

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

FROM NO. 4

(SEE RULE 42)

SENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. 251/2002

Mise Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant(s). Sri Hans Raybari

-Vs-

Respondant(s) U.O.I & Ors.

Advocate for the Applicant(s) Mr. K.K. Biswas
S.Nath

Advocate for the Respondant(s) Rly. Sr. C.

Notes of the Registry Date Order of the Tribunal

7.8.02 Heard Mr. K.K. Biswas, learned
counsel for the applicant.

The application is admitted.
Call for the records.

List the matter on 4.9.2002
for orders.

I.C.Usha
Member

Vice-Chairman

Steps taken.

6/8/02

mb

List on 4.10.2002 for written
statement on the prayer of Mr. J.L.
Sarkar, learned Standing counsel for
the Railway.

I.C.Usha
Member

Vice-Chairman

Notice prepared and
Sent to D-Section for
issuing of the same
to the respondents
Vid. D.No-2189 to 2182
Dtd-13.8.02.

mb

D-2182

14.11.02

On the prayer of Mr. S. Sarma learned counsel on behalf of Mr. J. L. Sarkar learned Railway counsel further four weeks time is allowed for filing of written statement. List on 14.11.02 for orders.

K. K. Sharma

Vice-Chairman

1m

14.11. Met to conduct hearing at Shillong, the cases adjourned to 26/11/2002.

26.11.02

Heard Mr. K. K. Biswas, learned counsel for the applicant and also Mr. J. L. Sarkar, learned counsel for the respondents. Further four weeks time is allowed to the respondents to file written statement, if any. List on 2.1.2003 for orders.

No. written statement
has been filed.

Vice-Chairman

mb

8.1.03

2.1.2003 Due to vacation, the cases adjourned to 9/1/2003.

Mr

A. K. Sharma

9.1.03 Present : The Hon'ble Mr Justice V. S. Aggarwal, Chairman.

The Hon'ble Mr K. K. Sharma, Admin. Member.

Mr K. K. Biswas, learned counsel for the applicant is present. None present for the respondents.

Written statement has not been filed. It is directed to be filed within four weeks. List on 7.2.03 for orders.

K. K. Sharma
Member

18 Aug
Chairman

7.2.2003 The respondents are yet to file written statement though time granted. Put up the matter for hearing on 18.3.2003. The respondents may file written statement within three weeks from today.

25.2.03

WLS submitted

Against Respondents.

S
Member

C
Vice-Chairman

mb

(18/3) Division Bench did not sit today. The case is adjourned to 10/4/2003.

Pho

A. K. Hajra

(10/4) Division Bench did not sit today. The case is adjourned to 21/5/2003.

Pho

AKH

21.5.2003 Present: The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra, Administrative Member.

Since the counsel for the applicant, Mr. K.K. Biswas is on accommodation, the case is adjourned and listed for hearing on 12.6.2003.

S
Member

C
Vice-Chairman

bb

12.6.03 Present : The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman
The Hon'ble Mr R.K. Upadhyaya, Admin. Member.

It has been stated that Mr K.K. Biswas learned counsel for the applicant is undergoing treatment at Chennai. Accordingly case is adjourned to 23.7.03.

11/3-2003

Member

C
Vice-Chairman

23.7.2003 Present : The Hon'ble Mr. Justice
D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. N.D. Dayal,
Member (A).

List the matter again on 28.7.2003
for hearing.

Member

Vice-Chairman

mb

28.7.2003. on the prayer of Mr. J.L.Sarkar,

~~Reserve~~

Learned Counsel appearing
for the Railway, the case
is adjourned to 21/8/2003.

PLD
A/G Day

21.8.03 Present : The Hon'ble Mr Justice D.N.
Chowdhury, Vice-Chairman.

The Hon'ble Mr K.V.Prahaldan
Admn.Member.

Heard Mr K.K.Biswas, learned coun-
sel for the applicant and also Mr A.
Chakraborty on behalf of standing
counsel Mr J.L.Sarkar at length. Mr
Chakraborty prayed for time on behalf
of Mr Sarkar to take instruction.

List again on 5.9.03 for hearing.

K.V.Prahaldan
Member

Vice-Chairman

pg

5.9.03 List again on 19.9.03 to enable Mr
J.L.Sarkar, learned Railway standing
counsel to obtain necessary instruction.

K.V.Prahaldan
Member

Vice-Chairman

pg

Office Note	Date	Tribunal's Order
	19.9.03	List again on 20.10.03 for hearing. <i>ACB</i> Member
1m		
	20.10.2003	Adjourned and again listed on 11.11.2003 for hearing. <i>ACB</i> Member
bb		
<u>14.11.03</u> Case is Ready for hearing. 1a.	11.11.03	No Bench today. Adjourn to 17.11.03. <i>ACB</i> Member
	17.11.2003	Present: The Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman The Hon'ble Shri S.K.Naik Administrative Member. Adhourned. List the case on 19.11.2003 again for hearing. <i>ACB</i> Member
bb		<i>ACB</i> Member
	19.11.03	None for applicant, even though the case has been listed at serial No.3 in the regular hearing list after it was adjourned from 17.11.03. Shri J.L.Sarkar through learned proxy counsel Sri B.C.Pathak <i>an</i> prays for adjournment. List again on 20.11.03 for hearing. <i>ACB</i> Member
		<i>ACB</i> Member

