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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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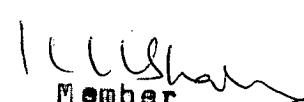
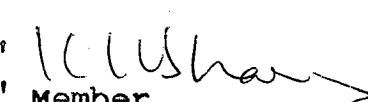
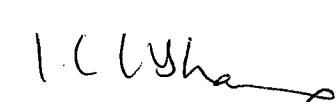
FORM NO. 4

(See Rule 42)

CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH,
GUWAHATI.

ORDER SHEET

Original No. 54/2002
Misc. Petition No. /
Contempt Petition No. /
Review Application No. /Applicant(s) Vinod Km. ShonmaRespondent(s) U.O.T. AssmAdvocate for Applicant(s) M. Chanda, G.N. Chakrabarty, S. DattaAdvocate for Respondent(s) Railway Counsel, B.K. Sharma

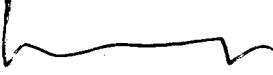
Notes of the Registry	Date	ORDER OF THE TRIBUNAL
This is an application in form C. F. for C. S. deposit of vide IP / 76550262	25.2.02	Heard Mr. M. Chanda, learned counsel for the applicant.
Dated 31.1.2002 A. D. Registrar Dy. Registrar P.S.		The application is admitted. Call for the records. List on 28.3.2002 for order.
Steps taken S. S. /		 Member
Notice prepared and sent to D/S for issuing direction No. 1 to 4 by Regd. No. 6/8/02 DINo 77415777 Dtd 7/3/02	28.3.2002 29.4.2002	Put up after service report. List on 29.4.2002.
		 Member
	29.4.02	Service is completed. Mr. S. Sarma, learned counsel for the Respondents prays for time to file written statement. Prayer is allowed. List on 27/5/2002 for orders.
⑨ Service report are still awaited. 26.4.02		 Member
	mb	 Vice-Chairman
		 Vice-Chairman
		 Vice-Chairman

15.5.2002

27.5.02 Written statement has been filed

W/s. Submitted
by the Respondents.

The case may now be listed for
hearing on 27.6.2002. The applicant
may file rejoinder, if any, within
two weeks from today.

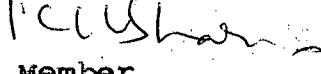

Vice-Chairman

19.6.2002

mb

Rejoinder submitted 27.6.02
by the applicant in reply
to W/s.

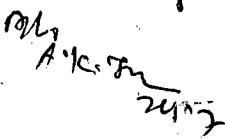
List again on 24.7.2002 for
hearing so as to enable the respondents
to file connected documents.


L C U Sharm
Member

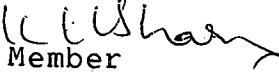

Vice-Chairman

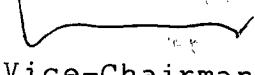
pg

24.7. The case is adjourned to 11.8.2002
as the respondent did not file today.


Vice-Chairman
24.7

Heard learned counsel for the
parties. Hearing concluded. Judgement
delivered in the open court, kept in
separate sheets. The application is
allowed in terms of the order. No
costs.


L C U Sharm
Member


Vice-Chairman

Received copy
Bishan Das
For Mr. B. K. Sharma
Rly St. Counsel
12/8/02
trd

Commenced to the
order dtd 1/8/02
to the applicant & the
Kashiy Compt.

① OA 54/02

IN THE GAUHATI HIGH COURT

(High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura,
Mizoram & Arunachal Pradesh)

CIVIL APPELLATE SIDE

Appeal from
Civil Rule

WP(C)

No. 6334 of 2002

Union of India & ors. Appellant
Petitioner

Sri Vinod Kumar Sarma ^{Versus}

Appellant Mr. B.K. Sharma
For Petitioner Mr. S. Sarma
Mr. S. K. Das - Advocate

Respondent
Opposite Party

Respondent
For Opposite Party Mr. M. Chanda, Mr. S. Gose, Mr. S. Chanda
Mr. S. Sulta, Mr. S. Nath, etc.

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

52
 WP(C) NO.6334 of 2002
 BEFORE
 HON'BLE MR JUSTICE D.BISWAS
 HON'BLE JUSTICE SMT.A.HAZARIKA

7.12.06

This writ petition is directed against the judgment and order dtd.1.8.02 passed by the Central Administrative Tribunal, Guwahati Bench in Original application No. 54/02.

