

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1485 of 2001.

Allahabad this the 10th day of November 2004.

Hon'ble Mr. D.R. Tiwari, Member-A.

Anand Kumar Tiwari
S/o Shri R.N. Tiwari
R/o 205-K/10L, Kasari
Masari, New Chakiya
Anandpuram, Allahabad.

.....Applicant.

(By Advocate : Sri R.Sinha/
Sri A Srivastava)

Versus.

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Lucknow.
3. Controller of Stores,
Northern Railway,
Jodhpur (Rajasthan)
4. Divisional Mechanical
Engineer, Northern Railway,
Diesel Shed, Mugalsarai, Varanasi.

.....Respondents.

(By Advocate : Sri A.K. Gaur)

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By this O.A., filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the order dated 20.03.2001 (Annexure A-4). He has further sought for issuance of direction to respondent No.3 to accord all the benefits and privileges of continuity of service including monetary benefits alongwith payment of arrears of pay and allowances from March 2001 alongwith interest @ 17% per annum.

2. Briefly stated, the father of the applicant was working as a Khalasi in Regional Diesel Locomotive Shed, Mugalsarai who later-on became mentally disabled and was declared unfit for doing his job. Consequently

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the applicant requested for his appointment on compassionate grounds in the Railways and he was asked to come for duty of Khalasi on 21.02.1994 and the applicant started working as Khalasi in the said Diesel Locomotive Shed, Mughalsarai and subsequently he was given the Token No. 94. After some time Government took a decision to close down the Diesel Locomotive Shed of Mughalsarai and as such willingness of the employees was taken if they could join some other place. It appears that respondent No. 2 has sent a communication dated 22.12.1997 to the office of respondent No. 3 for absorption of the applicant. The respondent No. 3 has sent a letter dated 12.01.1998 to the effect that in case there is no Disciplinary Proceeding or vigilance case pending against the applicant, service record, Leave Account and L.P.C. may be sent (Annexure A-1). Accordingly the applicant was posted under establishment of respondent No. 3 and he discharged his duties with entire satisfaction of his superiors. The office of respondent No. 3 organised suitability test for promotion to the post of Store Mazdoor and accordingly he appeared in the said test and was declared suitable and was placed on panel of Store Mazdoor in the grade of Rs. 2610-3540/-. He was given provisional promotion by order dated 10.07.1998 (Annexure A-2). He was given the Bishist Sewa Pramar Patra and Medal for the year 21.09.2000 (Annexure A-3).

3. Surprisingly in October 1999 while the applicant was working as Store Mazdoor in the office of respondent No. 3, he was summoned by the Establishment and certain querries were made regarding his appointment as Khalasi. He specifically stated that he was engaged on compassionate grounds. He was told by those officers that certain officials of the office of respondent No. 3 has preurred the job fraudulently and in that

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connection the vigilance enquiry was setup and the matter was enquired into. By the impugned order dated 20.03.2001 issued by respondent No.3 the services of the applicant were terminated (Annexure A-4).

4. By means of this O.A., the applicant has challenged the impugned order on multiple grounds mentioned in paragraph 5 and its sub paragraphs. It has been submitted that in place of his father who was declared medically unfit, he was granted the job on compassionate grounds and he was engaged on the basis of verbal order of the Competent Authority on 21.02.1994. Since the date of the engagement, the applicant is being paid regular salary of the post of regular Khalasi and by official order he was transferred in the establishment of respondent No.3 thus the question of getting fake appointment does not arise. He has further contended that in the establishment of respondent No.3, he was promoted to the post of Store Mazdeer after passing the test on 10.07.1997 and he was awarded the Bishist Sewa Medal for the year 1999-2000. Even if, no appointment letter was issued to the applicant, but he has been regularly working since 1994 and after working for 18 months, the applicant acquired temporary status. The applicant has disputed the claim of the respondents and has stated that he is not aware of any medical memo referred in the impugned order. He has submitted that really surprisingly that after a lapse of 5 years in October 1999 some officers of the Vigilance Wings has asked certain question regarding the appointment of the applicant and 2 years thereafter the applicant's services were terminated on the allegation that his appointment on compassionate grounds was fake. He has mentioned that no disciplinary action under Rule 9 of the Railway Servant (Discipline and Appeal)) Rules

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1968 was taken and to say that it is termination simpliciter is wrong and order has been passed as a measure of punishment. Finally he has pleaded that the impugned order dated 20.03.2001 is against the principle of natural justice.

5. Respondents, on the other hand, have contested the O.A. and filed a detailed counter affidavit wherein they have submitted that no casual labour can be engaged by any authority as per extent Rules and only the General Manager is the Competent Authority for sanction to engage casual labour. It has been submitted that no willingness/option was asked from the Staff of Diesel Locomotive Shed to serve the other Department. They have, however, stated that some vacancies of Group 'D' staff (Khalasi) was vacant in the office of respondent No.3 and the applicant applied for his transfer from Lucknow to Jodhpur. They have submitted that vigilance investigation was made by General Manager (Vigilance) vide letter dated 14.03.2001 that the appointment of the applicant was fake and fraudulent and his services have been terminated. They have denied the receipt of representation dated 21.05.2001 by the office of respondent No.3.

6. I have heard counsel for the parties very carefully and perused the records.

7. The only question which falls for consideration is whether the action of the respondents in terminating the services of the applicant can be sustained in law. The impugned order (Annexure A-4) clearly speaks about the inquiry made by the Vigilance Department and on the basis of findings, his services were terminated. This inquiry was made behind the back of the applicant. It cannot be said that it is a termination simpliciter and does not require any inquiry. Since the applicant has

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worked for about four years and he was a contributor to the P.L. bonus etc., which is clear from Annexure A-2 of the O.A. The respondents have admitted that there were vacancies in the office of Respondent No.3 and the applicant also applied for the same. The requirement of vacancy in the office of respondent No.3 is clear from Annexure A-1 of the O.A. He has been terminated without following any procedure under the Railway Servant (Discipline & Appeal) Rules, 1968. It is a case of no notice, no hearing etc. It is a settled principle of law that no employee can be terminated by an inquiry held behind his back. Principle of natural justice demands that he should be given an opportunity to defend himself. For this view I am taking gets support from the decision of the Apex Court in the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose, National Centre for Basic Science, Calcutta & others- JT 1999 (1) SC 396 wherein it has been held that if findings were arrived at in inquiry to the misconduct behind the back of the officer or without a regular Departmental inquiry, the simple order of the termination is to be treated as "founded" on the allegation and will be bad in law. In view of this, the O.A. is liable to succeed on merit because the principles of natural justice and the statutory provisions of Railway Servant (Discipline & Appeal) Rules have been given a go by.

8. In the result in view of the discussions made above, the O.A. succeeds on merit and is accordingly allowed. The respondents are directed to reinstate the applicant forthwith with the liberty to the respondents to initiate the disciplinary proceedings in accordance with law if so advised.

D. Deo
Member-A.