

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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HYDERABAD

O.A. No. 742 of 1987. 198
~~XXX No.~~

DATE OF DECISION 24/4/88

Sri K. Mysaiah Petitioner

Mr. P. Krishna Reddy. Advocate for the Petitioner(s)

Versus

The Railway Board, New Delhi and Respondent
2 others.

Mr. N. R. Devaraj, S. C. for Rlys. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B. N. JAYASIMHA: VICE CHAIRMAN

The Hon'ble Mr. D. SURYA RAO: MEMBER (JUDL)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

MGIPRRND-12 CAT/86-3-12-86-15,000


(BNJ)


(DSR)

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ORIGINAL APPLICATION 742 of 1987

.....
(JUDGMENT OF THE TRIBUNAL)

(DELIVERED BY HON'BLE MEMBER (JUDL) SRI D.SURYA RAO)

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1. The applicant herein is working as substitute Watchman-cum-Sweeper in the Indian Railway Institute of Signal Engineering and Telecommunications, hereinafter referred as I.R.I.S.E.T. Mess, which is not ^a part and parcel of the Railway Administration. He states that the minimum qualification for appointment to any Class IV post in the I.R.I.S.E.T. is a 10th Class pass and for being appointed as watchman-cum-Sweeper one should pass the ^{C-1} Medical Test. When the applicant passed the medical test, he was appointed as substitute watchman-cum-Sweeper in the grade of Rs.196-232 (RS) by an order dated 3-4-1986. The applicant contends that according to the Railway Board's Letter No. E(NG)/2/84/RR1/26 dated 16-8-1985, the minimum qualification for the post of Khalasis in S & T Department is pass in the 10th Standard. On the day when the applicant was selected, he was qualified for the said post. Some of the senior employees working in the Mess,

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Co-operative Society Canteen were not willing to accept the post of Watchman-cum-Sweeper. The applicant, however, accepted the appointment. The applicant learnt that on representation of the some of the Unions and the P.N.M. Meeting held by the Railway Board with the recognised Labour unions, the minimum educational qualification for recruitment of Group D (Class-IV posts) as laid down in the Railway Board letter dated 16-8-1985 was sought to be reviewed. However, pending final decision the earlier order of the Railway Board dated 16-8-1985 was kept in abeyance by an order dated 4-9-1986. By this letter dated 4-9-1986 the position obtained prior to 16-8-1985 was restored by keeping the letter dated 16-8-1985 in abeyance and it was stated that the matter will be reviewed as soon as the final decision is taken.

The applicant states that no final decision was taken on the said issue. However, a show cause notice dated 29-10-1986 was issued to the applicant proposing to terminate his services from 12-11-1985. Questioning

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the same, O.A.NO. 393 of 1986 was filed before this Tribunal, wherein this Tribunal by an order dated 2-11-1987 set-aside the show cause notice on the ground that the prescribed 14 days notice was not given to the applicant ^{but} ~~that~~ it ^{was} however left to the respondents to fill the posts on regular basis in accordance with the procedure and rules on the subject and to terminate the services of the applicant after following the procedure of giving 14 days ~~of~~ notices. Thereafter, on 19-11-1987 the impugned order No: 72 of 1987 was issued informing the applicant that his services will be terminated from 3-12-1987. The applicant questions this order on various grounds. It is stated that the applicant has acquired temporary status and had put in 20 months of service and so his services cannot be terminated; Notice of termination should not have been passed without filling up the posts on regular basis. It is further stated that the order dt. 4-9-1986 of the

Railway Board whereby the Board's letter dated 16-8-85

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was kept in abeyance cannot hold good beyond one year as the effect of the said order is to keep the order dated 16-8-1985 in abeyance for one year only; The applicant being fully qualified , in case of selections are held, he would be entitled to preference over others working in the Mess, Canteen or society of the IRISET as he had already put in 20 months of service as a Casual Worker in the Railways; The applicant's services cannot be terminated without issuing notice of one month under Section 25-F of the Industrial Disputes Act; That the retrenchment notice should contain the reasons for retrenchment under Section 25-F of the Industrial Disputes Act, ^{and} That the notice is also bad for the reason that 15 days clear notice is not given. The notice is dated 19-11-1987 and it will come into effect only on 3-12-1987 A.N. Hence the applicant was not given 14 days clear notice, ^{It is also pleaded that} The earlier order of the Tribunal is to continue the applicant till final selec-

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tions are held and hence the applicant's services could have been terminated only if he was not found suitable for the post. For the above reasons, the order dated 19-11-1987 is sought to be set-aside.