We have heard Mr.Sharma learned counsel for the petitioners and Mr.Ghosh learned counsel for the respondent.

The respondent was appointed by the Assistant Personnel Officer(II) N.F.Railway, Tinsukia as a Substitute Emergency Peon vide order dtd. 30.4.01 The terms and conditions provided in the appointment order is that the engagement was for 3 months and it will not confer upon the respondent any right to claim for further appointment. The service of the respondent as Substitute Emergency Peon has been terminated w.e.f. 19.12.2001 on payment of 14 days pay in lieu of 14 days notice. The order of termination reads as follows:

“In terms of rule 301(I) on Indian Railway Establishment code Vol:1 the services of Shri Vinod Kumar Sharma Sub Emergency Peon in scale Rs.2550-3200/- attached to Sr.DME/Dsl/NGC is hereby terminated w.e.f. 19.12.2001(FN) with 14 days pay in lieu of 14 days notice.

This issue has the approval of competent authority.”


 The above letter of termination does not contain anything which can be considered stigmatic. Moreover, that apart, the respondent was appointed as Substitute Emergency Peon for a period of 3 months only though he was allowed to continue up to 19.12.01. Being a Substitute Emergency Peon, he was not vested with any

URGENT

Central Administrative Tribunal
केन्द्रीय प्रशासन न्यायालय
B33 19 DEC 2006
Guwahati Bench.
गुवाहाटी न्यायालय

Noting by Officer or Advocate	Serial No.	Date	Office notes, reports, orders or proceedings with signature
1	2	3	4

right to continue in service. The service of the respondent was liable to be discharged without any notice on expiry of the currency of the post against which such engagement is made or on medical or physical incapacity. This being the position his termination after expiry of the initial period of appointment for any reason whatsoever cannot be faulted with on the ground that he was not served with any notice or that the order of termination is stigmatic. There is nothing perverse in the order of termination. Moreover, the respondent has been paid 14 days salary in lieu of notice as provided in Rule 301(I) of Indian Railway Establishment manual Vol.I. We do not find any infirmity in the termination order.

We therefore allow this petition and set aside the impugned order of the learned Tribunal.

Before parting with the record, we would like to observe that the termination of the respondent from service will not be a disqualification on his part in seeking employment/re-employment under any authority including the Railways.

Sd/- A. Hazarika.
JUDGE.

Sd/- D. Biswas.
JUDGE.

Memo No. HC.XXI.

10115-20

R.M. Dtd.

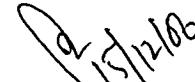
16/12/06

Copy forwarded for information and necessary action to:-

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Railways, New Delhi.
2. The Divisional Railway Manager (P), NF Railway, Lumding.
3. Shri M. Srinivas, Senior Divisional Mechanical Engineer (Diesel) NGC, NF Railway, Lumding.
4. The Medical Director, Central Hospital, NF Railway, Maligaon, Guwahati-11.
5. Sri Vinod Kumar Sarma, Son of Late Kalika Sarma, resident of Gr No. 750G, South Hill Colony, Lumding, Dist. Nagaon.
6. The Central Administrative tribunal Guwahati Bench, Rajgarh Road, Bhangagarh, Guwahati- 781005.

By order


Asstt. Registrar (Judl.)
Guwahati High Court, Guwahati.


13/12/06

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. NO. 54 of 2002 of

DATE OF DECISION 1.8.2002

Sri Vinod Kumar Sharma

APPLICANT(S)

Mr. Hrishikesh Dutta.

ADVOCATE FOR THE APPLICANT(S)

VERSUS -

Union of India & Ors.

PETITIONER(S)

Mr. S.Sarma.

ADVOCATE FOR THE
RESPONDENTS.

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

THE HON'BLE MR. K.K.SHARMA, MEMBER (A).

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

5. Judgment delivered by Hon'ble Vice-Chairman.

Q

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 54 of 2002.

Date of Order : This the 1st day of August, 2002.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Hon'ble Mr. K.K.Sharma, Member (A).

