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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.691/88
And
Original Application No. 27/89

Shri Yunus Dadamiya Mujawar,
Municipal House No.145,
Forest,
Solapur.

.. Applicant
in O.A.Nos.691/88
& 27/89

V/s.

1. General Manager,
Central Railway,
Bombay V.T.,
Bombay.
2. Divisional Railway Manager,
Central Railway,
Solapur Division,
Solapur.

.. Respondents
in O.A.Nos.691/88
& 27/89.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearance:

1. Shri S.K.Shilgekar,
Advocate,
for the applicant.
2. Shri V.G.Rege,
Advocate,
for the respondents.

ORAL JUDGMENT:-

Dated: 7.6.1989

[PER: Shri M.B.Mujumdar, Member(J)]

By this judgment we are disposing of Original applications Nos. 691 of 1988 and 27 of 1989.

2. By order dated 12.3.1987 the applicant and one Shri Ajit Sadanand with whom we are not concerned in these cases were appointed as Substitute Motor Vehicle Drivers. It is mentioned in the order that the appointment was purely on ad hoc basis and in a substitute capacity.

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The appointment order was passed by the Divisional Personnel Officer, Solapur and the applicant was posted to work at Ghorpadi. On 19.3.1987, the applicant was examined by the Assistant Divisional Medical Officer, Central Railway, Solapur and found fit for appointment. In October, 1987 the applicant requested for transferring him to Solapur due to his personal difficulties. Accordingly by order dated 1/2-3-1988 the applicant was transferred to Solapur. By letter dated 16.4.1987 applications were called for for the purpose of preparing a panel for the post of Motor/Car Drivers in the scale of Rs. 950-1500 and Rs. 950-1400 for filling up the anticipated vacancies in Solapur Division. The applicant along with others submitted an application and he was trade tested on 21.12.1987. The applicant passed in that test. However, Chief Personnel Officer(M) at the headquarters office Bombay V.T. found that the trade test was not properly held and declared it as null and void. Consequent upon the order of the Chief Personnel Officer(M), the Divisional Personnel Officer, Solapur passed office order No.134/88 dated 6.9.1988. By that order the applicant and four other Motor Vehicle Drivers were reverted to their original posts with immediate effect. It is mentioned in that order that the trade tests conducted for the post of Motor Vehicle Driver on 14.12.1987 and 4.1.1988 were treated as null and void by the Chief Personnel Officer(M). A corrigendum dated 17.10.1988 was issued on 17.10.1988 and it was ordered that in the order dated 6.9.1988, the date "4.1.1988" should be read as "21.12.1987".

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3. On 14.9.1988 the applicant has filed O.A. No.691/88 challenging the order of reversion dated 6.9.1988. By order dated 21.9.1988 the application was admitted and interim stay was granted against the reversion of the applicant. However, the respondents filed Misc.Petition No.613/88 for allowing them to take action against the applicant by following legal procedure i.e. by giving one month's notice or salary in lieu of notice. As Mr.Shelgikar stated that no permission was necessary for that purpose, we disposed of that Miscellaneous Petition by our order dated 16.11.1988. We, however, made it clear that if the applicant's services are terminated by giving one month's or salary in lieu of notice then that action can also be challenged by the applicant by filing a fresh application after exhausting departmental remedies.

4. Thereafter by order dated 22.11.1988, passed by the Divisional Personnel Officer, Central Railway, Solapur, the services of the applicant were terminated. As that order is material in this case we quote it below:-

"...You are aware that you have been appointed as Substitute Motor Vehicle Driver under order dated 12.3.198.

Your services are no longer required and hence this stand terminated with immediate effect.

You have already been passed for the payment of Rs. 1860/- for the period from 19.10.1988 to 18.11.1988 through regular pay sheet, and credited to your S.B. Account No.4539 in Janata Sahakari Bank, Railway Lines, Solapur.

The payment for the period from 19.11.1988 to 23.11.1988 comes to Rs.246.33. You have already taken an amount of Rs.400/- towards Ramzan Festival Advance 1988.

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Out of which Rs. 240/- has been recovered in instalments of Rs. 40/- per months from June, 1988 to November, 1988 through regular pay sheet. Remaining balance of Rs. 160/- is deducted from the wages amount of Rs. 246.33 and the balance of Rs. 86.33 is hereby remitted to you in cash.

Also a sum of Rs. 1478/- in cash an amount of month's salary is hereby remitted to you in lieu of a month's notice.

A further sum of Rs. 1478/- in cash is also hereby remitted to you towards the terminal compensation in respect of your service from 12.3.1987 to 23.11.1988..."

5. The applicant has challenged the above order by filing O.A.No.27/89 on 29.12.1988. By our order dated 29.12.1988, we have admitted the application but refused to stay the order dated 22.11.1988 by way of interim relief.

6. The respondents have filed separate written statements in both the cases.

7. We have just now heard Mr.S.K.Shelgikar, learned advocate for the applicant and Mr.V.G.Rege, learned advocate for the respondents in both the cases.

8. At the out set, we may point out that by the impugned order dated 6.9.1988 the applicant was reverted to his original post. But the applicant was directly appointed as Substitute Motor Vehicle Driver and he was not promoted to that post from any lower post. Hence the order to that extent is invalid and illegal. That is why we had stayed it. Mr.Rege, learned advocate for the respondents could not support that order so far as the applicant's reversion is concerned and hence we quash and set aside that order to the extent so far as it relates to the reversion of

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the applicant.

9. More important question is regarding the validity and legality of the order dated 22.11.1988 which we have quoted earlier. Admittedly the applicant was appointed as a Substitute Motor Vehicle Driver purely on ad hoc basis. It was made clear in the order of appointment that he was liable to be reverted as soon as empanelled candidate was posted as Motor Vehicle Driver.

10. Mr. Shelgikar showed us some provisions from the Railway Establishment Manual to show that the applicant had acquired the status of a temporary Motor Vehicle Driver after he had served for more than four months. We need not quote these provisions here because this position was not challenged before us on behalf of respondents. We, therefore, hold that the applicant had acquired temporary status as a Substitute Motor Vehicle Driver.

11. But in our view this position does not help the applicant much. It is specifically mentioned in the order dated 22.11.1988 that the services of the applicant were no longer required and hence his services were terminated with immediate effect. He was given Rs. 1478/- in cash towards one month's salary in lieu of one month's notice. He was also given an equal amount in cash towards terminal compensation, i.e. retrenchment compensation for the period of his service from 12.3.1987 to 23.11.1988. He was also given the arrears due to him. In view of this position we are unable to find any flaw in the notice dated 22.11.1988. When his services were no more needed, we

do not think that the respondents have committed any wrong in terminating his services by giving this notice. On our query the respondent's advocate made it clear that after this notice was given the respondents have not appointed anybody as Substitute Motor Vehicle Driver. We, therefore, hold that this notice of 22.11.1988 is perfectly legal and valid.

12. In result, we quash and set aside the order dated 6.9.1988 passed by the Divisional Personnel Officer, Central Railway, Solapur, so far as it relates to the reversion of the applicant only. Original Application No.619/88 is allowed to that extent, with no order as to costs. However, we hold that the order dated 22.11.1988 passed by the Divisional Personnel Officer, Central Railway, Solapur is perfectly legal and valid. Hence Original Application No.27/89 is dismissed with no order as to costs.