Office Note	Date	Tribunal's Order
<p><u>8.12.2003</u></p> <p>Copy of the order has been sent to the D/secy. for issuing the same to the applicant as well as to the Rly. Standby Counsel for the Regds</p> <p><i>AS</i></p>	<p>20.11.2003</p>	<p>Present: Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman Hon'ble Shri S.K. Naik, Administrative Member.</p> <p>Heard both the learned counsel for the parties. Orders passed separately.</p> <p><i>S.K.N.</i> Member</p> <p><i>S.K.N.</i> Vice-Chairman</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.251 of 2002

Date of decision: This the 20th day of November 2003

The Hon'ble Smt Lakshmi Swaminathan, Vice-Chairman

The Hon'ble Shri S.K. Naik, Administrative Member

Shri Hans Rajbhar

S/o Shri Sudaran Rajbhar

Gr. No.235-B, West Gotanagar,
Guwahati.

.....Applicant

By Advocate Shri K.K. Biswas.

- versus -

1. The Union of India, represented by the
General Manager,
N.F. Railway,
Maligaon, Guwahati.

2. The Chief Commercial Manager,
N.F. Railway,
Maligaon, Guwahati.

3. The Chief Claims Officer,
N.F. Railway,
Maligaon, Guwahati.

4. The Chief Personnel Officer,
N.F. Railway,
Maligaon, Guwahati.

.....Respondents

By Advocate Shri J.L. Sarkar, Railway Counsel.

.....

O R D E R (ORAL)

SMT LAKSHMI SWAMINATHAN (V.C.)

This is the second round of litigation by the applicant as he had earlier filed O.A.60 of 2001 which was disposed of by Tribunal's order dated 15.3.2002.

2. We have heard Shri K.K. Biswas, learned counsel for the applicant and Shri J.L. Sarkar, learned counsel for the respondents, perused the pleadings and other relevant documents on record.

Y

3. In this application the applicant prays for quashing the letter issued by the respondents dated 21/26.6.2002 which has been passed in pursuance of the aforesaid order of the Tribunal dated 15.3.2002. In that order the Tribunal had held as follows:

"We have given our anxious consideration on the matter. Admittedly, the applicant worked for about thirty three months without any artificial break. As per the existing guidelines a person is entitled for conferment of temporary status after rendering three years service as temporary peon. The applicant served for about three years as temporary peon till the impugned order was passed. The operative part of the termination order also disclosed that the termination order was not a termination simplicitor, but his termination was other than a termination simplicitor. Considering all the aspects of the matter I am of the view that it is a fit case in which the Railway authority as the employer can now provide the healing touch. The applicant at any rate served for about three years as an emergency peon. The impugned order of termination on the eve of the completion of three years period undoubtedly visited with evil consequence and thereby denying the applicant from receiving a fair deal.

On overall consideration of the matter I am of the opinion that it is an appropriate case in which the Railway authority may sympathetically consider the matter afresh for accommodating in any grade IV job or in any other suitable post in terms of qualification etc. The applicant may also submit a representation narrating all the facts along with the copy of the judgment within six weeks from the date of the receipt of the order and if such representation is made, the Railway authority is directed to consider the same sympathetically expeditiously and preferably within four months from the date of receipt of the representation."

4. During the hearing learned counsel for the applicant had tried to reagitate the issues which had already been taken in the previous O.A., including the fact that principles of natural justice had not been complied with, while the respondents issued the impugned termination order dated 26.3.1997. It is relevant to note that in the aforesaid order of the Tribunal these contentions had not been dealt with, and we, as a co-ordinate Bench cannot ^{again} consider or deal with the same issues. Shri J.L. Sarkar,

learned.....

learned counsel for the respondents has also submitted that the O.A. is barred by the principles of Res Judicata as the applicant has merely agitated the same issues which had already been dealt with in the Tribunal's order dated 15.3.2002. Learned counsel has further submitted that the respondents had fully complied with the directions of the Tribunal by passing appropriate orders dated 21/26.6.2002. During the hearing, the learned counsel for applicant has submitted that certain amounts due to the applicant by way of provident fund, leave salary and dues as mentioned in the termination order dated 26.3.1997 have not been paid to him so far. However, we note, as also pointed by the learned counsel for the respondents, these amounts have not been claimed in the reliefs claimed by the applicant. In the circumstances of the case, the learned counsel for the respondents has submitted that in case, any amounts as mentioned by the applicant are due to be paid to him as per the rules, the respondents will take necessary action to pay him all the amounts shortly.

5. One other ground taken by the learned counsel for applicant is that in pursuance of the order of the Tribunal dated 24.1.2001 in Babu Chakraborty Vs. General Manager, N.F. Railway and others (O.A.67 of 2001), the applicant in that case, who had been similarly terminated from service, has since been reinstated by the respondents in pursuance of the Tribunal's order. He has submitted that similar relief has not been afforded to the applicant, which, therefore, is discriminatory and against the principles of law. In this regard, we note that the applicant has not submitted a copy of the representation given by him, in pursuance of Tribunal's order.....

order dated 15.3.2002, i.e. the representatin dated 8.4.2002 referred to in the impugned letter dated 21/26.6.2002 and it is not clear whether this ground was taken by the applicant or not. It is further relevant to note that the respondents have stated that the applicant in his representation dated 8.4.2002 has not highlighted any new point for consideration and therefore, his termination was in order as per rules.