Sri Vinod Kumar Sharma
Son of Late Kalika Sharma
Resident of Gr. No. 750G,
South Hill Colony, Lumding,
District-Nagaon,
Assam.

...Applicant

By Advocate Mr. Hrishikesh Dutta.

-versus-

1. The Union of India
Represented by the Secretary to the
Government of India,
Ministry of Railways,
New Delhi.
2. The Divisional Railway Manager (P),
N.F.Railway, Lumding.
3. Shri M.Srinivas,
Senior Divisional Mechanical
Engineer (Diesel)/NGC, N.F.Railway,
Lumding.
4. The Medical Director
Central Hospital
N.F.Railway,
Maligaon,
Guwahati-781011

...Respondents

By Advocate Mr. S.Sarma on behalf of Standing Railway
Counsel.

O R D E R (ORAL)

CHOWDHURY J. (V.C.).

The applicant was engaged as a substitute
emergency Peon in the scale of Rs.2550-3200/- and posted to

the service of substitute emergency Peon attached to DME/TSK with effect from 23.04.2001 on the terms and conditions mentioned in the letter of appointment dated 30.04.2001. Subsequently by order dated 17.7.2001 the applicant was spared as emergency Peon attached to DME, Tinsukia and he was attached as emergency Peon to the Senior DME (D), New Guwahati. According to the applicant he fell sick on 6.10.2001 which annoyed his officer under whom he was attached. On 15.10.2001 respondent no.3 summoned him and handed over a communication addressed to respondent no.4, the Medical Director, Central Hospital. The applicant accordingly handed over the said letter and he was allowed to go back and accordingly the applicant returned to his duty place. It appears that the said communication dated 8.10.2001 addressed to Sr. DMO (IC) to arrange for Medical Examination of the applicant and to issue Fit/Unfit certificate enabling him to take necessary action. By letter dated 1.11.2001 the applicant was made temporarily unfit for three months and was directed to report to Senior DMO/NGC with sick memo for taking him under sick list. By the impugned order dated 18.12.2001 the service of the applicant was terminated with effect from 19.12.2001 with fourteen days pay in lieu of fourteen days notice. The legality of the said action of the respondents is challenged as arbitrary and discriminatory.

2. The respondents contested the claim and submitted that the applicant was a substitute emergency Peon and his service was terminated in terms of his appointment and as per rule. Mr. Hrishikesh Dutta, learned counsel for the applicant on the other hand

Contd..

assailing the impugned order of termination contended that the impugned order was passed *per se*, arbitrary, discriminatory and in violation of Article 14 and 16 of the Constitution. The learned counsel for the applicant stated and contended that the said order was passed as a punitive measure which would be evident from the order of termination itself. Referring to the order of termination from service dated 8.12.2001 Mr. H. Dutta, learned counsel for the applicant pointed out to the endorsement made in the terminsation order to the Sr. DME/D/NGC wherefrom it was clear that the order of termination was issued with reference to his Note No. F/283/D/M/F.Peon (Loose) dated 08.12.2001. The learned counsel for the applicant submitted that the foundation of the termination was passed on the said Memo which was sent by the Senior DME as a measure of punishment. Mr. S. Sarma, learned counsel for the respondents on the other hand submitted that the order of termination was lawfully made. Mr. Sarma submitted that emergency substitute peon can be appointed in terms of the appointment letter and in conformity with the policy for engagement of emergency peon. Such person can also be terminated from service without holding any departmental enquiry. Such person can be continued only if found suitable. Mr. Sarma referred to the decision of the C.A.T., Principal Bench, rendered in O.A. No.1589/98 disposed of on 21.3.2001 in the case of Manoj Kumar Poddar Vs. Ministry of Railways & Ors. Mr. Sarma also produced relevant records. In the records a communication bearing Office Note No. E/283/D/M/E.Peon(Loose) dated 8.12.2001and records also included the office memos. The said communication itself indicated that the concerned authority was not satisfied

Contd..

on the performance of the applicant. According to the respondent no.3 the applicant was not dependable person. The full text of the letter dated 8.12.2001 is reproduced below :

"Sri Vinod Kumar Sharma has been engaged by me as emergency peon when I was DME/TSK w.e.f. 23.4.01 vide DRM(P)/TSK's order No. E/254/E Peon/pt-I DT 30.04.01. Subsequently Sri Sharma has been transferred from TSK to NGC on his request vide DRM (P)'s letter No. E/283/III(M) dated 5/10.0.01 and joined at NGC on 11.07.01.

