

CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA

O.A. No. 707 of 2005

Dated : 2<sup>nd</sup> September, 2011

**C O R A M**

Hon'ble Mr. Justice Syed Md. Mahfooz Alam, Member [Judicial]  
 Hon'ble Shri Naresh Gupta, Member [Administrative]

Naveen Kumar Chandra son of Shri Sachida Nand, resident of Village – Ketru Nawada, P.O. & P.S. - Gidhaur, District – Jammi.

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Applicant

By Advocate : Shri Gautam Saha

Vrs.

1. The Union of India through the Secretary, Railway Board, Delhi.
2. General Manager, North East Frontier Railway, Maligaon, Assam.
3. General Manager [Personnel], North East Frontier Railway, Maligaon, Assam..
4. Divisional Railway Manager, North East Frontier Railway, Lumding Division, Lumding, Assam.
5. Divisional Railway Manager [Personnel], North East Frontier Railway, Lumding Division, Lumding, Assam.
6. Assistant Personnel Officer/II, North East Frontier Railway, Lumding Division, Lumding, Assam.
7. Divisional Finance Manager, North East Frontier Railway, Lumding Division, Lumding, Assam.

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Respondents.

By Advocate : Shri N.K.Sinha.

**ORDER**

**Naresh Gupta, Member [Administrative] :-**

This original application has been filed by one Naveen Kumar Chandra for quashing the order dated 25.10.2004 whereby the services of the applicant were terminated with effect from 19.10.2004 [after he was re-engaged as a Substitute Emergency Peon to DRM/LMG w.e.f. 16.10.2004] and the order dated 04.10.2004 whereby the services of the applicant were terminated earlier with effect from 04.10.2004.

2. The applicant was engaged as a Substitute Emergency Peon to DRM, Lumding Division with effect from 20.11.2003 [Annexure-A/3 of OA]. His

services were extended on completion of three months of service, i.e. with effect from 20.02.2004 and he was granted temporary status with effect from 18.03.2004 [vide Annexure-A/7 of OA]. Though temporary status was granted on completion of 120 days regular satisfactory service, the impugned order dated 04.10.2004 [Annexure-A/2 of OA] was issued whereby the services of the applicant were terminated with effect from the date of the order on the ground of unsatisfactory service. Further, according to the OA, based on the report of DRM/LMG dated 30.08.2004, the applicant was compelled to put his signature on a typed letter handed over to him on 16.10.2004 [Annexure -A/10 of OA], according to which the applicant accepted that his performance had not been satisfactory so far and containing a request that he might be given another chance to re-engage him as a Substitute Emergency Peon and for this purpose he deposited one month's salary and retrenchment compensation paid subsequent to his termination notice. Though the applicant was re-engaged with effect from 16.10.2004, the Assistant Personnel Officer/II, North East Frontier Railway, Lumding Division [Respondent No.6] issued the impugned order dated 25.10.2004 by which the services of the applicant were again terminated with effect from 19.10.2004.

3. The applicant has questioned the above orders as being illegal, arbitrary and having been issued without following the procedure laid down for termination of services of an employee who has been conferred temporary status. Neither show-cause nor opportunity had been provided to the applicant nor any reason given for termination of his services. The applicant was entitled to constitutional protection under Article 311 of the Constitution of India as he had been conferred temporary status.

4. The respondents in their written statement have stated that although the applicant had been given temporary status, his performance was not found to be satisfactory thereafter and, therefore, he was terminated vide order dated 04.10.2004, along with one month's pay in lieu of one month's notice and

retrenchment compensation at 15 days wages provided in the circular of GM[P] MLG No.E/205/0/RP/Emergency Peon/PC/Con dated 15/18.02.1999.

5. Heard the learned counsel for the applicant and the respondents on 16.08.2001 and perused the entire record.


6. It is seen that according to the Railway Board's letter dated 03.03.1992 casual workers who have attained temporary status required to be dealt with for indiscipline or mis-behaviour can be proceeded against only under D&A Rules. In a case dealt with by the Central Administrative Tribunal [Calcutta] in OA No. 789 of 2002 decided on 07.07.2004, it was held that a temporary status holder is entitled to protection of Article 311 of the Constitution. In this regard, the Tribunal found support from the judgment of the Apex Court in the case of **Nar Singh Pal vs. Union of India & Ors., 2000 [3] SLJ 332**, wherein it was held that once an employee attains 'temporary' status, he becomes entitled to certain benefits one of which is constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. In that case, the Apex Court observed :


*"If an order has been passed by way of punishment and was punitive in nature, it was the duty of the respondents to hold a regular departmental enquiry and they could not have terminated the services of the appellant arbitrarily by paying him the retrenchment compensation.*

*..... Once an employee attains the 'temporary' status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. ...."*

7. In view of the above position and the facts and circumstances of the case, the order of termination of services of the applicant is set aside and the applicant ordered to be reinstated in service. However, this order shall not preclude the respondents from taking recourse to disciplinary proceedings under the rules applicable, if the respondents are so advised.

8. With the above directions, the OA is disposed of. No costs.

  
[ Naresh Gupta ]  
Member[Administrative]  
mps.

  
[ Syed Md. Mahfooz Alam ]  
Member [Judicial]