

*(T. J. T. 1991)*

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**

AHMEDABAD BENCH

4

O.A. 490/1987  
O.A. 26/1988

O.A. No. 304/1988  
~~O.A. No.~~ 305/1988  
O.A. 313/1988

1991

DATE OF DECISION 12-7-1991

Shri Zaver Madha & Ors.

Petitioners

Mr. M.M. Xavier

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Mr. R.M. Vin

Advocate for the Respondent(s)

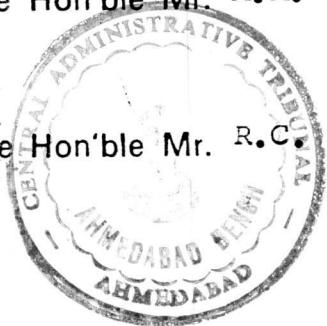
**CORAM :**

The Hon'ble Mr. M.M. Singh

: Administrative Member

The Hon'ble Mr. R.C. Ehatt

Judicial Member



O.A. No. 490 of 1987.

(S)

In the matter of  
SHRI ZAVER NADHA,  
Male Beldar/Gangman  
Barwad's House,  
Vanand Shei,  
TRAPEJ

... Applicant

( Advocate : Shri M.M. Xavier )

Vs.

1. The Union of India,  
owning and representing  
Western Railway,  
through its General Manager,  
Western Railway,  
Churchgate,  
BOMBAY.
2. The Divisional Railway Manager,  
Western Railway,  
Bhavnagar Division,  
BHAVNAGAR para.
3. The Permanent Way Inspector,  
Western Railway,  
Krishnanagar,  
C/o. Divisional Engineer,  
BHAVNAGAR para.

... Respondent

(Advocate : Mr. R.M. Vin )

O.A. No. 26 of 1988

- 1) Kiwa Bhikha
- 2) Ranchod Nanji
- 3) Harji Devji
- 4) Maka Nanji

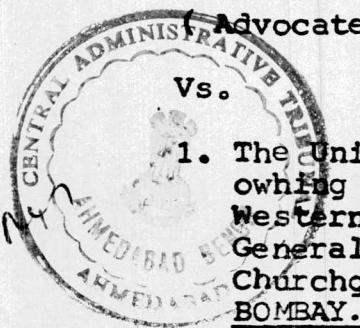
All residing at,  
Mafatnagar,  
New Plots,  
Village Badi Bandaria,  
BHAVNAGAR - 364 050

... Applicants

( Advocate : Shri M.M. Xavier )

Vs.

1. The Union of India  
owning and representing  
Western Railway, through its  
General Manager,  
Churchgate,  
BOMBAY.



2. The Divisional Railway Manager,  
Western Railway,  
Bhavnagar Division,  
BHAVNAGAR para

3. The Permanent Way Inspector,  
Krishnanagar,  
C/O. Divisional Engineer,  
Western Railway,  
BHAVNAGAR para

... Respondents.

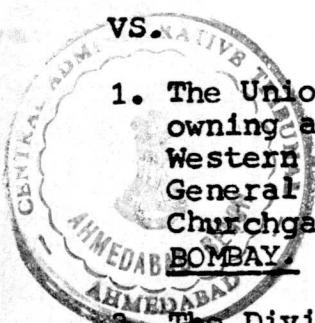
(Advocate : Mr. R.M. Vin)

O.A. No. 304 of 1988

IN the matter of  
SHRI MAKANANJI,  
Mafat Nagar New Plots,  
Post Badi Bandaria,  
BHAVNAGAR DIST. - 364 050

... Applicant

(Advocate : Shri M.M. Xavier )



1. The Union of India,  
owning and representing,  
Western Railway, through  
General Manager,  
Churchgate,  
BOMBAY.

2. The Divisional Railway Manager,  
Western Railway,  
Bhavnagar Division,  
BHAVNAGAR para.

3. The Permanent Way Inspector,  
Krishnanagar,  
C/O. Divisional Engineer,  
Western Railway,  
BHAVNAGAR para.

... Respondents

(Advocate Mr. R.M. Vin )

O.A. No. 305 of 1988

In the matter of  
SHRI RANCHOD NANJI,  
Male Belder under  
Permanent Way Inspector,  
Western Railway,  
Krishnanagar,  
BHAVNAGAR.