The performance of Sri Vinod Kumar Sharma E/Peon of Sr. DME/NGC has been unsatisfactory. He speaks lies very often. Being emergency peon, this nature of speaking lies is totally unacceptable since it made him not a dependable person. Moreover he has not been carrying out the instructions properly and when questioned, he tells some excuse which turns out to a lie.

Because of his unsatisfactory service, the certificate of performance at the end of first three months has been withheld so that he would improve his conduct. But there has been no improvement. On the other hand it is becoming worse.

He is very negligent. When he is sent to call somebody or to fetch something from office/residence of other officers or supervisors/market, he invariably takes abnormal time to return without any justification. He is working in his own direction neglecting my instructions.

Under the above circumstances, Sri Vinod Kumar Sharma Emergency Peon /Sr. DME/D/NGC cannot be continued as my emergency peon. Hence it is requested that necessary action may be taken to terminate the services of Sri Vinod Kumar Sharma E/Peon with immediate effect observing all the formalities and rules"

3. Considering all the materials on records, it does not appear to us that the order of termination was simplicitor. Rule 301 of Indian Railway Establishment Manual speaks of termination of service which reads as follows :

"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 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 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."

Rule 301 makes it clear that persons can be terminated from service without notice when such termination is due to expiry of sanction to the post. Mr. Sarma, learned counsel for the railways submitted that the order of termination did not indicate any stigma. It may be contained in the documents referred to the termination order. We have already mentioned about the memos written by the respondent no.3 which itself indicated the nature of allegation on the applicant and the same prevailed upon the authority to issue the termination order. Mr. Sarma, learned counsel referred to the decision of the Supreme Court in Krishnadevaraya Education Trust and another Vs. L.A. Balakrishna reported in 2001 AIR SCW 253 and submitted that during the period of probation if the performance of an employee is not satisfactory which means that he is not suitable for the job, the employer has a right to terminate the services as a reason thereof. There cannot be any dispute on the proposition laid down by the Apex Court as cited by Mr. Sharma. The said judgment also indicated that if such

Contd..

order was challenged the employer will have to indicate the grounds of the termination. No doubt in such case if the performance of an employee found not satisfactory the employer has the right to terminate the services in terms of the appointment and policy but when such termination is for such alleged misconduct in that case that cannot be said to be a termination simpliciter. Such thing happened in the instant case as was reflected in the letter dated 8.12.2001. The decision referred to by Mr. Sarma is not applicable in this case so much so that the case of termination was not in terms of Rule 301 (1) IREC.

4. For the reasons stated above we are of the view that the impugned order of termination dated 18.12.2001 is not sustainable in law and accordingly set aside. The respondents are directed to reinstate the applicant in service forthwith with all consequential benefits.

5. The application is accordingly allowed. There shall however be no order as to costs.

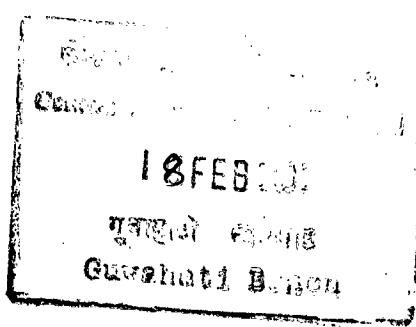


(K.K.SHARMA)
Member(A)



(D.N.CHOWDHURY)
Vice-Chairman

trd



13
 Filed by the applicant
 through advocate Sri
 G. N. Chakravarty on
 18-02-2002

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act,
 1985)

Title of the case : O.A. No. 54 ... /2001

Sri Vinod Kumar Sharma : Applicant

Versus -

Union of India & Others : Respondents.

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Filed by

Date : 18-02-2002

Advocate

Vinod Kumar Sharma

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act,
1985)

O.A. No. 54/2001

BETWEEN

Sri Vinod Kumar Sharma
Son of Late Kalika Sharma
Resident of Gr. No. 750(G),
South Hill Colony, Lumding
District Nagaon
Assam

.....Applicant

--AND--

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Railways,
New Delhi.
2. The Divisional Railway Manager (P)
N.F.Railway, Lumding.
3. The Shri M.Srinivas
Senior Divisional Mechanical Engineer (Diesel)/NGC
N.F.Railway, Lumding.