6. In the circumstances of the case we, therefore, find no good grounds to interfere in the matter, having regard to our earlier order of the Tribunal dated 15.3.2002 in O.A.60/2001. In this view of the matter the O.A. is ~~likely~~ to be dismissed. However, having regard to the earlier observations of the Tribunal to the respondents to "provide the healing touch", in case, the applicant makes a self-content representation to the respondents with regard to the issue of discrimination, this order shall not be a bar to the respondents looking into the matter in accordance with law, rules and instructions. Further, as mentioned above, if any amounts are due to the applicant, in accordance with the relevant rules or are outstanding with the respondents, they shall take necessary steps to make the payments as expeditiously as possible and in any case within six weeks from the date of receipt of a copy of this order, with intimation to the applicant.

7. In the result, for the reasons given above the O.A. is dismissed subject to the observations made in para 6 above.

No order as to costs.

S. K. NAIK
(S. K. NAIK)
ADMINISTRATIVE MEMBER

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH :

GUWAHATI

Case No.
AUG 2002
Date of filing O. A. NO. 261 of 2002
Guwahati Bench

Sri Hans Rajbhar Applicant

-vs-

Union of India & Others Opposite Parties/
Respondents.

I N D E X

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4.	B	CAT/Guwahati's order dated 15-03-2002 in O.A. NO; 60 of 2001	16 to 19
5.	C	Applicant's letter ^{dt:} 08-04-2002 to implement CAT's order in OA60/2001	20
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7.	E	Termination Notice dt: 26-03-97	22

Filed on: 06-08-2002.

Filed by:

K.K. Biswas
(K.K. BISWAS) 6/8/2002

Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL:: GUWAHATI BENCH

GUWAHATI
(An application under section 19 of the Administrative
Tribunal Act, 1985)

O.A. NO.....251..... of 2002

Sri Hans Rajbhar,
c/o Sri Sudarsan Rajbhar,
Gr: NO: 236-B, West Gotanagar,
Guwahati-781011

Applicant

-vs-

- 1) Union of India representing by the
General Manager, N.F.Railway, Maligaon,
Guwahati-781 011.
- 2) The Chief Commercial Manager, N.F.Railway,
Maligaon, Guwahati- 781011
- 3) The Chief Claims Officer, N.F.Railway,
Maligaon, Guwahati- 781011
- 4) The Chief Personnel Officer, N.F.Railway,
Maligaon, Guwahti-781011Opposite Parties
Respondents

DETAILS OF APPLICATION :

1. Particulars of the Orders against which the application
is made :

2) The General Manager(P), N.F.Railway, Maligaon's
Order communicated ^{vide} No:E/227/E-Peon(T) dt: 21/26-06-2002
(Annexure- A)

2. Jurisdiction;

The Applicant declares that the subject matter of
the Application is within the jurisdiction of this

Hon'ble Tribunal.

3. Limitation:

The Applicant submits that the Application has been filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case:

4.1 That the Applicant is the citizen of India and is, therefore, entitled to the rights and privileges guaranteed to the citizens of India under the Constitution.

4.2 That your Lordship in this Hon'ble Tribunal vide the celebrated judgement/order dated 15-03-2002 in O.A.NO: 60 of 2001 were kind enough to issue direction to the N.F.Railway Administration to consider sympathetically to accommodate the Applicant, whose service as Emergency Peon attached to Chief Claims Officer was terminated arbitrarily and unlawfully on 26-03-97, in any grade IV job or in any other suitable post in terms of qualification etc. afresh. (Annexure-B)

4.3 That in the said wonderful and benign judgement/Order mentioned under para 4.2 above all the issues arising out of the unlawful termination of service of the Applicant were exhaustively highlighted and expressed the view " that it is a fit case in which the Railway authority as the employer can now

c ontd..3.. provide..

Advocate
Hon'ble Tribunal
6.8.2002

Hon'ble Tribunal

provide the healing touch" to the Applicant who had rendered service for about three years as an Emergency Peon attached to the CCO all along and who was denied " from receiving a fair deal" at the cause of termination of service of the Applicant.

- 4.4 That in spite of the categorical direction of this Hon'ble Tribunal in the aforementioned judgement/ Order, the principal appendages of the N.F.Railway Administration, more particularly the General Manager himself, has applied his mind mechanically in compliance with the orders of the Tribunal and ~~not~~ carefully considered the whole case on its true perspective based on the facts, records and laws/Rules involved , and thus, made " mis-carriage of Justice " to the representation of the Applicant dated 08-04-2002 and caused " DEFIANCE " to the order of this Hon'ble Tribunal mentioned above.

Copy of the representation of the Applicant dated 08-04-2002 is annexed as Annexure- C.

- 4.5 That the Railway Authority raised the points in the impugned order mentioned above that the services of the Applicant were "unsatisfactory", "irregular", " was absconding since 09-03-97" and " his services were terminated w.e.f.26-3-97 after complying with the requirements of Rule 301(1) of IREC vol-1 "" has not highlighted any new point for further consideration. "

How ridiculous and astonishing all those pleas !

