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CONCLUSIONS

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Versus

Pravar Vidyut Abhiyanta(Niramana) 5th /N.

Railway, Old Railway Station Building,

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Hon'ble D.S.Misra A.M.
Hon'ble G.S.Sharma-J.M.

(Delivered by Hon'ble D.S.Misra)

This is an application under section 19 of the Administrative Tribunals Act, 1985 against an order dated 10.6.1986 passed by respondent no.1(Pravar Vidyut Abhiyanta) and order dated 11.6.1986 passed by respondent no.2 (Senior Electrical Foreman, Construction TRD, N-E. Railway Hathras) Aligarh discharging the applicant from service w.e.from forenoon of 11.6.1986.

2. The applicant has alleged that he had worked as casual Khalasi in the Northern Railway at Minto Bridge, New Delhi for about 700 days w.e.f. from 17.8. 1978. He also worked as casual Khalasi at Hathras Junction, Northern Railway, for a period of about 8 months from 21.5.1984 and had completed more than 1090¹² days of service as casual/scale -rated Khalasi and was, therefore, entitled to be regularised. He has alleged that he has been illegally and arbitrarily discharged from service without affording any opportunity of hearing. He has prayed for issue of an order setting aside the order of discharge from service and for being treated in continuous service with full back wages and all other amenities and benefits of service.

2. In reply filed by Senior Electrical Engineer(Construction)

N.E. Railway, Kanpur on behalf of the two respondents, a preliminary

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objection was raised that the application was premature and not maintainable as the applicant had not availed of the alternative remedy of filing an appeal to the next higher authority against the order of discharge. It is further stated that the applicant's performance in different units, where he worked as casual Khalasi was not satisfactory and his attendance was very irregular. While working under Senior Electrical Chargeman (C.4) unit Minto Bridge, New Delhi, although the name of the applicant was in the rolls for a period of 90 days, but he performed the duties only for 41 days and for remaining days he unauthorisedly absented himself. Likewise while working under Senior Electrical Chargeman in Luxer, he absconded from duty from 24.5.1979 to 31.5.1979; from 28.11.1979 to 5.12.1979; from 13.12.1979 to 14.12.1979 and from 24.12.1979 to 7.1.1980. Due to his poor performance the applicant was discharged on 1.1.1980. Thereafter, the applicant was reengaged from 8.1.1980 after he gave an assurance that he would improve his performance. However, despite his assurance his work from 16.1.1980 to 27.4.1980 was again not satisfactory as he was not regular in performing his duties. He unauthorisedly absented himself on 4.2.1980, then from 21.2.1980 to 22.2.1980 and on 6.3.1980, 18.4.1980, 20.4.1980 and 1 21.4.1980 and hence his name was struck off from the rolls. The applicant again approached the office of the Senior Electrical Foreman (Construction) Aligarh where he was appointed afresh as casual Khalasi on 26.11.1980. He worked upto 14.3.1981, but during the period of 85 he again absented unauthorisedly for 13 days on which score his name was again struck off from the rolls. The whereabouts of the applicant remained unknown for three complete years, and the applicant was again re-engaged as Khalasi on 25.5.1984 by Senior Electrical Foreman (Construction) Hathras, where he worked until the date of his discharge. During this period, as per rules, he was only given monthly wages and no other privilege like pass, P.T.O. and leave ~~XXXX~~ were given to him. The respondents have denied the assertion of the applicant in sub-para (ii) of

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para 6 of his application that he was faithful to his duty and his work was always found satisfactory by his superiors. It is alleged that the applicant's performance was not entirely satisfactory and despite various warnings he did not improve his working. On 17.4.1986, the applicant took active part in the illegal strike causing disruption of normal functioning of the unit. He also instigated other staff to participate in the strike and prevented them from performing their duties. Upon this unwarranted conduct of the applicant, respondent no.2 vide his letter dated 3.5.86 issued a written warning to him which the applicant refused to accept (copy at annexure-CA-1). After the refusal of the applicant to receive the said warning letter, respondent no.2 vide his letter dated 3.5.1986 to respondent no.1 informed him about the conduct of the applicant (copy at annexure-CA2). It is further alleged that an inquiry into the strike of 17.4.1986 was conducted by the Assistant Electrical Engineer (Construction) Allahabad, who submitted his report (copy at annexure-CA-3) in which it was held that the attitude of the applicant was not positive and during duty hours he was unnecessarily trying to create problems in the routine working. The respondent no.1 was advised by the inquiry officer to keep a close watch on the working of the applicant (copy at annexure-CA-4), so that the discipline of the unit should not be spoiled on account of the individual employee (copy at annexure CA-5). As the working of the applicant did not improve despite warning, the respondent no.2 gave a written information to respondent no.1 that the performance and working of the applicant had not improved whereupon respondent no.1 by his letter dated 26.5.1986 asked respondent no.2 to discharge the applicant (copy at annexure CA-6). The order of discharge dated 16.11.1986 was issued by respondent no.2 accordingly. Respondents denied that the order of discharge was illegal and arbitrary. It is asserted