... Applicant

(Advocate : Shri M.M. Xavier )

VS.

1. The Union of India, owning and  
representing Western Railway, through,  
General Manager,  
Churchgate,  
BOMBAY.

(6)

2. The Divisional Railway Manager,  
Western Railway,  
Bhavnagar Division,  
BHAVNAGAR para.

3. The Permanent Way Inspector,  
Krishnanagar,  
c/o. Divisional Engineer,  
Western Railway,  
BHAVNAGAR para.

... Respondents

( Advocate : Shri R.M. Vin )

O.A. No. 313 of 1988.

In the matter of  
SHRI HAJI DEVJI,  
Mafatnagar,  
New Plots,  
Village Bedi Bandari,  
BHAVNAGAR DIST. - 364 050.

... Applicant

(Advocate : Shri M.M. Xavier )

VS.

1. The Union of India, owning and  
representing Western Railway, through,  
General Manager,  
Churchgate,  
BOMBAY.

2. The Divisional Rly. Manager,  
Western Railway,  
Bhavnagar Division,  
BHAVNAGAR para.

3. The Permanent Way Inspector,  
Krishnanagar,  
C/O. Divisional Engineer,  
Western Railway,  
BHAVNAGAR para.

... Respondents

(Advocate Mr. R.M. Vin )

JUDGEMENT

O.A./490/87

O.A./26/88

O.A./304/88

O.A./305/88

O.A./313/88



Per : Hon'ble Mr. R.C. Bhatt

Date : 12-7-1991

: Judicial Member

1. These five applications involving common issues are heard together by the consent of the Learned Advocates for the parties, and are being disposed of by common judgment.

2. These five applications are made by the applicants under Section 19 of the Administrative Tribunals Act, 1985, The applicant Zaver Madha of O.A./490 of 1987 has challenged the order dated 20th March, 1987, issued by respondent No.3, Permanent Way Inspector, Western Railway, Krishnanager, Bhavnagar, by which he directed the Mukadam (Gangmate) to terminate the services of the applicant with effect from 20th March, 1987. The applicant in Application No. 490 of 1987 has alleged that he was initially appointed on 1st June, 1966 as Gangman and thereafter he had worked intermittently with the respondents, that he was re-appointed from 5th July, 1985. The applicant has produced at Annexure A-1 his service card to show the work particulars.

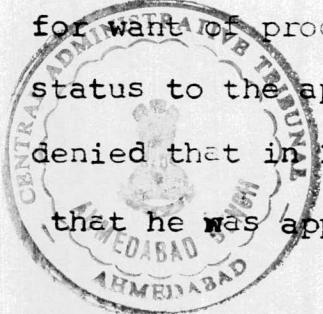
According to the applicant, he has worked continuously from 21st September, 1986 to 20th March, 1987 in the pay scale of Rs. 196/- 232 (R) under respondent No. 3. It is the case of the applicant in this application that the substitute who worked for 120 days continuously acquires temporary status and is considered as

temporary employee and is entitled to all rights and privileges admissible to temporary railway servant, that though he had completed more than 120 days of continuous work, he was not granted temporary status. It is alleged by him that substitute who acquired temporary status is also to be screened immediately for regular employment and in case where the substitutes have been working for more than four months, special efforts are to be made to finalise the panel and are to be absorbed on the regular basis. It is alleged by the applicant that many of his juniors have been absorbed, but the applicant has been singled out and his services have been terminated with effect from 20th March, 1987, as shown in Annexure A-2, without following the provisions of the Indian

(A)

Railway Establishment Code and Manual, Railway Board circular and labour law etc., and the action of the respondents is illegal, arbitrary, discriminatory in violation of Articles 14, 16 and 311 of the Constitution of India. It is also alleged by the applicant that no seniority list was notified nor any termination notice was issued, nor any notice- pay was paid to him, that he had personally approached Respondent No. 3 and had requested to consider his case. A copy of the representation dated 20.3.1987, is produced at Annexure A-3. The applicant, has therefore, prayed that the impugned order dated 20th March, 1987, terminating his service be declared illegal, void and discriminatory, and the applicant be considered in continuous service as Mala Beldar/ Gangman in the scale of Rs. 196- 232 (R) with all consequential benefits like seniority, chances of regular absorption etc.