2. On behalf of the respondents, a counter has been filed stating that the applicant was originally employed with the IRISET Mess; that he was not an employee of the Railways as the staff of the Messes are not employed by the Railways. His subsequent engagement was only as a Substitute Watchman-cum-Sweeper in the Institute. Substitute refers to the persons engaged in Indian Railway establishment on regular scales of pay and allowances purely as a temporary measure. Substitute with a continuous service of 4 months are given temporary status and afforded all the rights and privileges such as leave, passes, medical facilities etc., as are admissible to the temporary railway servants. Conferment of temporary status on substitutes does not entitle ^{him} to automatic absorption/appointment to Railway

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Service, unless he is selected in an approved manner.

The applicant had not been selected in the approved

manner. Selection by an approved manner requires

selection/ screening of persons by Screening Committee

consisting of 3 Assistant Officers. The applicant

was not selected by Screening Committee. However,

the staff working in IRISET Messes are permitted to

appear before the Screening Committee alongwith

the staff of IRISET Cooperative Canteen, IRISET Co-

operative Stores, etc., so as to be empanelled

for absorption against regular vacancies in IRISET.

By a letter dated 16-8-1985, the Railway Board stipu-

lated that the minimum educational qualification

should be 10th standard for recruitment as Khalasis

in the S & T Department. Prior to this, ability to

read and write was considered as sufficient for edu-

cational qualification. Due to the rise in the minimum

educational qualification to Xth standard, many persons

in the IRISET Cooperative Canteen, Stores, Messes

became ineligible for Class IV posts appointments in

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IRISET. This resulted in hardships. The Railway Board was addressed by the Institute vide Office letter No.E/CL/IV dated 7-2-1986, to relax the educational qualification in regard to persons working in the IRISET Messes, Canteens etc., who were already in employment prior to the issue of the Board's order dated 16-8-1985. Pending receipt of the Board's reply, certain temporary Class IV vacancies in IRISET were decided to be filled up by engaging Substitutes purely as a temporary measure. The applicant was appointed as Substitute Watchman-cum-sweeper purely on adhoc and temporary basis with a clear stipulation in the appointment order that his services were liable to be terminated with 14 days notice. The applicant accepted the appointment made on adhoc basis and the condition of service. It is stated that the applicant is not the senior most among the employees of IRISET Cooperative Stores, Canteen, Messes etc.; he is also not senior most even among these with X class qualification.

He was however appointed because persons senior to

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him possessing the Xth class qualification did not want to be engaged as Substitute as the appointment was only of temporary nature and of short duration.

It is stated that, meanwhile, the Railway Board have reconsidered their earlier orders and advised vide their letter dt. 4-9-1986 that "the revised minimum educational qualifications laid down in Board's letter dt. 16-8-1985 be held in abeyance".

It was, therefore, decided to terminate the services of the applicant with necessary 14 days notice in conformity with his employment order, to do justice to those who are seniors to him. It is further stated that the applicant has no prescriptive right for continuance in employment in Class IV category ignoring the rights of those who are seniors to him. Hence, it is proposed to terminate his services by giving 14 days notice by an order dated. 29-10-1986. This order was set-aside in O.A. No. 393 of 1986 by this Tribunal. While rejecting the contention of the applicant thereon that he should be continued in service, it was directed that

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it is open to the Department to terminate the services of the applicant after following the procedure of giving 14 days notice. According to these directions, fresh notice of termination was served on the applicant vide impugned order dated 19-11-1987 by which a clear notice of 14 days was given stating that the applicant's services will be terminated on 3-12-1987. Thereafter, the applicant has filed the present application. It is stated that it is misleading to say that the applicant was put in for 20 months of service. When the earlier termination order dated 29-10-1986 was passed, the applicant was put in only 6 months of service. He was allowed to continue in service in view of the stay order issued by the Tribunal in O.A.393 of 1986 for nearly 14 months. It is, therefore, contended that the period of 14 months of service which the applicant has put in as a result of the stay issued by the Tribunal should not give the applicant any benefits with regard to continuity of service. In any event, the

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the fact of attainment of temporary status as a Substitute does not confer any right to the applicant to continue in the post. It is denied that the Tribunal never gave any direction that the applicant's services should be terminated only after filling up the post on regular basis. It is stated that the interpretation of the Board's letter dated 4-9-1986 by the applicant is a clear misrepresentation.