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that order of discharge was passed in accordance with the rules and the applicant had a right to prefer an appeal against the order of discharge before the next higher authority. As the applicant had failed to prefer an appeal, the application is not maintainable and is liable to be dismissed.

4. The applicant filed rejoinder-affidavit, in which he asserted that it was not necessary to file appeal against the impugned order and the application was maintainable under section 20 of the Administrative Tribunals Act. The applicant asserted that through-out his service, he was attending office regularly but the employer used to mark the applicant absent from duty only with a view to create an artificial break in the continuous service of the applicant. He also asserted that his work throughout had been satisfactory. He also denied receipt of any warning about unsatisfactory work. Regarding his participation in the strike of 17.4.1986, the applicant has stated that he was prevented by strikers from attending his duties. He denied the allegation that he prevented the other work^{ers} from performing their duties. He also alleged that four other employees, who had participated in the strike of 17.4.1986, were allowed to continue in service, but the applicant was discharged even without being given a chargesheet. He also denied that any notice, annexures CA 1, were sought to be served on the applicant, which were refused by him. He also alleged that in the inquiry conducted by the Assistant Electrical Engineer (Construction) Allahabad nothing was asked from him by the Inquiry officer and no reliance should be placed on the inquiry held behind the back of the applicant and without affording him an opportunity to have his say before the Inquiry officer. He also asserted that the report of such an ex parte inquiry could not be used against him and asserted that his work was through out satisfactory. He further asserted that the impugned order was illegal, arbitrary, mala fide and ^{is} liable to be quashed. He also

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asserted that he had no remedy by way of statutory appeal against the impugned order.

5. The respondents had taken a preliminary objection that the application was not maintainable under sub-section(1) of Section 20 of the A.T.Act as he did not exhaust the departmental remedy of appeal to the higher authority. Section 20(a) of the said Act only prohibits the admission. Since the application has already been admitted, it may be presumed that the prohibition contained in Sub-section(1) of Section 20 of the A.T.Act has been condoned.

6. We have heard the arguments of the learned counsel ~~for~~ ^{for} the parties and have also perused the record. In his argument, learned counsel for the applicant mainly dealt with the allegation that the services of the applicant were terminated without holding an inquiry and therefore, the order was violative of Art. 311 of the Constitution. Learned counsel for the respondents asserted that the work and conduct of the applicant had not been satisfactory and he has been indulging in activities detrimental to the discipline of the organization where he was working. Learned counsel for the respondents also draw out ^{the} attention to the conduct of the applicant in refusing to receive the written warning dated 3.5.1986 issued over the signature of senior Electrical Engineer. Similarly, in the inquiry conducted by an Assistant Electrical Engineer(Construction) Northern Railway Allahabad, it is disclosed that the applicant was responsible for encouraging indiscipline in other employees working at the place of his posting. He tried to justify the order of discharge on the ground that the applicant was merely a casual employee and his service could be terminated without following the procedure prescribed in the Railway Servants Discipline and Appeal Rules. We have considered this argument and find that in view

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of various admissions made by the respondents in their reply, it is established that the applicant had been working with the respondents for several years. In para 9 of the counter-affidavit, it has been stated that since 25.5.84, the applicant was being given monthly wages like other central government employees. The applicant had, therefore, acquired the status of a temporary railway servant and his services were protected under Article 311 of the Constitution of India. As the impugned order does not indicate the provisions of the Rule under which his services were terminated, it is evident that the order has been passed by way of punishment without following the procedure prescribed under the Railway servants Discipline and Appeal Rules. We are, therefore, of the opinion that such an order is not warranted by law and rules and as such can not be sustained.

7. We hereby quash the impugned order and hold that the applicant should be deemed to continue in service with all consequential benefits and direct the parties to bear their own costs.

Member-A

19.11.86

Member-J

19/11/86

JS/10.11.1986.