✓ Parthiv Shah
Mr. Parthiv Shah
Advocate
6.8.2002

If " unsatisfactory", then how the Applicant could render service to the same employer for about continuous three years ! The question of " irregular" does not arise at all as the Applicant drew fully ^{Throughout} pay the whole of the period of his service under ~~cc~~ till his termination without any artificial ^{in service} break and the period of " absconding " from 09-03-97 till 26-03-97, that is , the date of his termination of service , was shown deliberately to victimise the applicant by showing him "absconding". Even if the Applicant was absconding for the argument's sake, then what steps were taken by his employer for knowing his whereabouts. The employer had not made ~~in~~ any enquiry to the local home address of the Applicant, nor made any FIR in the local Police Station, nor made any Gazette Notification, nor displayed the matter of absconding in the Notice Board of the Employer's Office or any conspicuous place and the modes for such action prevailing in the Railways system in the case of absconding. The ~~plea~~ is absolutely afterthought, malafide, unilateral, unfair and vindictive to finish one's chunk of bread.

The plea of " not highlighting any new point " as taken by the Railway authority in the impugned order mentioned above is also an another example of non-application of mind and thereby causing "miscarriage of justice" and ~~violate~~ the principles of Natural Justice so as to deprive the Applicant from his

" Just dues". It is not understood what more "new point " is required by the Railway authority on the face of such a magnificent Judgement/Order given by this Hon'ble Tribunal in the O.A. NO: 60 of 2001 mentioned above . All the points, issues and Railway's flaws & lapses were exhaustively dealt with in the sqid Judgement/Order. Never-the-less, the Railway authority has not complied with the directions given by the Hon'ble Tribunal and thereby caused defiance to the said Order.

4.6 That the Provident Fund contribution of the Applicant was regularly drawn from the salary of the Applicant on completion of his one year service and the deducted amount is still withheld with the Railway authority . The photocopy of the P.I. slip is attached as Annexure- D.

4.7 That the leave- salary/encashment for the leave earned by the Applicant during the tenure of his service as Emergency Peon has not also been released as yet by the Railway Authority.

4.8 That the benefit of the Pay, Scale, Fixation of Pay, arrear etc. as admissible due to the 5th Pay Commission has not been paid to the Applicant as yet by the Railway authority.

4.9 That the Retrenchment compensation which will come 6 (six) months' salary around inclusive of leave-salary etc have not been paid by the

✓
Mr. Jayaram
6-8-2003
Advocate

Railway authority as yet nor at the time of terminating the service of the Applicant as per Rules of the ID Act. as well as Railways own set of Rules.

4.10 That it is humbly submitted that the termination Notice itself is defective so much so that it did not comply with the requirements of Rule 301(4) and Rule 301(5) of the Indian Railway Establishment Code, Vol-1, 1985 Edition . The Rule 301(4) says " the reason justifying their action " with a view to terminating one's service " should be recorded" and the Rule 301 (5) indicates " 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 ".

Here it is mentioned that the " appointing authority " for engaging/appointing an Emergency Peon in all cases is the General Manager and without his personal approval no Emergency Peon is appointed. As such, at the time of termination of service of the Applicant the personal approval of the General Manager should have been taken and thereon the Notice issued.

Copy of the termination letter is annexed as Annexure- E.

4.11 That the section 25F (a) of the INDUSTRIAL

DISPUTES ACT, 1947 also indicates that "the Workman has been given one month's notice in writing indicating the reasons for retrenchment"; but "no reasons for retrenchment" were shown in the termination Notice mentioned above.

4.12 That since termination of service was not simpliciter, the show cause notice should have been served to the Applicant on ground of his "absconding" before effecting his termination of service.

4.13 That no notice of absconding by the Applicant and no report of the controlling officer of the Applicant, as alleged, were produced in the Tribunal in the O.A. NOE 60 of 2001 mentioned above by the Railway authority so as to prove the veracity of their statement in regard to termination of service of the Applicant.

4.14 That the termination of service on the vague allegation of "unsatisfactory work" is not tenable and thus not enough compliance with natural justice and, hence, the order liable to be set aside. It is humbly submitted that their Lordships in Hon'ble Supreme Court observed in Nepal Singh -vs- State of UP, reported in (1984) 3 SLR 126, 130, 131, paras 8-9(SC): "Any statutory employer must take care, when terminating a career on the ground of unsuitability, to ensure that its order is founded on definable material 'objectively assessed' and relevant to the ground of termination."

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Mr. J. S. Joshi vs
6-8-2002
Advocate
V. H. Ray Bhushan

Advocate
V. Hanumanth
6.8.2002
Advocate

- 4.15 That from the facts & circumstances narrated above it would be evident that the termination of service of the Applicant by the Railway Authority was in punitive nature and in imposing the punishment the concerned authority should have acted fairly objectively, and not arbitrarily.
- 4.16 That this Applicant humbly submits that the principle of equality in respect of the Government policy as to conditions of service is vitiated " by reason of arbitrariness, mala fides, importation of extraneous factors ."
- 4.17 That it is humbly submitted that in terminating the service of this Applicant the concerned Railway authorities exercised the excess use and abuse of powers with an ulterior motive of victimising the employee by way of termination as well as non-consideration of representation of the Applicant as ordered by this Hon'ble Tribunal in the aforesaid judgement.
- In this connection this humble Applicant relies upon the most laudable judgement of their Lordships in the Hon'ble Supreme Court in 'Ahmedabad Urban Development Authority -vs- Manilal Gordhan das', reported in AIR 1996 SC 2804.
- 4.18 That as per settled principles of Labour Laws it is desirable that while dealing with an employee's case, and that too, on the direction of these Hon'ble Tribunals mentioned above,

the employer should have to rise and act above personal consideration and malice and remain impartial and "just"; but in the case of this Applicant the comment offered in the impugned order by the Railway authority was unfair, unjust, arbitrary, unilateral, violative of Railways own set of norms and rules and, hence, attracts "bias" and "malafide".

