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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.88 of 1986

(C.A. No. 346 of 1986)

Union of India & Others. Defendants-Appellants

Versus

Nakched Ram and Others Plaintiffs-Respondents

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

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This Appeal has been received on transfer from the Court of District Judge, Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985. The appeal is against the judgement and decree dated 31.10. 1985 passed by the IXth Additional Munsif Varanasi in Suit No. 78 of 1985 Nakched & Others Versus Union of India & Others. The grounds of appeal are that the Court below had erred in not relying on the seniority list filed by the defendants and the plaintiffs were not permanent employees on the post of Shuntman and had not attained temporary status and the Court below did not rely on the oral and documentary evidence produced by the defendants-appellants.

2. According to the plaintiffs-respondents they were appointed as substitutes at various

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28/ ^{in the} dates ~~at~~ ^{at} Mugalsarai Division of Eastern Railway. They were appointed as substitute Shuntmen and had been working since then in a temporary capacity. The plaintiff -respondent No.1 was appointed as a substitute Shuntman in October, 1977, the plaintiff-responder No.2 in September, 1980 and plaintiff-responder No.3 from August, 1981 and they got all the privileges of regular employees. They had also claimed protection under the 18 months officiating Rule but they were spared on 24.1.1985 by the Deputy Chief Yard Master, Eastern Railway, Mugalsarai and asked to revert back to their original post. This was done without giving them any notice or chargesheet. They had challenged this order on account of it being issued by an officer who was not competent to do the same. These contentions were opposed by the defendants-appellants in the Suit on the ground that the plaintiffs-respondents were never confirmed in the post of Shuntman. The substitutes are engaged against regular vacancies and they are regularised after screening as and when ^{if vacancies occur & occur} ~~the~~ learned Trial Court after examining the oral and documentary evidence arrived at a conclusion that the plaintiffs-respondents were substitutes on the Eastern Railway and that they do not get any right to work as ^{regular} ~~as~~ Shuntman. Their names also appeared in the lists of substitutes and they were to be regularized on their own turn. They are also not entitled for automatic regularization

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and therefore they could not be considered as regular employees. However on the point whether the Deputy Chief Yard Master could spare them and was competent to do the same, ³ he had relied on D.W.I. who had said that the Deputy Chief Yard Master could not spare the plaintiffs-respondents and the competent authority was the Divisional Railway Manager. The learned Trial Court did not rely on the pleadings of the counsel for the defendants that the Deputy Chief Yard Master spared the plaintiffs-respondents only on the authority of the orders of the competent officer because no evidence had been produced to support this version. Therefore he set aside the order given by the Deputy Chief Yard Master for sparing the plaintiffs-respondents. The learned Trial Court thus came to the conclusion that though the plaintiffs-respondents were substitutes and could be spared by a competent authority, ³ and since the Deputy Chief Yard Master was not competent, the order issued by him to spare them were null and void.

3. We have heard the learned counsel for the defendants-appellants who maintained that the Yard Master ³ ~~only~~ controls the employees and he could spare the plaintiffs-respondents when they were no more required at the post against which they were working, ³ and it remained no more vacant. Nobody represented the plaintiffs-respondents. We have also perused the Suit file.

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3/ 4. There is no dispute about the fact that the plaintiffs-respondents were working as substitutes. The substitutes are persons who are engaged in regular scales of Pay & Allowances which are applicable to the posts against which they are employed. These posts fall vacant due to railway employees being either not available or being on leave and which cannot be kept vacant. They can only be appointed if there is a vacancy. They attained^{3/} temporary status after working for four months and no notice of discharge is required except as given under the ~~Codex~~^{3/} Rules. They are normally appointed only by the competent authority. A Register is normally maintained showing the names of substitutes employed. They can be employed in class IV categories or class III categories. There is no dispute about the conclusion arrived at by the Trial Court that the plaintiffs-respondents were only substitutes. It is also clear that a substitute can work against a vacancy as long as it is available when either the regular incumbent returns from leave or a properly empanelled person is posted on the job a substitute cannot be kept on working against that post. In this particular case it seems that these plaintiffs-respondents had worked for long periods as substitutes~~Shuntmen~~ in violation of the instruction regarding temporary ad hoc arrangements that are

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required to be made against vacant posts. However it is also clear that they never attained a regular or permanent status as a Shuntman and that they were never subjected to regular selection. The plaintiffs-respondents therefore had no claim against the Shuntman posts. Day-to-day officiating arrangements are made by the Senior Subordinate under whose charge a substitute works and orders are not obtained from the Divisional Office for such working. The plaintiffs-respondents had alleged that the Deputy Chief Yard Master who was interested to favour some other persons and had soft corner for them, all of sudden passed an order sparing them from the post of Shuntman. Since the status of the plaintiffs-respondents never changed irrespective of the fact that they had worked for a long period they continued to be substitutes only and a substitute can only be utilized against casualties. Therefore it cannot be said that the order of the Deputy Chief Yard Master to spare the plaintiffs-respondents was in any way out of jurisdiction. He was the senior subordinate fully competent to make local officiating arrangements as contended by the learned counsel for the defendants-appellants. We do not find anything wrong in his issuing an order sparing the plaintiffs-respondents when regular selected persons reported to work as Shuntman. We do not agree that the provisions of

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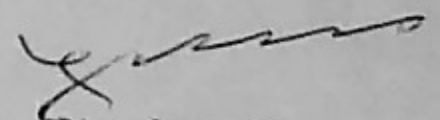
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Article 311 were attracted and the plaintiffs-respondents could not be spared without following the procedure. The sparing will also not tantamount to reversion because a substitute works only as long as the permanent employee is on leave or the post is vacant waiting for the arrival of a ³⁻duly selected hand and cannot be kept vacant. Since it is not a reversion the question of a Shuntman being a class III employee not subject to reversion does not arise. We also find that the Deputy Chief Yard Master was the competent authority as averred by the defendants-appellants in para 24 of their reply in the suit filed. We therefore do not agree with the conclusion arrived at by the learned Trial Court that the Deputy Chief Yard Master was not competent to spare the plaintiffs-respondents.

5. On the above considerations we allow the appeal. The Suit (No. 78 of 1985) is dismissed Parties to bear their own costs throughout.

अनप जोशी

Member (A)



Vice Chairman

Dated the 11th Feb., 1988.

RKM