A3/1

RESERVED

Central Administrative Tribunal Allahabad.

Registration T.A.No.518 of 1986 (O.Suit No.15 of 1984)

Kamta .... Plaintiff

Vs.

Union of India and 3 others .... Defendants.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This original suit for declaration has been received by transfer from the Court of Munsif Fatehpur under Section 29 of the Administrative Tribunal Act XIII of 1985.

2. It is alleged by the plaintiff that he was appointed as a casual labour under the Assistant Engineer Northern Railway Fatehpur, defendant no.2 and was attached with I.O.W.Fatehpur, defendant no.3 in 1974 and worked as such till 1982. After his working for more than 180 days as a casual labour, the plaintiff was entitled to his appointment as a Gangman but without any rhyme or reason, the defendant no.3 orally removed him from service without giving any notice to him. After making representations when no heed was paid to the plaintiff, he filed the present suit after giving a notice under Section 80 of the Code of Civil Procedure for a declaration that the order of termination of his

services is illegal and void. After the receipt of the record in this Tribunal, the plaintiff sought an amendment in the plaint to plead that his removal from service w.e.f. 5.6.1982 is against the provision of Sections 25-F and 25-G of the Industrial Disputes Act. It was also pleaded by way of amendment that after working as a casual labour continuously from 9.10.1974 to 5.6.1982, the plaintiff became a regular class IV employee of the railway establishment under rule 2501 of the Railway Establishment Code (for short Railway Code) and termination of his services without following the procedures prescribed by the Railway Servants (Discipline and Appeal) Rules violates the provision of Art.311(2) of the Constitution and he is entitled to reinstatement with arrears of pay from 5.6.1982.

3. The suit has been contested on behalf of the defendants and in the written statement filed before the learned Munsif on their behalf, it was admitted that the plaintiff was appointed as a casual labour and was working under the defendant no.3. It was also admitted that after working as casual labour for 180 days, the incumbents acquire temporary status. It was further pleaded that the plaintiff had made forged and fictitious entries in his casual labour card and on enquiry when he could not give any satisfactory explanation, his services were dispensed with on 5.6.1982 and the allegations made by him to the contrary are incorrect. No additional written statement was filed in reply to the amendment sought in the plaint as above.

4. It is an admitted case of the parties that the plaintiff had joined the Northern Railway as a casual labour w.e.f. 9.10.1974 and his services were terminated on 5.6.1982. In his plaint, no specific reason was given by the plaintiff for the termination of his services and it was alleged that it was done on account of personal prejudice and his family Ranjish with trolleyman of the defendnat no.3 who is the own elder brother of plaintiff. For the first time, it became clear from the written statement of the defendants that the plaintiff's services were terminated for his making forged and fictitious entries in his labour card. The main point arising for determination in this case is whether the services of the plaintiff, who was working as casual labour continuously from 1974, could be summarily dispensed with without following the prescribed procedure?

5. On being requisitioned by the plaintiff, photostat copy of the service card of the plaintiff was filed before us by the defendants. This service card shows that from 9.10.1974 the plaintiff had worked with the defendants upto 5.6.1982 with some breaks. The last sheet of the service card shows that the plaintiff had worked for more than 180 days upto 24.2.1982 and thereafter he worked from 28.4.1982 to 5.6.1982 . The plaintiff had thus acquired the temporary status for continuously working for more than 180 days upto 24.2.82 and this status could not be lost on account of a big gap from 15.2.1982 to 27.4.1982. The defendants have not specifically pleaded that the plaintiff had not acquired the temporary staus by the time his services were ter-

minated. We are, therefore, of the view that under the provisions of the Railway Code, the plaintiff had acquired temporary status and his such status continued upto 5.6.1982.

6. The Railway Code provides that on acquiring the temporary status the railway employees are entitled to all the rights and privileges admissible to temporary railway servants under chapter XXIII of the Railway Establsihment Manual. They also become entitled to the benefits of Railway Servants (Discipline and Appeal)Rules,1968. We are, therefore, of the view that on suspecting the hand of the plaintiff in forging his casual labour card, it was necessary for the defendants to initiate regular disciplinary proceedings against him under the provisions of D.A.Rules. Undisputedly, no such proceedings were initiated and after making an oral enquiry when his explanation was not found satisfactory, he was removed from service. The removal from service is a major penalty and for this regular enquiry as contemplated by Rule 9 of the D.A.Rules should have been made against him. As this was not done, the order of his termination passed by the defendants is illegal and cannot be sustained.

7. As we do not have any written order of termination before us, the question of its setting aside does not arise. We would, however, direct the defendants that if so desired, they should take the necessary action against the plaintiff now in accordance with the provisions of the D.A.Rules within a period of 3 months from the receipt of this order and in case no such action is now

contemplated due to lapse of time or any other practical dificulty, the plaintiff should be taken back on duty with all consequential benefits ignoring the oral order dated 5.6.1982 of termination of his services. The suit is disposed of accordingly without any order as to costs.

27/7/87
Member (A)

27/7/87
Member (J)

Dated 27.7.1987
kkb