The constitutional provision under Article 39A is reproduced in this connection: "The State shall secure the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

4.19 That the termination of service of the Applicant and the denial of sympathetic consideration to " provide the healing touch ", as ordered by your Lordship in the aforementioned judgement ORDER, the comment offered by the N.F.Railway Administration in the impugned order, for all desirable and lawful purposes enumerated above have caused the infringement of and also ultra vires to the Arts. 14, 16, 39(a) and 309, of the constitutionally guaranteed rights.

contd...10..That..

Ms. No. 2
- 6.8.2002
Advocate

✓ Harshali Khan

22
Advocate
- 6.8.2002
V. K. Venkateswaran

4.20 That above all the Principles of "Reasonable Opportunity" and "Natural Justice" have not been observed and followed in the case of the Applicant by the N.F.Railway Administration right since the termination of service till the issuance of the impugned order mentioned under para - 1 above.

5. Grounds for Relief:

5.1 For that The contents of the impugned order issued by the Railway authority mentioned under Annexure-A are contrary to the directions of the Hon'ble Tribunal as mentioned in O.A. NO:60 of 2001's O R D E R passed on 15-03-2002.

5.2 For that the impugned order of the Railway Authority is " Malafides" and " bias" and not according to law & Rules of the Service-matters, and hence, liable to be quashed.

5.3 For that has not the case of the Applicant been examined with proper application of mind and, hence, caused "miscarriage of justice".

5.4 For that the Railway authority have flouted their own set of rules in respect of "termination of service" not examined the case de novo with sympathetic consideration for accommodating the Applicant in any group-IV employment as ordered by the Hon'ble CAT/GHY.

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Mr. J. Soni
6.8.2002
Advocate

5.5 For that the impugned order was perverse on the face of it.

5.6 For that the impugned order was unreasonable, arbitrary and/or mala fide

5.7 For that the impugned order or action has violated the Fundamental rights guaranteed to the Applicant under Articles 14, 16, 39A, 309 of the Constitution of India.

5.8 For that the Respondents have not exercised their jurisdiction in terminating the service of the Applicant and discretion in the impugned order in accordance with law.

5.9 For that there had been denial of procedural safeguards and/or procedural and Administrative Fairness.

5.10 For that the cardinal Principles of Natural Justice were violated all along.

6. Details of Remedy exhausted:

The Applicant declares that the Railway authority v
ide their impugned order mentioned under Annexure-A
have made the remedies available exhausted, and hence,
this Application before this Hon'ble Tribunal for
having justice.

7. Matters not previously filed or pending with any other
Court:

The Applicant most humbly submits that he filed an

Application before this Hon'ble Tribunal under No: 60 of 2001 against the unlawful order of termination of service of the Applicant by N.F.Railway Administration which was disposed of by your Lordship vide O R D E R dated 15-03-2002 with the direction to the Railway authority to consider the case sympathetically afresh for accommodating the Applicant in any grade IV job or in any other suitable post in terms of qualification etc. But the Railway Authority vide the impugned order did not comply with the directions of your Lordship. Hence, this Application against the impugned order as under Annexure-A is filed for justice . The Applicant most humbly submits that no ^{other} such application , writ petition or suit is pending before any Tribunal or Court in respect of the subject matter of this application.

8. Relief sought:

In the circumstances stated above the Applicant humbly prays that the Lordships of this Hon'ble Tribunal may be pleased to administer justice and issue orders -

(i) For quashing the miscarriage of justice caused by the General Manager(P), N.F.Railway ,

Maligaon, in his letter No:E/227/E-Peon(T)
dated 21/26-06-2002.

(ii) For setting aside the termination order issued by the Railway authority vide letter No:E/227/1/E/Peon dt: 26-03-97 made unlawfully;

Handwritten
M/s. 5.8.2002
Advocate

- (iii) For re-instatating the service of the Applicant in any grade IV/Group-D employment or in any other suitable post in terms of qualifications etc.
- (iv) for granting all consequential benefits and back wages right from the date of termination of service, that is, from 26-03-97;
- (v) Any other relief(s) as the Hon'ble Tribunal may deem fit and proper.

9. Interim Relief:

Pending finalisation of this Application Your Lordships may be pleased to pass such order as deem fit and proper.

10. Particulars of Application Fee:

Indian Postal Order No. dated. 31-07-2002
7G574775
amounting to Rs 50.00 (Rupees fifty only) to be drawn in the Head Post Office, Guwahati is enclosed.

11. Details of Index

An Index in duplicate containing the details of the documents to be relied upon is enclosed.

12. List of Annexures :

A, B, C, D, E.

VERIFICATION

I, Sri Hans Rajbhar, son of Sri Maul Rajbhar, aged about 27 years, resident of Rly Qrs. No:236-B at West Gotanagar, Guwahati-781011, do hereby solemnly affirm and verify that the contents of paragraphs 4.1 to 4.10 are the facts of the case and true to my knowledge, information and belief and that I have not suppressed any material facts and paras 4.11 to 4.20 are my humble and respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 6th day of August, 2002.

Place;Guwahati.

Date.06.08.2002

Hans Rajbhar

Signature of the Applicant

To

The Deputy Registrar,
Central Administrative Tribunal,
Guwahati.