3. The respondents have filed written statement in O.A./No. 490 of 87 contending that the services of the applicant have not been terminated but he was simply relieved. It is contended, inter alia, by the respondents that though initial date of appointment of the applicant was 1st June, '66, he was re-engaged as casual labourer w.e.f. 5th July, '85 to 20th Sept. '85 against the work of monsoon patrolling, and again he was re-engaged as Casual Labourer for the same work from 25th June, '86 to 20th September, '86, and from 21st September, '86, the applicant was taken as an un-screened substitute and was relieved w.e.f. 20th March, '87 for absence of productive work, that the applicant has been re-engaged time and again when there is availability of work and relieved on conclusion of the work. It is contended that the applicant was relieved from 20th March, '87 for want of productive work, that the question of granting temporary status to the applicant was still under process. The respondents denied that in 1966, he was appointed as regular Gangman and contended that he was appointed as only casual labourer. It is contended



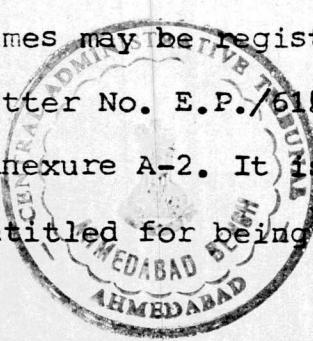
that the temporary status will be granted to the applicant if found due. The respondents denied that other substitutes having temporary status are to be screened and regularised. They also denied that any junior to the applicant had been absorbed. It is contended that the order at Annexure A-2 was only made for relieving the applicant for time being and it was not final termination of his services, and as there was no retrenchment, the question of notice etc. did not arise, but even if the action is considered as retrenchment, the applicant is not entitled to the benefit claimed by him. It is contended that in view of the interim relief granted on 1st December, '87, the applicant has been allowed to resume on or about 16th Dec. '87.

4. The applicant filed rejoinder contending that even according to the written statement, it is not now in dispute that the applicant has continuously worked from 21st September '86 to 20th March '87, i.e. for 166 days before his service was terminated. He contends that the action of the respondents was contrary to the very concept of "first come first serve" and "first come last to go". He contends that the applicant is entitled to be considered for absorption against the vacancies available on the open line or project on the basis of his seniority position.

5. The other four applicants of Application No. O.A./26 of 88, No. 304 of 88, O.A. No. 305 of 88 and O.A. No. 313 of 88, have alleged that they were working as Male Beldar/ Gangman under respondents No. 3, that the respondents have terminated their services by oral order dated 20th March, 1987 without complying with the various mandatory provisions of laws, Railway Act and Rules and regulations, and industrial law. The applicant of application No. 26 of 88 has alleged that he was initially appointed on 21st June, 1967 and thereafter he was re-appointed on 9th June, 1985 and he worked intermittently thereafter, but he has worked for a

continuous period from 21st Sept. 1987 to 20th March, 1987 with respondent No. 3. The applicant of O.A. No. 304 of 88 has alleged that his original date of appointment was 27th August 1968 and then he was re-appointed on 2nd August, 1985, that he has worked continuously from 11th October 1986 to 20th March, 1987, i.e. for 180 days with respondent No. 3 and that his service was terminated by oral order w.e.f. 20th March 1987. The applicant of O.A. No. 305 of 1988 has alleged that his initial appointment was on 30th September 1987, that he was re-appointed on 18th July, 1985, and that thereafter he continuously worked from 2nd September 1986 to 20th March 1987 for 200 days with respondent No. 3, but his service was terminated by oral order dated 20th March 1987. The applicant of O.A. No. 313 of 88 has alleged that his initial date of appointment was 2nd August 1988 and thereafter he was re-appointed on 18th July, 1986, that he has continuously worked from 25th June, 1986 to 20th March, 1987.

