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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 161 of 1987

Syed Husain Petitioner.

Versus

Station Master, Rauzagaon,
N.Railway, Barabanki & others Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

The petitioner, Syed Husain, who was working as a substitute under Station Master, Rauzagaon on Northern Railway during various spells, one of which was 7 months 32 days from 28.10.1980 to 19.6.1981 against the post of Safaiwala, was discontinued with effect from 20.6.1981. He has filed this writ petition in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow being Civil Misc. Writ Petition No.5314 of 1981 praying for the issue of a ~~direction~~ writ, order or direction in the nature of certiorari quashing the striking off of ~~commanding~~ his name from the register and/or regularising his appointment on the basis that he has already worked more than 6 months. This petition has now been received on transfer under Section 29 of the Administrative Tribunals Act XIII of 1985. His submission is that his retrenchment cannot be done because he has worked for more than 6 months, the action was in violation of provisions of para 2512 of the Indian Railway Establishment Manual, he was not given any opportunity before termination, and the provisions of section 25-F have not been followed.

2. The respondents have denied that the petitioner ever worked continuously. The petitioner was screened in August, 1980 and not empanelled for absorption. It was, therefore, decided to strike off his name from the register. His case is not covered under Section 25-F of the I.D. Act as the case is not one of retrenchment.

3. In his rejoinder the petitioner has reiterated that he worked continuously during the period 28.10.1980 to 19.6.1981 and acquired temporary status. Screening is meant for permanent absorption only. It cannot mean discontinuance of casual/substitute status.

4. We have heard the learned counsel for the parties and have carefully seen the case file.

5. It is evident from Annexure 'R-1' filed by the respondents that the working of the petitioner during the period 28.10.1980 to 19.6.1981 was as follows :-

<u>From</u>	<u>To</u>	<u>Total days</u>
28.10.80	31.10.80	4
1.11.80	20.11.80	20
25.11.80	30.11.80	6
16.12.80	31.12.80	16
1. 1.81	31. 1.81	31
1. 2.81	29. 2.81	29
1. 3.81	31. 3.81	31
1. 4.81	30. 4.81	30
1. 5.81	31. 5.81	31
1. 6.81	19. 6.81	19

Thus his working was continuous from 16.12.1980 to 19.6.81 giving a total of 187 days. The figure would work out to 186 days if February is taken as 28 days as it could not have been 29 days in 1981. A substitute or casual labour, who works for 120 days/4 months attains temporary status. The averment made by the respondents in para 2 of their

reply are, therefore, not correct. They only reflect on the perfunctory manner in which the reply has been framed.

6. Having attained temporary status a substitute has to be given a retrenchment compensation under the I.D. Act. Since they are engaged for the duration of vacancy no notice would be required for discharge. A workman who has not completed one year's continuous service is not entitled to any compensation under the I.D. Act and Section 25-F is also applicable to him only then. The petitioner had worked continuously for ~~186~~ days and thus I.D. Act is not applicable to him.

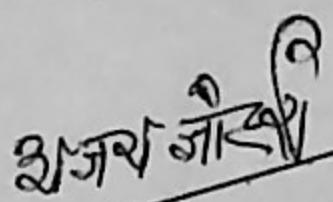
7. He was, however, entitled to the privileges available to those who had attained temporary status. These are laid down under Chapter 25 of the Indian Railway Establishment Manual and these are privileges admissible to temporary Railway servants. Thus, if the services were resulting in termination of appointment due to his non-empanelment, the petitioner was entitled to the notice. A notice would not have been necessary if his name was kept on the register so that he could be called for work when a vacancy arose. The order given by the respondents placed as Annexure 'I' to the petition and Annexure 'R-2' to the reply do not indicate that any notice was given to him before striking off his name. Striking off the name is also termination of appointment. In the absence of the requisite notice the order striking off the name is ~~bad in law & void~~.

8. The petitioner had not been successful at the screening, hence he cannot be regularised in the class IV category. His prayer in this regard is not tenable.

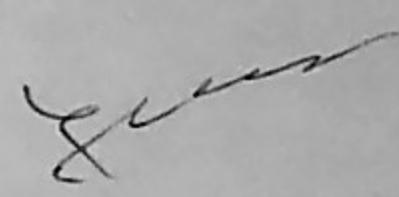
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9. Under the circumstances the order striking off the name of the petitioner from the register and prohibiting his future engagement is quashed. The petitioner will retain his seniority as on date of discharge and would be eligible for consideration for engagement against vacancies of substitutes. This order, however, does not prohibit the respondents from terminating his service under Rules and law. The petition is disposed of accordingly. We leave the parties to bear their own costs.



MEMBER (A).



VICE-CHAIRMAN.

Dated: March 11th, 1988.

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