NORTHEAST FRONTIER RAILWAY:

NO:E/227/E-Peon(T).

TO

Shri Hans Rajbhor
 C/o Shri Sudarsan Rajbhor
 Qr. No. 246-B, West Ghatanagar,
 Guwahati-781011.

OFFICE OF THE
 GENERAL MANAGER (P)
 MALIGAON:GUWAHATI-11.

Dated: 21 -06-2002

Sub:- Your representation of 8-4-2002
 for consideration re-engagement
 in any Group D post as per Hon'ble
 CAT/GHY's judgement.

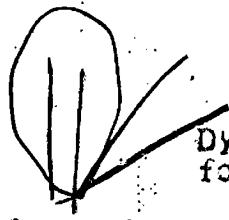
Ref:- APO/LC's No.E/170/Legal Cell/NS/31/2001

GM/N.F.Rly has passed the following orders:-

The undersigned has considered the representation of Shri Hans Rajbhor, Ex- Subs-E/Peon under CCO/MLG. in the light of the Order of Hon'ble CAT/GHY dated 15-03-2002 in OA 60 of 2001 and relevant rules/records in connection with engagement and discharge of Sub-E/Peon. The applicant was appointed as Sub-E/Peon in scale Rs. 750-940/- under CCO/MLG from Rectt/Peon(Loose) dated 27-06-94 in terms of G.M. (P)/MLG Letter No. E/227/2 Rectt./ Peon (Loose) dated 27-06-94 wherein the rules of engagement and discharge of Sub-E/Peon are embodied. The most basic condition in continuation of service of a Sub-E/Peon is satisfactory service to the officer under whom he is employed it is noted that Shri Rajbhor was terminated from service w.e.f. 26-03-97 The perusal of the order of Termination dated 26-03-97 and also all the records in this regard including CCO/MLG's report dated 17-03-97 reveals that Shri Hans Rajbhor Emergency Peon was absconding since 09-03-97 and that his work was most unsatisfactory and irregular. The matter was reviewed at appropriate level and it was decided not proper to keep him in service due to his irregular and unsatisfactory service and hence his services were terminated w.e.f. 26-03-97 after complying with the requirements of Rule 301(1) of IREC Vol-1.

The applicant in his representation dated 8th April '02 has not highlighted any new point for further consideration. The termination of the applicant was in order and as per rules. Hence Shri Rajbhor whose services were unsatisfactory and irregular does not deserve to be taken back in Railway Service.

The applicant may be informed accordingly.

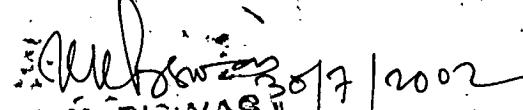

 (Chandrajit Saikia)
 Dy. Chief Personnel Officer (HQ)
 for General Manager (P) Maligaon.

Copy forwarded for information and necessary action to:-

1. CAT/GHY-This is in connection with his OA No.60 of 01 of 15-3-02
2. APO/LC/HQ.
3. ~~Sri J.L. Sarkar, Rly. Advocate~~ Tho: APO/LC.

for General Manager (P) Maligaon.

Attested


 (K. Biswas)
 Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.60 of 2001.

Date of Order : This the 15th Day of March, 2002.

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

Shri Hans Rajbhar
C/O : Sudarsan Rajbhar
Qrs. No.246-B, West Gotanagar
Guwahati - 78111.

... Applicant.

By Advocate Mr.R.P.Yadav.

26.3.2002

- Versus -

1. Union of India
2. The General Manager
N.F.Railway, Maligaon
Guwahati-11.
3. The Chief Claims Officer
N.F.Railway, Maligaon
Guwahati-11.

... Respondents.

By Mr.J.L.Sarkar, Railway Advocate.

ORDER

CHOWDHURY J.(V.C.) :

By order dated 27.6.94 the applicant was appointed as Emergency Peon on pay of Rs.750/- per month in the scale of Rs.750-940/- w.e.f.27.6.94 against an existing vacancy under CCO, Maligaon. His appointment was conditional. The following conditions were mentioned in the appointment letter :

1. Your appointment will not confer upon any right to claim for further appointment in this Railway and you are liable to be discharged without any notice when your service will not be required by the administration or on the expiry of the currency of the post against which you are engaged or on medical grounds or physical incapacity or in the event of posting of approved

Contd..2

Attested

30.7.2002
S. B.

28 hand.

2. You will be transferred with the Officer for whom you are engaged as substitute Emergency Peon or you will be discharged in the event of the officer for whom you are engaged expresses his unwillingness to take you on transfer along with him.

3. The appointment of emergency peon at the first instance will be for a period of three months only and will be extended further on receipt of a certificate from the Controlling Officer that the service of the emergency peon is satisfactory and he can be continued further."

His appointment was extended and continued as such till the impugned order No.51/97 was passed vide order dated 26.3.97 terminating the service of the applicant. The applicant thereafter moved different authorities ventilating his grievances. Failing to get appropriate remedy from the authorities the applicant approached this Tribunal for redressal of his grievances. There was some delay in filing the application and after due consideration the delay was condoned.

2. The Railway authority justifying the termination of the applicant submitted its written statement. According to the Railway authority, his service was terminated on the basis of the report of the Controlling Officer which indicated his service was unsatisfactory. Moreover, the applicant absconded w.e.f.9.3.97. Hence his service was terminated w.e.f.26.3.97 in terms of Rule 301(1) of IREC Vol.I.