6. These four applicants have alleged that when substitute / casual labourers work for 120 days continuously, they acquire temporary status and are to be considered as temporary employees and are entitled to all the rights and privileges admissible to a temporary railway servant, and these applicants have acquired temporary status. The applicants have produced at Annexure A-1 the copy of their casual labour card showing the duration of total work. It is alleged by the applicant that the respondents had issued notification dated 22nd April, 1985, that all the casual labourers who had worked prior to 14th July, 1981 should approach their respective Supervisors within a period of 15 days so that their names may be registered for future recruitments. Copy of this letter No. E.P./615/2 dated 23rd April, 1985 is produced at Annexure A-2. It is alleged by the applicants that they are entitled for being absorbed on regular basis. It is alleged by



them that the oral order terminating their services was illegal, arbitrary and bad in law and in violation of Railway Manual and Act, that no notice was given to them before their termination and their service was terminated without following the provision of Rule 149 of the Indian Railway Establishment Code Vol. I and other provisions, and, therefore, the action of the respondents is illegal and void. It is alleged by the applicants that respondent No. 1 had issued an order dated 23rd December, 1987 produced at Annexure A-3 directing the respondent No. 2 to appoint one Smt. Manu Kala on regular basis in class IV, while the applicants who were liable for similar treatment have been denied regular absorption. They have, therefore, prayed that the impugned oral order dated 20th March, 1987 declared as illegal, and void, arbitrary, and the applicants be continued in service in the scale of Rs. 196-232 (R) with all consequential benefits and eligible for being considered for regular absorption.

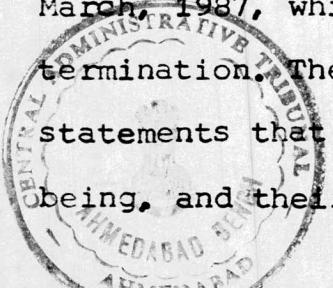
7. The respondents have filed written statements in these four applications. They have contended that the services of the applicants are not finally terminated, but they have been simply relieved for the time being for want of productive work. They have contended that so far the applicant of O.A. No. 26 of 88 is concerned, he has worked for 181 days from 21st September, 1986 to 20th March 1987, that the applicant of O.A. No. 304 of 88 has worked for 162 days from 11th October, 1986 to 20th March, 1987, that the applicant of application No. 305 of 88 has worked continuously for 181 days from 21st September, 1986 to 20th March 1987 and the applicant of application No. 313 of 88 has worked for 160 days in broken spells from 22nd November 1985 to 20th September 1985, and 21st September 1985 to 20th March, 1987. It is contended by the respondents that these applicants have worked as unscreened substitutes and they are casual workers. They contended that the

grant of temporary status to the applicants is not automatic and the question of granting temporary status to them is under consideration. They contended that there is a ban on engagement of fresh casual labour on Railway from 14th July, 1981. It is contended that the screening and absorption in regular services are depending upon the length of service put in by an individual and also upon vacancies in regular cadre, that the applicants are quite junior and they have no claim for regular absorption. That the casual labourer employed for seasonal work like monsoon patrolling cannot be continued forever. They have denied the allegation that their action is illegal, arbitrary and discriminatory or against the principle of natural justice, or against Railway Manual, Railway Act or Rules, or against Labour Laws.

8. The applicants of these four applications have filed rejoinder in each application controverting the contentions taken be the respondents in their written submission. They have contended that from the written statements, it is clear that the applicants have worked continuously for more than 120 days, therefore they have acquired temporary status. They denied that there was a ban on engagement of fresh casual labourer on Railway from 14th April 1991. They have also denied other contentions taken by the respondents in the written statements.

9. It is clear from the written statements in all the five applications that each applicant has put in continuous work for more than 120 days with respondent No. 3. Therefore question which is germane to the enquiry is these matters is whether the services of these applicants could be terminated without prior notice to them? It is not in dispute that they have been relieved from 20th March, 1987, which according to the respondents, is not a final termination. The respondents have contended in their written statements that the applicants are simply relieved for the time being, and their services have not been terminated.

10. The learned advocate for the applicant submits that the



applicants were casual labourers on open line and that they have been working as substitutes. The definition of substitute is given in para 2315 in Chapter 23 of the Indian Railway Establishment Manual. It reads as under:-

"Substitutes are persons engaged in regular scales of pay and allowance applicable to posts against which they are employed. These posts may fall vacant due to Rly. servants being on leave due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

Para 2318 deals with rights and privileges admissible to the substitute para 2318 reads as under:- "Substitute should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of six months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection."

**Note:** The conferment of temporary status on the substitutes on completion of six months continuous service will not entitle them to automatic absorption/ appointment to railway service unless they are in turn for such appointment on the basis of their position in elect lists and/ or they are selected in the approved manner for appointment to regular railway posts."