Vinod Kumar Sharma

4. The Medical Director
 Central Hospital,
 N.F.Railway,
 Maligaon,
 Guwahati-781011

..... Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order against which this application is made:

This application is made against the impugned order dated 18.12.01 issued by the respondent No.2 terminating the services of the applicant in an arbitrary and unfair manner and at the instance of the respondent No.3 with a mala fide intention and without assigning any reason.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India. He is approaching this Hon'ble Tribunal challenging the legality

Vineet Kumar Sharma

and validity of the action of the respondents in terminating his services by issuing the impugned order dated 18.12.2001.

4.2 That the applicant belongs to a very poor family and has read upto VIIIth standard. He could not prosecute further studies for want of financial support. It is stated that the applicant lost his father at a very tender age and had to shoulder the burden of maintaining the livelihood of his family. The circumstances forced him to give up studies and to be in search of a job.

4.3 That the applicant was fortunate in getting a job to support his needy family. It is stated that there were few posts of Substitute Emergency Peon under the disposal of the respondents which were sought to be filled up by selecting eligible persons. The applicant having passed the VIIIth standard was found suitable and therefore, was sent for Medical Examination. On being declared passed in the Medical Category, the applicant was found suitable and was therefore, allowed to work as Emergency Peon (Attached with DME/TSK) with effect from May, 2000. However, subsequently he appointed as Substitute Emergency Peon in the scale of Rs. 2550-3200 with effect from 23.04.01 vide order dated 30.04.01 issued by the Assistant Personnel Office (II), N.F.Railway, Tinsukia with the approval of the General Manager, N.F. Railway. The said appointment was made subject to the terms and conditions as contained in the order dated 30.04.01 above mentioned.

A copy of the aforesaid order dated 30.04.01 is annexed herewith as **Annexure-1**.

4.4 That the applicant soon after receipt of the aforesaid order, joined his duties under the Divisional Mechanical

Vineet Kumar Sharma

Engineer, Tinsukia and continued to work to the satisfaction of his superior and without any objection from any quarter. It is stated that though the appointment was made initially for three months, the same was extended by the respondent authorities on being satisfied with the services of the applicant. However, subsequently by an order dated 17.07.01 passed by the respondent No.3, the services of the applicant was attached to the respondent No.3 himself. The applicant accordingly continued to work being attached with the respondent No.3 with effect from 11.07.01 against the existing vacancy. It is stated that as the attached emergency peon, the applicant had to stay with the concerned officer and also had to household works. The applicant, being in dire need of a job, never refused to do the work, whatsoever he was asked for by his superior.

A copy of the aforesaid order dated 17.7.2001 is annexed herewith as **Annexure-2**.

- 4.5 That on the evening of 6.10.01, the applicant fell sick due to attack of viral fever and became confined to bed. The next morning, on 7.10.01 the Respondent No.3 asked him to prepare the breakfast and to go to the market. The applicant, being unable to move due to body ache, expressed his inability to carry out the orders and at this, the respondent no.3 got annoyed on him. The respondent No.3 also threatened that if the applicant did not make him available for the works, he would be thrown out of job.
- 4.6 That on 15.10.01, the respondent no.3 summoned the applicant and handed over to him a letter addressed to the respondent no.4. The respondent no.3 directed the applicant to visit the respondent no.4 to hand over the said letter to him. The

Vineet Kumar Sharma

applicant, accordingly reported to the respondent no.4 on the same day and handed over the said letter to him. The respondent no.4, after receipt of the said letter, however, allowed the applicant to go back. The applicant went back to Lumding, resumed duties under the respondent No.3 and continued to work without any objection from any quarter.

4.7 That thereafter on 18.12.01, the respondent No.3 asked the applicant to go to the office in the morning. The applicant went to the office and surprisingly the impugned order dated 18.12.01 was served upon him after taking his signature on a piece of paper in acknowledgement of the impugned order. The applicant was taken by a surprise at the issuance of the impugned order of termination. It was just like a bolt from blue to the applicant. He however, on receipt of the impugned order, went to meet the respondent no.3. But the respondent no.3 did not even allow the applicant to enter his office. The applicant was shunted out by the Gate keeper and therefore he had to leave the place.