3. Mr.R.P.Yadav, learned counsel for the applicant strenuously argued that the impugned order of termination is unlawful, more so, when the said order

Attested

E. MELKESwar
S. S. BISWAS 30.7.2002
Advocate

was passed on the ground of unsatisfactory nature of service also on the ground of alleged absconding of the applicant. 29

3.

Mr. J. L. Sarkar, learned counsel for the respondents has referred to the Full Bench decision dated 12.2.99 in Shyam Sundar vs. U.O.I. & Ors. case being O.A. No. 896 of 1995 and also another decision of the said Bench of the Tribunal passed in Manoj Kumar Poddar -vs- Ministry of Railways & Ors. case in O.A. 1589 of 1988 disposed on 21.3.2001.

4.

We have given our anxious consideration on the matter. Admittedly, the applicant worked for about thirty three months without any artificial break. As per the existing guidelines a person is entitled for conferment of temporary status after rendering three years service as temporary peon. The applicant served for about three years as temporary peon till the impugned order was passed. The operative part of the termination order also disclosed that the termination order was not a termination simpliciter, but his termination was other than a termination simpliciter. Considering all the aspects of the matter I am of the view that it is a fit case in which the Railway authority as the employer can now provide the healing touch. The applicant at any rate served for about three years as an emergency peon. The impugned order of termination on the eve of the completion of

Contd.. 4

Attested
BISWAS (30.7.2002)
Advocate

3/ three years period undoubtedly visited with evil consequence and thereby denying the applicant from receiving a fair deal.

5. On overall consideration of the matter I am of the opinion that it is an appropriate case in which the Railway authority may sympathically consider the matter afresh for accommodating in any grade IV job or in any other suitable post in terms of qualification etc. The applicant may also submit a representation narrating all the facts along with the copy of the judgment within six weeks from the date of the receipt of the order and if such representation is made, the Railway authority is directed to consider the same and sympathically expeditiously / preferably within four months from the date of receipt of the representation.

Subject to the observations made above, the application stands disposed of.

There shall, however, be no order as to costs.

sd/ VICE CHAIRMAN

hb

TRUE COPY

Section Officer (J)
गणराज्य अधिकारी (संचालिक अधिकारी)
Central Administrative Tribunal
संघीय प्रशासनिक अधिकारी
Guwahati Bench, Guwahati
संघीय अधिकारी, गुवाहाटी

26/3/2002

26/3/2002

8/Copy

26.3.2002

(R. P. YADAV)

Accepted
S. N. Deka
S. N. Deka
K. BISWAS
Advocate

To
The General Manager,
N.F.Railway, Maligaon
Guwahati - 781011.

Sub:- Court Order.

Sir,

Most humbly and respectfully, I beg to lay down the following list for your kind consideration please.

1. That Sir, my services was terminated by impugned order, No. 51/9 dtd. 26.3.97.
2. That Sir, I approached all concerned and on failing to get the justice, finally I was forced to take shelter in the court of Law.
3. That Sir, it is the matter of immense that the Hon'ble Central Administrative Tribunal, Guwahati Bench has ordered to approach your honour for consideration of my case.
4. That Sir, in this connection I am to say that I am ready to join any grade class IV job or any other suitable post in the N.F.Rly.
5. That Sir, I am endorsing herewith the photo copy of the order of Hon'ble Court of Justice.

In view of the fact stated above, and in the light of the Hon'ble Court order and keeping in view my sufferings for long more than five years for no fault of mine I fervently pray to your honour kindly to consider my case sympathetically and give me appointment in the Rlys as prayed for and for this act of kindness I shall remain obliged.

Date: 8.4.2002.

DA:- Photo Copy of
Court Order.

Yours faithfully,

Sd/-

(Hans Rajbhar)

C/O Sudarshan Rajbhar

Rly Qrs. No. 236/B

West Gotanagar

Guwahati - 781011.

Copy to:- CCO & CPO/MLG for information and
necessary action please.

True copy of
Applicant's representation
dt: 08.04.2002 placed
below at SN-20/1
At 8.4.2002
Advocate
30.7.2002
Advocate

Yours faithfully,
Sd/-
(Hans Rajbhar)

20/1

ANNEXURE-C

53

To
The General Manager
B.E.R.Railway, Maiti
Guwahati-781011

Copy Court order.

Sir

Most humbly and respectfully, I beg to lay down the following lines for your kind consideration please.

1. That sir, my services were terminated by termination order No. A1701 dt. 24/3/02.
2. That sir, I approached all concerned and on failing to get justice, finally I was forced to take shelter in the court of law.
3. That sir, it is the matter of immense pleasure that the Hon'ble central Administrative Tribunal, Guwahati Bench has ordered to approach you, following for consideration of my case.
4. That sir, in this connection I am to say that I am ready to join any grade class IV job or any other suitable post in the B.E.R.Railways.
5. That sir, I am enclosing herewith the copy of the order of the Hon'ble court of justice.

In view of the facts stated above, and in the light of the Hon'ble court order and keeping in view my sufferings for long more than five years for no fault of mine I fervently pray to your honour kindly to consider my case sympathetically and give me appointment in the Railways as prayed for and for this act of kindness I shall remain obliged.

DA: photo copy of
Court order,

Yours faithfully,
K. S. RAJBHAR
(HANS RAJBHAR)
c/o Sudershan Rajbhar
Rly Qrt. No. 2 S/2 West Ghatanagar
Guwahati-781011

Copy to: CCO & CPO/MLG for information and necessary action please.

