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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1023 of 1986
(Civil Misc. Writ Petition No.13437 of 1985.)

Rama Shankar and two others Petitioners
Vs.

Divisional Railway Manager
(Karmik), N.E.Railway,
Varanasi Respondent.

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

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

This petition under Article 226 of the Constitution of India has been received on transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The petitioners, it is alleged, had been working as casual labour in the construction work of converting the Meter gauge into Broad gauge under the Engineering Department in the Varanasi Division. The respondent no.1 vide his notice dated 26.3.1985, copy annexure 1, invited applications from ~~substitutes~~ and casual workers working in all the departments of the Varanasi Division for appointment in the Mechanical Department on the equivalent status. As the petitioners fulfilled all the requirements mentioned in the aforesaid notice, they too submitted applications for appointment in the Mechanical Department and on

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being selected as Engine Cleaner by the Selection Committee, the petitioner no.1 was appointed as such in the Loco Shed Bhatni vide order dated 1.6.1985, copy annexure 3, issued by the respondent and he started working on that post w.e.f.3.6.1985. The petitioner no.2 joined his duty on 6.6.1985 in the same Loco Shed under order dated 5.6.1985, copy annexure 4, issued by the respondent and the petitioner no.3 had joined his post subsequently at Chakra Kutchery Loco Shed under order dated 31.5.1985 issued by the respondent. The respondent, however, vide his order dated 12.6.1985, copy annexure 6 surprisingly directed the deletion of the names of the petitioners from the list of selected candidates and ordered their removal from their respective posts immediately on the ground that they were casual labourers in open line and not in the Works Department.

3. The validity of the said order dated 12.7.1985 passed by the respondent removing the petitioners from service has been challenged in this writ petition on the grounds that the impugned order is wholly illegal, mala-fide, arbitrary and without jurisdiction and violates the provisions of Articles 14 and 16 of the Constitution and the principles of natural justice. The petitioners were fully eligible for appointment and their names were wrongly removed by the respondent with ulterior motive in order to provide

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jobs to some persons in whom he was interested. It is also alleged that after the due selection of the petitioners in accordance with ^{the} terms of the notice issued by the respondent, the respondent was not competent to review or revise his order. They accordingly prayed that the impugned order be quashed and the respondent be directed not to make any appointment on the posts of Engine Cleaner held by the petitioners.

4. In the counter affidavit filed on behalf of the respondent, it was stated that the petitioners were working as casual labourers in the Broad Gauge construction under the direct control of the Chief Engineer (Construction) N.E.Railway Gorakhpur and were not working in any department under the control of the Varanasi division and as such, they were not eligible for being considered for appointment under the notice dated 26.3.1985 (annexure 1) issued by the respondent. In order to meet the exigency of the situation created by the heavy casualty occurred in the department because of the marriage season etc., the normal and routine procedure for appointment was not adopted ^{and} on the basis of paper qualification and general fitness, the posting orders were issued subject to the screening test and medical examination. The appointment of the petitioners was thus subject to screening test. It is wrong to say that

the petitioners were given the appointment after a proper selection as alleged by them. The petitioners had hardly worked for two months and in some cases, less than this when the impugned order dated 12.7.1985 terminating their tenure was issued and the allegations to the contrary are not correct. On knowing from the screening that the petitioners were not in the employment of open line with a view to correct the administrative mistake, the impugned order was passed and the motive attributed by the petitioners is not correct. The mere fact that the petitioners were working in places falling under the control of the Varanasi Division does not bring them under the control of the Divisional Office Varanasi and the notice annexure 1 inviting applications was not applicable to the petitioners. The petitioners had no right to continue on the posts and no interference is called for by the High Court/Tribunal. The petitioners have not exhausted the alternative remedy of departmental } Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as appeal contemplated by Rule 18 of the } D.A.Rules) and this petition is not maintainable.

5. In the rejoinder filed by the petitioners, it has been stated that all the petitioners were appointed as casual labourers by the P.W.I B.G.Construction, N.E.Railway, Deoria Sadar. Deoria Sadar is under the control of Varanasi } division and as such, the petitioners were working under the control of the Varanasi Division. In

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any case, the advertisement, annexure 1 nowhere mentioned that the candidates other than of Varanasi division were not allowed to apply thereunder. The appointment letters, annexures 3 to 5 of the petitioners did not indicate that the appointments were subject to proper selection. Some casual labourers working in the Broad gauge construction were appointed in the Varanasi division ^{on b} 22.3.1985 and 15.4.1985 vide copies of orders annexed to the rejoinder. The notice of advertisement did not make any distinction among the casual labours and the allegations made by the respondents in their counter affidavit to the contrary are not correct. It was also stated that there is no provision of appeal under rule 18 of the D.A.Rules against the immediate termination orders and the petitioners had no option but to approach the High Court for getting the impugned order quashed.