The learned advocate for the applicants invited our attention to pg. 465 and 466 para 6 of the Book on Railway Establishment Rules and Labour Laws by E.S. Mainee, 1989-90 edition, wherein, it is mentioned:-

"Substitutes who put in four months' continuous service shall be entitled to all the rights and Privileges admissible to temporary Railway Servants."

This modification from the period of "six months" to "four months" was made as per R.B.'s No. E (NG) II/77/SB 37 of 24th October 1976  
So the period of six months was reduced to four months.

Admittedly, in all the five cases, the applicants

have continuously worked without break for more than four months and therefore, according to the learned advocate for the applicants, the applicants are entitled to all the rights and privileges admissible to temporary railway servants. On pg. 471 of this book it is mentioned that

"Casual labour other than that employed on projects, shall be considered to have acquired temporary status on completion of four months continuous service either in the same work or any other work of the same type, to which they may be shifted.

and on pg. 472 it is mentioned that :

"Casual labour acquiring temporary status shall be entitled to all the rights and privileges admissible to temporary Railway Servants eg. authorised pay scales, compensatory and local allowances, dearness allowances, medical facilities, leave, provident fund, passes, advances, notice for termination of service etc."

11. Learned advocate for the applicants submitted that the applicants having acquired temporary status their services could not be terminated without notice. He refers to Section 149 of the Indian Railway Establishment Code, Vol. I :-

"TERMINATION OF SERVICE AND PERIODS OF NOTICE:

(1) Temporary Railway Servants - When a person without a lien on a permanent post under Government is appointed to hold temporary post or to officiate in a permanent post he is entitled to no notice of the termination of his service if such termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy, or is due to the mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice, and to a notice of 14 days if he was not engaged on a contract. The period of notice specified above shall apply on either side, and steps should be taken to bring this condition to the notice of the railway servants concerned."

12. Learned advocate for the applicants also drew our attention to the definition of "temporary Railway Servants" given in para 2301 and also about their termination of Services and period of notice as mentioned para 2302 of Chapter 23 of Indian Railway Establishment Manual, which read as under:-

2301. DEFINITION- A "temporary railway servant" means a railway servant without lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", a "contract" or "part time" employee or an "apprentice".

2302. TERMINATION OF SERVICE AND PERIODS OF NOTICE:  
(1) Service of a temporary railway servant shall be liable to termination on 14 days notice on either side provided that such a railway servant shall not be entitled to any notice of termination of his service -

(1) If the termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal from service as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution of India.

(2) When he is deemed to have resigned his appointment and ceased to be in railway employ in the circumstances detailed under note 2 below Exception II to rule 732 (1) of the Indian Railway Establishment Code, Volume I

In lieu of the notice prescribed in this paragraph it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice.

(3) The notice of termination of service under this paragraph should be given by an authority not lower than the appointing authority.

(4) In the case of a railway servant or Apprentice to whom the provisions of the Industrial Disputes Act 1947, apply, he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act.

Therefore, according to the learned advocate for the applicants, even though the applicants were un-screened substitutes as per the written statements of the respondents, they having acquired temporary status, and as they are entitled to all rights and privileges admissible to temporary Railway Servants, their services could not be terminated by respondents without 14 days' notice.

13. Learned advocate for the applicants in support of his submission has relied on the decision in Union of India & Ors. v/s. Ramkumar 1986, C.A.T. pg. 459. In para five of this decision it is observed as under.

"What is therefore important is whether the plaintiff respondent had attained temporary status. If he has attained temporary status by virtue of having worked for 120 days without periods which are counted as break, a notice of termination of services when he is asked to sit at home for want of work necessary to be issued. A casual labour who has attained status possesses a right of getting a notice for discharge. Rule 2505 in Chapter 25 of the Indian Railway Establishment Manual and Rule 2301 in Chapter 23 deal with this matter."

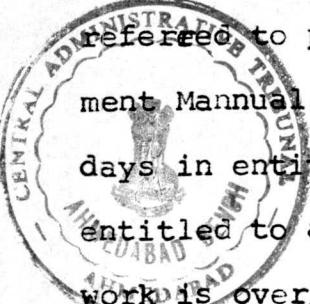
It was also observed in para 6 of this decision that Casual Labour who has attained temporary status can be terminated as provided in Rule 2302.

Para 7 deals with Rule 149 of the Indian Railway Establishment Code, Vol. I. It was held that the plaintiff had acquired temporary status and therefore if the discharge was not due to the expiry of the sanction of the post on which he was working, he was entitled to a notice and a simple discharge would be illegal.