Maiti, Guwahati
the 8th April 2002

Attest

Mr. D. D. Deka
S/o K. D. Deka
Asst. Secy

N. F. RAILWAY

STATEMENT OF VOLUNTARY/NON-CONTRIBUTORY STATE RAILWAY
PROVIDENT INSTITUTION ACCOUNT
FOR AND UPTO THE END OF THE YEAR 31ST MARCH 1999

DEPARTMENT HEADQUARTR GENERAL

21
ANNEXURE - D

AU 00

BU 237

34

DEPOSIT ACCOUNT OF **HANS RAJBHAR**

DEPOSITOR NO. 01930392 N

DESIGNATION :

(FIGURES IN RUPEES)

TRANSACTION MONTH	SUBSCRIPTION			WITHDRAWAL	REFUND	BONUS		REMARKS
	COMPULSORY	V.P.F.	TOTAL			CREDIT	WITHDRAWAL	
BALANCE ON 1-4-98	1671		1671					
APR. 98								
MAY. 98								
JUN. 98								
JUL. 98								
AUG. 98								
SEP. 98								
OCT. 98								
NOV. 98								
DEC. 98								
JAN. 99								
FEB. 99								
MAR. 99								
TOTAL								LOAN RECOVERY
INTEREST @ 12.0%			201					

BALANCE ON
31-3-99

RS.

1872

(RUPEES ONE THOUSAND EIGHT HUNDRED SEVENTY TWO ONLY)

DATED :

99-07-02

SPECIAL ATTENTION IS INVITED TO NOTES 1 & 2 OVERLEAF.

FOR FINANCIAL
& CHIEF ACCO

Attested
S. K. BISWAS, Advocate
30-7-2002

212

Annex

H. P. Railway

D. R. B. No. 81/97

In terms of Rule 301(4) of Indian Railway Establishment Code Vol- I, the services of Sh. Hira Rajbhor, Sub. Inspector Poon in scale Rs. 750-970/- attached to C.G.I.R.R. Railway/110 is hereby terminated from 26-3-97(A) with one month's pay in lieu of one month's notice. He is also entitled to retain amount compensation @ 15 days pay for each completed year of service.

Signature of the Appointing Authority or his/her Authority with Office Seal

No. B/227/1/E. Poon

Dated: Malibagh 26-3-97

Copy forwarded for information and necessary action to:

1. EA & CAO/Malibagh
2. CGI/B.P.Rly/Malibagh in reference to his Office Note No. O/CGI/Notes/96-97 dated 17-3-97
3. OS/Commercial. He may obtain acknowledgement from Sh. Hira Rajbhor, Sub. Inspector Poon in duplicate copy of this Circular and return the same to his Office/Malibagh.
4. EA/EA for payment of one month's wages in lieu of one month's notice.
5. EA to CGI
6. PA to CGI
7. Sh. Hira Rajbhor through C.G.I./Malibagh Sh. Rajbhor may draw the payment of one month's wages in lieu of one month's notice from CGI Office/Malibagh

C.O.6 - 155 Es D/26.3.97

O/5/34 - C/07-87 26.3.97

Signature of the Appointing Authority or his/her Authority with Office Seal

Attested

Mr. K. Biswas
(E. K. BISWAS)
Advocate
30-4-2002

In The Central Administrative Tribunal
Guwahati Bench :: Guwahati. **FER 203**

Guwahati Bench

O.A. NO. 251/2002

Shri Hans Rajbhor

Vs.

Union Of India & Ors.

In the matter of :

Written Statement on behalf of
the respondents.

The respondents in the above case most respectfully beg to state as under :

1. That the respondents have gone through the original application and have understood the contents thereof.
2. That the respondents do not admit any statement except those which are specifically admitted in this written statement. Statements not admitted are denied.
3. That in reply to statements in para 4.2 it is stated that as per Hon'ble Tribunal's order dated 15.3.2002, the case of the applicant was considered by the General Manager and it was decided not proper to keep the applicant in service due to his irregular and unsatisfactory service. The decision of the G.M.(P)/MLG was communicated to the applicant by Office letter No. E/227/E-Peon(T) dated 21.5.2002.

Chief Personnel Officer (A) 26
S. R. Riy. / Maligno
Guwahati-18

*F. I. D. S. J. Chakraborty
Dh. Officer
26/5/2003*

4. That in reply to statements in para 4.3 to 4.20 it is stated that the applicant was appointed as Emergency Peon attached to CCO/Maligaon by GM(P)/MLG's letter dated 27.6.1994. According to the report of his controlling officer, the service of the applicant was unsatisfactory. Moreover, the applicant was absconded w.e.f. 9.3.97. (Hence, the service of the applicant was terminated w. e. f. 26.3.97 after following the procedures mentioned under Rule 301(1) of IREC Vol. I.) The applicant was paid one month pay in lieu of notice with retrenchment compensation at the rate of 15 days pay for each completed year of service.

5. That in the facts and circumstances of the case the application deserves to be dismissed with cost.

Verification

I, A.K. Nigam, working as Chief Personnel Officer/Admn., N.F.Rly, Maligaon, do hereby verify that, the statements made in the paragraphs 1 to 5 are true to my knowledge.

Guwahati


Signature

Chief Personnel Officer(A)
N.F.Rly, / Maligaon
Guwahati-8