

**RESERVED**

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1586 OF 2004  
ALONGWITH  
ORIGINAL APPLICATION NO.1588 OF 2004

ALLAHABAD THIS THE 19<sup>th</sup> DAY OF September 2008

**HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J**  
**HON'BLE MR. K. S. MENON, MEMBER-A**

1. K. N. Upadhyay,  
S/o Late Vidya Nand Upadhyay,  
R/o Railway Qter. No.1/96 N,  
Baulia Railway Colony,  
Gorakhpur.
2. Rajendra Gupta,  
S/o Jagannath,  
R/o S/86 C, Baulia Railway Colony,  
Gorakhpur.
3. Uday Chandra sinha,  
S/o Late Ram Chandra Prasad,  
R/o L/96 T Baulia Railway Colony,  
Gorakhpur.

. . . . . Applicants

By Advocate : Shri S. K. Om

Versus

1. Union of India, through  
General Manager, North Eastern Railway,  
Gorakhpur.
2. Senior Personnel Officer (Depot),  
North Eastern Railway,  
Gorakhpur.
3. Dy. Chief Material Manager (Depot)  
North Eastern Railway,  
Gorakhpur.
4. Dy. Controller of Stores (Depot),  
North Eastern Railway,  
Gorakhpur.

. . . . . Respondents

By Advocate : Shri K. P. Singh

**ALONGWITH**

ORIGINAL APPLICATION NO.1588 OF 2004



1. Ram Naresh son of Sri Matbhar,  
Resident of village Bhitia, Uska  
Bazar, Siddharth Nagar.
2. Ram Naval S/o Sri Sunder,  
R/o Mahuapur Tetariya, Gorakhpur.
3. Chedi S/o Sri Hira,  
Resident of Village S. Marihayau,  
District-Gorakhpur.
4. Jokhan Pandey S/o Dashrath Pandey  
R/o Village Phardahni, Gorakhpur.

. . . . . Applicants

By Advocate : Shri S. K. Om

Versus

1. Union of India, through  
General Manager, North Eastern Railway,  
Gorakhpur.
2. Senior Personnel Officer (Depot),  
North Eastern Railway,  
Gorakhpur.
3. Dy. Chief Material Manager (Depot)  
North Eastern Railway,  
Gorakhpur.
4. Dy. Controller of Stores (Depot),  
North Eastern Railway,  
Gorakhpur.

. . . . . Respondents

By Advocate : Shri K. P. Singh

### O R D E R

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

Having regard to the facts and circumstances of both the OAs are similar and have challenged the identical show cause notice issued by the respondents to the applicants, hence both the OAs are disposed of by this common order.






2. This application is filed seeking direction the respondents to regularize the services of the applicants, and to quash the order dated 07/08.12.2004 passed by the respondents.

3. The brief facts of the case are that the applicant no.1 was engaged as casual labourer on 10.06.1980, applicant no.2 was appointed on 16.08.1980 and applicant no.3 was appointed on 16.03.1980, and thereafter the services of the applicants were continued as casual labourer and appointed as substitute Khalasi by the order dated 08.12.1989 and 08/09.12.1989, the applicants in OA No.1588/04 are also appointed initially as casual labourer, and thereafter granted temporary status by the order dated 10.06.1988, and to the applicant no.2 on 09.12.1989 and for applicant no.3 on 10.08.1988 and applicant no.4 was also granted temporary status. The applicants are continuously working with the respondents without any break, the applicants appeared for screening but the results of the same have not been declared by the respondents till date. The respondents issued a show cause notice which is impugned in this OA stating that no approval was granted by the General Manager for the appointment of the applicants, hence this OA is filed against the same.

3. On notice the respondents have appeared and filed the detailed counter affidavit. The sum and substance



of the counter affidavit in both the OAs is one and the same, that is the appointment letters which are issued by the respondents as Substitute Khalasi to the applicants is admitted, but the endorsement made therein, "this has the approval of the competent authority" is not admitted for the reasons that the competent authority for the initial appointment for the casual as substitute Khalasi was a General Manager and it is a fact that the General Manager's Approval has not been accorded for their appointment, erroneously the office has made this endorsement. The matter was put up to General Manager N.E. Railway for regularization of the applicants who in response had taken decision that it would be lawful to remove such irregular employee under OM No.11012/07/91-Estt.(A) dated 19.05.1993, and based on this Railway Board has issued a letter dated 20.07. 1993 and accordingly the General Manager issued letter dated 24.11.2004 for giving show cause notice and it is only the apprehension of the applicants that the services of the applicants will be terminated by the respondents on the basis of the show cause notice issued to them, and further stated that the show cause notice was issued with the intention that on the receipt of the representation of the applicants the matter regarding irregular appointment will be considered and action will be taken accordingly, based on this sought for the dismissal of this OA.






4. The applicants have filed the rejoinder affidavit reiterating their contentions.

5. We have heard the learned counsel for the applicants and the respondents and perused the pleadings and the materials on record. The learned counsel for the applicant submits that the impugned show cause notice issued to the applicants is illegal and unsustainable in law having regard to the fact that the appointment orders issued by the respondents to the applicants it is clearly mentioned that with the approval of the competent authority, therefore, the action of the respondents in issuing the show cause notice is illegal, and further submits that the respondents will take action to terminate the services of the applicants. On the other hand the learned counsel for the respondents submits that the applicants have approached by filing this OA against the show cause notice, and therefore it is premature in the absence of any order to entertain the OA, as the respondents have called upon the applicants to show cause within a period of fifteen days as to why the services should not be terminated. In view of the above contentions, and on perusal of the impugned notice issue by the respondents it is clear that the respondent authorities called upon the applicants to reply for the same within fifteen days, if they failed to reply then the administration will take ex-parte decision. It is clear from the pleadings and the contention of the applicants that this OA is filed on



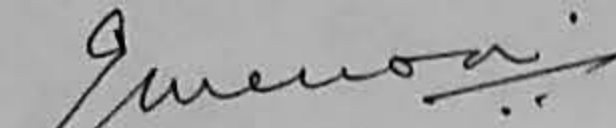
the apprehension that the respondents will take action illegally to terminate the services of the applicants even though there is no fault on the part of the applicants, having regard to the statement and the submissions made on behalf of the respondents stating that the error has crept in issuing the office order has resulted in irregularity therefore the show cause notice was issued with an intention on the receipt of the reply from the applicants the matter regarding irregular appointment of the applicant will be considered and action will be taken accordingly, in view of this I do not find any justification to decide the controversies and the rival contentions contended in this OA, and therefore it is just and proper in the interest of justice that the respondents shall decide the matter, treating the contention taken by the applicant in this OA as a reply to the show cause notice which is impugned in this OA, and further the applicants are permitted to make a reply statement if necessary with relevant materials and information to the show cause notice within 15 days to the respondents.

6. In view of the foregoing reasons, the OA is disposed of with a direction to the respondents to pass appropriate and speaking order in accordance with law after affording an opportunity to the applicants if necessary and communicate the same to the applicant within a period of three months from the date of receipt of a certified copy of this order, till the





decision is taken by the respondents the services of the applicants shall not be disturbed. All the contentions of the parties are left open. No Costs.

  
Member-A

  
Member-J

/ns/