Other decision relied on is Narayan Ala and Ors. v/s. Union of India & Ors. All India Services Law Journal - 1987, which says that retrenchment of Casual Labour in Railway cannot be upheld unless division wise seniority list is prepared. Next decision relied on was L. Robert D'souza vs. The Executive Engineer, Southern Railway, All India Service Law Journal 1982 (1) pg. 319, in which provision of Section 2 (00) Section 25 (F) etc. of the Industrial Disputes Act, Railway Establishment Manual have been referred to. It was held that in view of the Rule 2302 of the Railway Manual, termination of the services of the appellant in that case by the Railway on account of absence during the period appellant was on the post, without notice, was not legal. The next decision relied on was O.A. no. 331 of 86, Sukumar Gopalan and Ors. vs Union of India & Ors and it was decided on 16th February, 1987 by this Tribunal, where the provisions of the Industrial Disputes Act and Central Rules

were considered. In the provisions contained in para 2501 and 2513 of ch. 25 were also considered. It was held that the termination of the services of the applicant was illegal and the respondents were directed to re-instate the applicants with full backwages. All these decisions were given on facts of the respective cases.

14. Learned advocate for the respondents submitted that the applicants were not retrenched. He submitted that the applicants have not acquired temporary status of Railway Servant. He also

  
referred to paras 2301 and 2302 of the Indian Railway Establishment Manual. He submitted that a substitute working for 120 days is entitled the status of temporary servant, but is not entitled to any notice of termination. He submits that if the work is over, the substitute can be relieved without any notice.

He submitted that according to rule 149 of Indian Railway Establishment manual temporary railway servant are not entitled to any notice if such termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy. Rule 149 on which both the learned advocates rely was in the old ~~E~~dition. But there is no such Rule 149 in Indian Railway Establishment Code Vol. I. Fifth Edition- 1985. There fore Rule 149 as it existed <sup>long</sup> back and which is not found in new edition doesnot require to be considered at all. In the Fifth Edition - 1985 in chapter 3 "Termination of Service" there is Rule 301 which reads as under.

"301. TERMINATION OF SERVICE AND PERIOD OF NOTICE -

(1) TEMPORARY RAILWAY SERVANTS.-

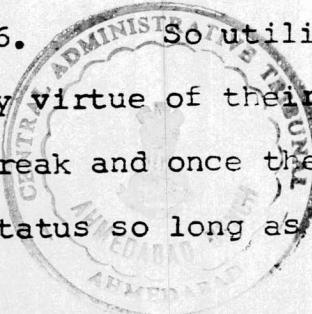
When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service if such termination is due to the expiry of the sanction to the post which he holds ~~of~~ the expiry of the officiating

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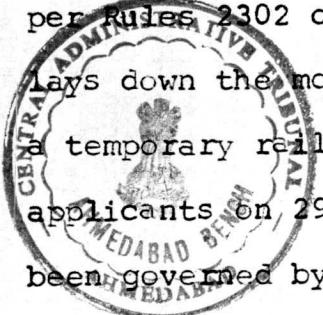
vacancy, or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice; and to a notice of 14 days if he was not engaged on a contract. Temporary railway servants with over three years continuous service, shall, however, be entitled to a month's notice. The periods of notice specified above shall apply on either side, and steps should be taken to bring this condition to the notice of the railway servants concerned."

15. It is important to note that though nomenclature given to applicants is that of "substitutes", the reply filed by respondents in these cases do not satisfy the ingredient of word substitutes as defined in para 2315 of Indian Railway Establishment Manual namely that applicants were appointed on posts which fell vacant on account of railway servant being on leave or due to non-availability of permanent or temporary railway servants and which could not be kept vacant. On the contrary, it is contended by respondents in their reply that applicants have been re-engaged time and again when there is availability of work and relieved on conclusion of work and that the applicant were relieved for want of productive work. It is also contended that applicants have been relieved for time being and shall be re-engaged again on availability of work. It is contended in reply that casual labourers employed for seasonal work like monsoon patrolling are not to be continued for ever. Thus examining the reply of respondents as a whole, we find the applicants were not utilised as "substitutes" as defined in para 2315, and therefore it would be reasonable to hold that they were utilised as casual labour.

