

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 11TH DAY OF AUGUST, 2000

Original Application no.1019 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Bhrigu Nath Prasad, son of  
Late Shri Budhu Lal, Ex-bunglow Khalasi  
of Dy.Chief Operating Superintendent  
(E) Northern Railway, New Delhi, C/o Shri Khub Lal  
Carpenter GD I T.N. 1630 Carriage Repair  
Shop, N.E.Railway, Izat Nagar, Bareilly.

.... Applicant

(By Adv: Shri A.S.Diwakar)

Versus

1. The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Asstt. Secretary to General Manager Northern Railway, Baroda House, New Delhi.
3. The Deputy Chief Operating Superintendent (E) Northern railway, Baroda House, New Delhi.
4. The Chief Personnel Officer, Northern Railway Baroda House, new Delhi.

.... Respondents

(By Adv: Shri A.K.Gaur)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

This application Under Section 19 of the A.T.Act 1985 has been filed challenging the order dated 12.6.1989 by which services of the applicant were terminated w.e.f 29.5.1989. The factual position which emerges from the record is that the applicant was engaged as a Substitute, Bunglow Khalasi in the pay scale of Rs.750-940 for a period of three months w.e.f. 7.11.1988. It appears that this appointment was continued for further period. However, he was not allowed to work from 29.5.1989 as stated in the application. It is also stated that no order of termination was served on him. This

application was filed before this Tribunal on 7.7.1993. The learned counsel for the respondents has seriously questioned the maintainability of this application on the ground of limitation. Shri A.S.Diwakar learned counsel for the applicant on the other hand <sup>"placed"</sup> ~~raised~~ before us the facts and circumstances narrated from para 4.7 to 4.17 in which the facts and circumstances <sup>"have been"</sup> narrated for condoning the delay. In short, the delay has been sought to be explained by saying that the applicant approached Member Secretary, Legal Aid & Advisory Committee of Hon'ble Supreme Court and under their guidance he approached, <sup>"and"</sup> filed several representations before the authorities but when he did not get any relief, he filed this application before the Tribunal. The last representation was filed on 18.1.1993. Considering the facts and circumstances, in our opinion, delay has been sufficiently explained. The application shall be treated within time accordingly.

Shri Diwakar, learned counsel for the applicant states that the applicant was discharged from service by an oral order. However, alongwith counter affidavit order dated 12.6.1989 has been filed ~~alongwith counter affidavit~~. Then he amended the writ petition and has challenged the legality of the order. Shri Diwakar has submitted that though the status of the applicant was temporary, he was entitled for hearing as the termination from service was passed on the ground of unauthorised absence from duty. He has submitted that the impugned order cannot be termed as an order <sup>"of termination"</sup> Simplicitor from service. It carried stigma against the applicant that he himself absented from duty in unauthorised manner. Before passing such order the applicant should have been afforded reasonable opportunity of hearing. The learned counsel has also submitted that the order is bad as the services have been terminated by a retrospective date.

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Shri A.K.Gaur, learned counsel appearing for the respondents on the other hand, submitted that the applicant's appointment was only as a Substitute Bungalow Khalasi as ad hoc arrangement on temporary basis and he had no right or lien against the post and he could be terminated from service without any notice and hearing.

We have carefully considered the submissions of the learned counsel for the parties. However, in our opinion even a temporary government servant is entitled for protection of Art.311. It was open<sup>to</sup> to the respondents to pass order of termination simplicitor but if they choose to pass the order on the ground of unauthorised absence which carried a stigma against the applicant, They were under obligation to give him opportunity to explain his conduct. Admittedly, in this case respondents have not acted in accordance with law. The impugned order dated 12.6.1989 can also not be sustained as the services of the applicant were terminated with retrospective effect. In our opinion, the applicant is entitled for relief.

For the reasons stated above, the application is allowed. The order dated 12.6.1989 is quashed. The applicant shall be reinstated on the post with continuity in service and other benefits which would have been accrued to him in normal course, but without any backwages.

There will be no order as to costs.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: 11th August, 2000

Uv.