6. We have carefully gone through the record in the light of the submissions made on behalf of the parties before us. The only point arising for determination in this case is whether the petitioners were duly selected as class IV employees by the respondents under the orders annexures 3 to 5 and their services were wrongly terminated without observing any formality. For deciding this question, we have to first examine the contents of the notice of advertisement, annexure 'A' to the petition. This document is in Hindi and the English translation of the relevant portion thereof is as below :-

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"Applications are invited from the substitutes and casual labourers working in all the departments of this (Varanasi) division for appointment in the mechanical department in the same capacity or status."

7. The wordings of the advertisement thus show that the substitutes and casual labours working in other departments of the Varanasi division had to join the Mechanical Department in the same capacity and not on a regular or permanent basis. Annexures 3, 4 and 5 are the office orders dated 1.6.1985, 5.6.1985 and 31.5.1985 under which the petitioners Rama Shankar, Avdhesh Misra and Santosh Kumar Maharaj respectively were appointed temporarily. The relevant contents of these orders are as follows:-

"The following casual labourers were declared successful in the eligibility test held on 20.5.1983 and 31.5.1983 and they are appointed as substitute engine cleaners on temporary basis.

Their regular appointment will depend upon screening test and medical examination."

8. These appointment orders thus clearly mention that the petitioners were appointed as substitute engine cleaners temporarily subject to screening test and medical examination. They were not given

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a regular appointment. The eligibility test on the basis of which they were selected or appointed was limited only to the general clarifications prescribed by the railway administration for these posts. The impugned order dated 12.7.1985, annexure 6 speaks that the persons noted below (including the petitioners) were selected as substitute engine cleaners temporarily but on screening test, it was found that they were not working in open line as casual labourers but were working in the construction department and as such, their names be removed from the office orders, annexures 3 to 5 and they should be removed from work with immediate effect.

9. According to para 2315 of the Establishment Manual, substitutes are those persons who are engaged in regular scales of pay and allowances applicable to posts against which they are employed. These posts may fall vacant due to railway servants being on leave or due to non-availability of permanent or temporary railway servants and which could not be kept vacant. Para 2318 of the Manual further lays down that substitutes should be given temporary status after working for four months.

} As the petitioners were appointed as substitutes and they were removed from their respective jobs within a period of less than 4 months, they could

not acquire the temporary status and as such, they are not entitled to any protection under the D.A.Rules. In our opinion, their services could be dispensed with without any notice or affording any opportunity of showing cause. The respondents ~~have~~ clearly stated in the impugned order that the petitioners were not working in the open line but were working in the construction department. In para 7 of their counter affidavit, they have clarified that by open line, they mean the various departments under the control of the Varanasi Division. The advertisement notice, annexure 'A' extracted above, shows that the applications were invited from the casual labourers and substitutes working in the departments of Varanasi division. The respondents ~~have~~ further stated that the petitioners were working under the control of the Chief Engineer(Construction) N.E.Railway, Gorakhpur Headquarters Office, Gorakhpur. Thus, according to them the petitioners were working under the control of the Gorakhpur headquarters and not under the Varanasi division of the N.E.Railway. The petitioners have alleged in their rejoinder that they were working under Varanasi Division but have not produced any evidence in support of their contention. The two annexures filed with their rejoinder by the petitioners are not at all applicable to this case as the appointments thereunder were not made ^{under} ~~in accordance with~~ the advertisement notice, annexure 'A', under which the petitioners were appointed. We are, therefore,

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of the view that there has been no discrimination against the petitioners in this case and as they did not acquire any legal right to hold the post of Substitute Engine Cleaners they have no right to challenge the impugned order under the law. Their petition has no force and merits dismissal.

10. The petition is accordingly dismissed but without any order as to costs.

Shma

27.3.1987
MEMBER (A)

S. Narve

27.3.1987
MEMBER (J)

Dated 27.3.1987
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