

Central Administrative Tribunal, Allahabad.

Registration T.A.No.696 of 1987 (C.M.W.P.No.2954/1980)

Vinay Kumar Sharma and 30 others ... Petitioners

Vs.

Union of India and 2 others ... Respondents

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

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

This writ petition under Art.226 of the Constitution of India has been received from the Lucknow Bench of the High Court u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the petitioners is that the petitioner nos. 1 to 15 had worked for sometime in the Loco Canteen at Pratapgarh and the petitioner nos. 16 to 31 had worked for a short time under Loco Foreman Northern Railway Lucknow before 1.6.1978. The petitioners were engaged as substitute Engine Cleaners w.e.f. 15.7.1980 in the Locoshed Pratapgarh by the Loco Foreman Northern Railway Pratapgarh and on 17.10.80 which was a pay day, when the petitioners were not paid their salary for the month of Sept.1980 during which they had worked as substitutes, they made an inquiry and came to know that their services were terminated under letter dated 22.8.1980 of the Sr. Divisional Mechanical Engineer Northern Railway Lucknow respondent no.2 w.e.f.23.8.1980 on the ground that the appointment of the petitioners was wrong as on account of the ban on the engagement of the casual labourers, the petitioners could not be engaged w.e.f. 15.7.1980 as they had not worked before the cut off date 1.6.1978. The petitioners have challenged the

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validity of the order dated 22.8.1980 as well as the earlier letter dated 6.8.1980 of the respondent no.2 and have also prayed for quashing the same with the allegations that the ban applied to casual labour and not to substitutes and in any case, the petitioners having worked before 1.6.78, the appointment was not irregular on that ground. It has also been alleged that the services of the petitioners could not be terminated without complying with the provisions regarding retrenchment as well as without a notice under rule 149 of the Railway Establishment Code Vol.1 (hereinafter referred to as the Code).

3. The respondents in their reply filed after a long delay of over 7 years despite stay order passed by the Lucknow Bench of the High Court in this case, denied the allegations of the petitioners that any of them had worked in any capacity before 1.6.1978. The canteen in which the petitioner nos. 1 to 15 might have worked was not a canteen run by the railway administration and as the petitioners had obtained their engagement fraudulently, their engagement was void ab initio. The petitioner nos. 1,9 and 10 were engaged w.e.f. 16.7.1980 and the remaining petitioners were engaged w.e.f. 15.7.1980 by the Loco Foreman Pratapgarh illegally and fraudulently. No inquiry or verification regarding the past services of the petitioners was ever made and the letter dated 16.7.1980 set up by the petitioners is a forged and fabricated document. The Loco Foreman Pratapgarh V.D.Triapthi has been served with a charge sheet for making the appointments of the petitioners illegally against the rules. The documents, if any, regarding the previous working of the

petitioners are forged and fabricated and as the respondent no.3 had not obtained the prior approval of the competent authority before engaging petitioners their appointment is illegal being against the standing orders of Railway Board. The petitioners did not complete their service of 120 or 240 days and as such, they have not acquired any right under the law and they were not entitled to any notice or any other formality before termination of their employment and their petition is liable to be dismissed.

4. The petitioners did not file any rejoinder in the case. On the last date of hearing, they filed some documents purporting to be the photostat copies of some pay sheets in support of their allegations that they had worked with the railway administration during certain period. The copies, however, have not been certified to be true copies as provided under the Central Administrative Tribunal (Procedure) Rules, 1987 and as such, we are unable to place any reliance on them and we accordingly refrain from considering the same.

5. The short question arising for determination in this case is whether the appointment of the petitioners is void ab initio and they are not entitled to any benefits of their appointment as substitutes by the respondent no.3. We have very carefully considered the contentions raised on behalf of the parties and are of the view that irrespective of the fact whether the petitioners were engaged for any period prior to the cut off date 1.6.78, the services of the petitioners were dispensed with w.e.f. 23.8.80 vide Sr.DME's letter dated 22.8.80, copy annexure 2, within a period of one month from the dates of their appointment. The petitioners had, therefore, not acquired the temporary status by serving as substitutes for a period of 120

days and as such, they had also not acquired the rights of temporary railway employees and they were not entitled to any notice of termination provided by rule 149 of the Code. The question of the nature of appointment as to whether ^{it is void} ab initio ~~void~~ or ^{not} otherwise, therefore, need not be gone into and assuming for the sake of argument that the petitioners were duly appointed in accordance with the rules, they acquired no rights within the short period of less than 1 month before their services were terminated by the Sr.DME by his letter dated 22.8.1980. We have carefully examined this letter and it nowhere alleges that any petitioner was guilty of any fraud or misconduct in obtaining the appointment. The only reason stated in this letter is that the services are to be terminated as their appointment considered irregular. The contention of the petitioners made in their written arguments that they were entitled to an opportunity of hearing and without holding a proper inquiry their services could not be disposed with, is, therefore, not sound.


6. In view of the above considerations, it also does not seem necessary to examine whether the ban imposed on the engagement of casual labour was applicable to substitutes or not and we are of the view that the services of the petitioners could be terminated by the Sr.DME who was otherwise competent to do so on administrative grounds and the benefits of notice and retrenchments rules cannot be extended to the petitioners. We are further of the view that the petitioners ^{appear to have} ~~had~~ served the railway administration for a number of years under the stay order granted by the

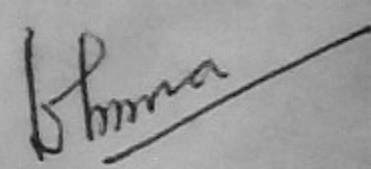
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High Court, ^{but} ~~and~~ ~~therefore~~, no legal right, could ~~be~~
accrued to them merely on the basis of their working
under the protection of the stay orders and the respond-
ents will be at liberty to replace the petitioners
by duly selected and appointed candidates in due course.

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


MEMBER (J)


MEMBER (A)

Dated: Nov. 21, 1988
kkb