orders contained in It is stated that the Railway Board's letter dated 4-9-1986 are effective for a period of one year with effect from 4-9-1986 i.e., upto 4-9-1987 or to the final decision is taken whichever is earlier. Therefore, it is wrong to say that the order dated 16-8-1985 is kept in abeyance for one year from that date. It is further stated that as per Railway Board's letter No E(NG) XI/84/RR-1/26 dated 6-11-1987, the instructions contained in the letter dated 4-9-1986 had to be continued up to 31-12-1987. This period was, however, extended upto 30-6-1988 by a further letter dated 18-12-1987. The termination notice

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dated 19-11-1987, therefore, does not violate the orders of the Railway Board. In view of these orders of the Railway Board, extending the time of keeping in abeyance the minimum educational qualification, the applicant cannot get any preference over his seniors by virtue of the Educational qualification. The reason for terminating the applicant from service is to do justice to his seniors. It is further stated that as per the Railway Board's letter dated 21-7-1965, the Railway Schools and Training Schools etc., do not constitute industry and as such they are not covered by the provisions of Industrial Disputes Act, 1947. The Railway Establishment Rules ~~are~~ alone are applicable to the applicant and in accordance with Para 301-RI of the Railway Establishment Rules, the applicant's termination after 14th days notice is valid, since he has not put in 3 years of service. Though the notice was served on 19-11-1987, the period was computed from 20-11-1987 upto the afternoon of 3-12-1987. This period comprises 14 clear days and 14 days wages will be paid

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to the applicant in accordance with the rules. Hence there is no violation of rules in the issue of notice to the applicant. It is stated that the notice was issued by the Lecturer of the Institute, who is the competent authority, therefore, there is an available appellate authority to the applicant. It is stated that as the vacancy is ^a of short duration and temporary in nature, there is no need to conduct ^a regular selection at present. However, the services of the applicant was sought to be terminated so as to do justice to those who are senior to the applicant. It is contended that the provisions of Industrial Disputes Act do not apply as 14 days notice is sufficient and valid. It is further contended that representations of the seniors to the applicant were received stating that they are entitled to appointment as they are senior and qualified to be screened for these regular posts. Hence, it is prayed that the applicant has not made out any case in support of the reliefs and it may be dismissed.

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3. We have heard the arguments of Mr.P.Krishna Reddy, learned counsel for the applicant and Mr.N.R. Devaraj, Standing Counsel for Railways.

4. On the basis of the above referred contentions, the following points arise for consideration:
Whether the applicant who was appointed as a Substitute Watchman-cum-Sweeper has attained temporary status? If he has attained temporary status, whether his services can be terminated without giving reasons and after 14 days notice? or whether his services can be terminated only after giving reasons and after 1 month's notice? The further question is whether the applicant will be entitled to a prior claim over others before a Screening Committee for permanent appointment?

5. It is the contention of Sri Krishna Reddy, Counsel for the applicant that the applicant was appointed on 3-4-1986 as Substitute Watchman-cum-Sweeper. By a letter dt. 29-10-1986 served on the

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applicant on 12-11-86 his services were terminated.

The applicant questioned the order in O.A.393/86 which was allowed on 2-11-86. During the pendency of O.A.393/86 the applicant had continued as Watchman-cum-Sweeper pursuant to interim orders of the Tribunal and he continued to work as such till 19-11-87 when the impugned order in this case was issued. It is Sri Krishna Reddy's contention that having worked for more than a year from 4-3-1986 till 19-11-1987 he has attained temporary status; that under section 25-F of the Industrial Disputes Act he is entitled to be given reasons as to why his services are being terminated as also a notice of atleast one month and that having attained temporary service he will be entitled to a preferential claim by a Screening Committee over all others when the post is being filled up regularly/ permanently.

Sri Devaraj, Standing Counsel, on the other hand, contends that the applicant is not entitled to count the period spent on duty under interim orders of the Court for reckoning one year's service, that the provisions of the Industrial Disputes Act are not applicable and

that termination of the services of the applicant with 14 days notice is sufficient under Rule 301 of the Railway Establishment Code Vol. I. It would be necessary to extract the relevant statutory provisions. Section 25-F of the Industrial Disputes Act, reads as follows:

"25-F.- Conditions precedent Retrenchment of workmen.-- No workman employed in any industries has been in continuous service for not less than one year under an employer would be retrenchment by that employer until--

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government on such authority as may be specified by the appropriate Government by notification in the Official Gazette. "

Rule 301 of the Railway Establishment Code Vol. I reads as follows:

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 ter-

mination 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 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.

Note(1)--Show cause notice is necessary for the termination of the service of permanent railway servants.

(2) Apprentices.--Except as otherwise provided in his service agreement, the service of an apprentice shall be liable to termination on one week's notice.