16. So utilised, the applicants had acquired temporary status by virtue of their continuous work for more than 120 days without break and once the person attains temporary status, he retains that status so long as he is in continuous employment. The applicants



have acquired temporary status and they <sup>were</sup> entitled to all the rights and privileges admissible to temporary Railway Servant, therefore, they were also entitled to the notice of 14 days or in the alternative payment of the pay for the period of notice as per ~~Rules~~ 2302 of the Indian Railway Establishment Manual, which lays down the mode, manner and methodology of terminating service of a temporary railway employee. This means that the discharge of the applicants on 29th March, 1987, by the respondents should have been governed by the above principle looking to the manner of utilisation of their services by the respondents. Even according to new Rule 301 of the Indian Railway Establishment Manual these were not the cases, where no notice of the termination of their services were required to be given.



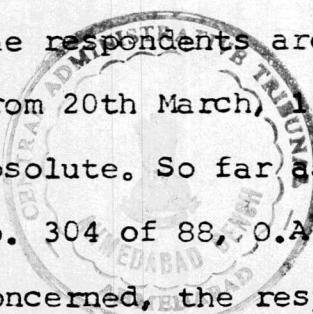
17. In view of the above legal position, we cannot agree with the submission of the learned advocate for the respondents, that even if applicants worked for 120 days continuously and are entitled the status of temporary servant, they would not be entitled to any notice of termination. No doubt such temporary servants' services could be terminated, but that should be in accordance with the conditions mentioned above. In the instant cases, admittedly no such notice of 14 days is given to the applicants before they were discharged nor the payment for the period of notice was given by respondents, hence such action on the part of the respondents was illegal and therefore it deserves to be quashed. The applicants casual workers and temporary railway servants would, therefore, be entitled to re-instatement in their service with full backwages. So far relief regarding their regular absorption is concerned, we hold that in view of the note at the end of Rule 2318 of the Indian Railway Establishment Manual, the conferment of temporary status of the substitute after their continuous service for four months does not however entitle them to automatic absorp-

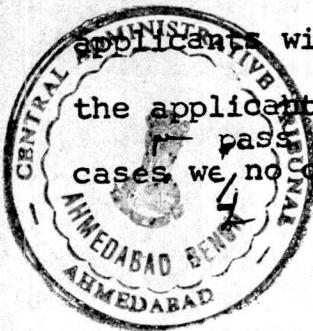
(13)

tion, re-instatement to railway services unless they are in turn for such appointment, <sup>ment on</sup> the basis of their position in select list and/ or they are selected in approved manner for appointment on regular post. The applicants have not shown us the compliance of these conditions, hence no such relief regarding regular absorption at present can be accorded to them.

18. The result is that all the applications shall be partly allowed viz., oral orders dated 20th March, 1987 by the respondents discharging the applicants are quashed, and the respondents are directed to re-instate the applicants on their original position at the date when they were discharged, with full backwages in application No. O.A. 26 of 88, O.A. 304 of 88, O.A. 305 of 89 and O.A. 313 of 88. So far as the applicant of application No. O.A. 490 of 87 is concerned, the respondents have stated in their written statement that the applicant was allowed to resume on or about 16th December, 1987, in view of the interim relief granted by this Tribunal on 1st December, 1987. The respondents therefore, shall have to pay him backwages only for the period from 20th March, 1987 to 16th December, 1987.

19. The applications are partially allowed. The order of discharging all the applicants by the respondents dated 20th March, 1987 is quashed and set aside and the respondents are directed to re-instate all the applicants. The applicant of O.A. No. 490 of 87, having been allowed to resume on or about 16th December, 1987, the respondents are directed to pay him backwages for the period from 20th March, 1987 to 16th December 1987 and Rule is made absolute. So far as applicants of application No. 26 of 88, O.A. No. 304 of 88, O.A. No. 305 of 88 and O.A. No. 313 of 88 are concerned, the respondents are directed to pay all backwages to the





within four months. The rest of the reliefs prayed by the applicants is rejected. Having regard to the facts of these cases we no orders as to costs. Applications are disposed of.

Sd/-

( R.C.Bhatt )  
Judicial Member

Sd/-

( M.M.Singh )  
Administrative Member

**TRUE COPY**

*Section Officer*  
Central Administrative Tribunal,  
Ahmedabad Bench.