(3) Certain other railway servants.-- The services of certain other railway servants specified below shall be liable to termination on notice on either side ~~as~~ for the periods shown against each. Such notice is not, however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of clause (2) of Article 311 of the Constitution and compulsory retirement due to mental or physical incapacity--

(a) Probationary Officers and Group A & Group B railway servants on Probation.	3 month's notice
(b) Gazetted railway servants on probation in the Medical department.	1 month's notice
(c) Group C and Group D railway servants on probation	1 month's notice

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(4) The service of any of the railway servants mentioned in clauses (1) and (2) and (3) who is entitled to a notice of stipulated period may be terminated forthwith and on such termination the railway servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the stipulated period of notice at the same rates at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of the stipulated period of notice.

Note.--The appointing authorities are empowered to reduce or waive, at their discretion the stipulated period of notice to be given by a railway servant but the reason justifying their action should be recorded. This power cannot be re-delegated.

(5) The notice of termination of service or order of forthwith termination of service, as the case may be, under this rule should be given by an authority not lower than the appointing authority.

(6) Notwithstanding anything contained in clauses (1), (2) and (4) of this rule, if the Railway servant or Apprentice is one to whom the provisions of the Industrial Disputes Act, 1947, apply, he shall be entitled to notice of wage in lieu thereof in accordance with the provisions of that Act.

Note.--No notice of termination will be necessary in a case where temporary railway servant is deemed to have resigned his appointment and ceased to be in employment if such a person remained absent on extraordinary leave beyond a limit of 5 years for whom no show cause notice is required as in the case of permanent railway servants."

Page
Rule 2318 of the Railway Establishment Manual Reads

thus:--

"2318. Rights and privileges admissible to the Substitutes:-- Substitutes 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,

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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 select lists and/or they are selected in the approved manner for appointment to regular railway posts."

6. The first question is whether the applicant has completed 1 year service as Substitute Sweeper-cum-Watchman. Normally, there should be no doubt in this regard as he has worked from 4-3-1986 till 19-11-1987. Sri Devaraj has, however, contended that any period after 12-11-1986 should not count as the applicant sought to be removed and he had continued in service only by virtue of an interim order of this Tribunal. This contention is wholly untenable as the interim order of the Tribunal became absolute as the Tribunal quashed the order of termination of service dt. 29-10-1986 as illegal. The applicant having pursued

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his legal remedies and continued in service under orders of the Tribunal which are legal cannot be deprived of the benefit of such service. Hence, it would follow that the applicant has served for more than one year. Section 25-F of the Industrial Disputes Act would then apply. It has been held in 1976 Lab. & I.C. 1426 that Rule 149(6) of the Railway Establishment Code requires that termination of a temporary Railway servant should be in accordance with the provisions of the Industrial Disputes Act and that if the requirements of Section 25-F are not complied with the termination would be bad. Applying the decision in 1976 Lab. & I.C. 1426 and Rule 301(6) which is similar to old Rule 149(6) it would follow that the applicant's services cannot be terminated unless the provisions of S.25-F of the I.D. Act are complied with. Two of the conditions stipulated by S.25-F viz., one month's notice giving reasons for the termination and payment of 15 days average pay for every completed year of service as

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retrenchment compensation have not been complied with. Consequently the impugned order viz., Staff Order No.72 of 1987 dt.19-11-1987 is set-aside and the applicant will be reinstated into service.

The further plea of the applicant is that he is a fully qualified candidate, that he is entitled under rule's to preferential treatment as against out-siders on the ground that he has acquired temporary status. No directions can be given in this regard as para 2318 of the Railway Establishment Manual requires even Substitutes to be screened and selected. Sri Krishna Reddy has placed reliance on 1973(1)SLR 383 wherein it was held that Substitute Khalasis who have acquired a temporary status have a right to be retained in service by virtue of the Railway Board's Circular letter No.E(NG)II-70/CL/28 dated 20-7-1970. This is a matter to be determined when the post of Sweeper-cum-Watchman is being filled in regularly in accordance with Para 2318. As and

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when the post of Sweeper-cum-Watchman is being filled in regularly the respondents will no doubt do so in accordance with the rules and instructions.

7. The application is accordingly allowed setting aside the impugned order dt.19-11-1987, and the applicant will be re-instated to service as Substitute-Sweeper-cum-Watchman with all consequential ~~including back wages.~~ benefits. There will be no order as to costs.

B.N.Jayasimha

(B. N. JAYASIMHA)
VICE CHAIRMAN

D. Surya Rao

(D. SURYA RAO)
MEMBER (JUDL)

Dt. 4th ^{April} March, 1988.

SQH*

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S. Venkatesh
By Registry (J)

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