A copy of the impugned order dated 18.12.2001 is annexed herewith as **Annexure-3**.

4.8 That the applicant states that the action of the respondents in issuing the impugned order is seemingly arbitrary, unfair and without any justifiable reason. It is stated that the impugned order is without any reason and the same has been passed in exercise of executive whims and fancy and therefore the same is liable to be set aside and quashed.

4.9 That the applicant states that as per the terms and conditions laid down in his appointment order dated 30.4.2001, he would be discharged on either of the grounds

Vinod Kumar Sharma

namely, (i) when his services were not required by the administration (ii) on expiry of the currency of the post against which he was engaged; (iii) on medical ground or physical incapacity and (iv) in the event of posting of approved hand. But, unfortunately the impugned order is silent on existence of either of such above mentioned grounds warranting its issuance. It is, therefore, abundantly clear that the impugned order has not been issued on either of the above grounds. The impugned order, being without any reason, is liable to be set aside.

4.10 That the applicant has come to know from a reliable source that the impugned order or termination has been issued on the basis of a recommendation of the respondent No.4 issued at the instance of the respondent No.3. From the facts of case narrated above, the applicant has reason to believe that the respondent No.3 had acted with mala fide intention and was instrumental in the process of issuance of the impugned order of termination. It is stated that the impugned order of termination has been *prima facie*, actuated by mala fide and the same is therefore liable to be set aside.

4.11 That this application is made *bona fide* and in the interest of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that the impugned order dated 18.12.01 is *prima facie* illegal and bad in law and therefore liable to be set aside.

Vinod Kumar Sharma

- 5.2 For that the impugned order of termination is seemingly arbitrary, without any justifiable reason and therefore liable to be set aside.
- 5.3 For that the respondents have acted with malafide intention in issuing the impugned order of termination and therefore have rendered the same liable to be set aside.
- 5.4 For that the whole exercise of the respondents in issuance of the impugned order dated 18.12.01, has been undertaken behind the back of the applicant and the same has been done in violation of Principles of Natural Justice.
- 5.5 For that the impugned order has been passed in violation of the procedure established by law and the same has been passed on some premises/grounds not supported by law.
- 5.6 For that the actions of the respondents are against the Principles of Justice, Fair play and good conscience.
- 5.7 That in any view of the matter, the impugned order is bad in law and liable to be set aside.

6. Details of remedies exhausted.

That the applicant states that he has no other alternative and other efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit regarding the matter in respect of which this application has been made

Vineet Kumar Sharma

before any court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or Suit is pending before any of them.

8. Reliefs sought for :-

Under the facts and circumstances stated above, the applicant humbly prays that your Lordships be pleased to issue notice to the respondents to show cause as to why the reliefs sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :-

- 8.1 That the impugned order of termination dated 18.12.2001 (Annexure-3) be set aside and quashed.
- 8.2 That the respondents be directed to reinstate the applicant in service with all service benefits.
- 8.3 Costs of the application.
- 8.4 Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief :-

That the applicant although do not pray for any interim relief, however, prays for an early hearing of the Original Application.

Vinod Kumar Sharma

10. This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I.P.O. No. : *76 550262*
ii) Date of issue : *31-01-2002*
iii) Issued from : G.P.O., Guwahati.
iv) Payable at : G.P.O., Guwahati.

12. List of enclosures.

As stated in the index.

Vinod Kumar Sharma

VERIFICATION

I, Shri/ Sri Vinod Kumar Sharma, Son of Late Kalika Sharma aged about ... years, Resident, of Gr. No. 750(G), South Hill Colony, Lumding District Nagaon Assam, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the
18th day of February, 2002

Vinod Kumar Sharma

ANNEXURE -1

N.F.RAILWAY

NO. E/254/E-PEON/PT.I

Office of the
Divl. Rly. Manager(P)
Tinsukia.
DATE 30.04.2001

To
✓ Sri Vinod Kumar Sarma.
C/O. DME/TSK.

Sub:- Engagement of Substitute Emergency Peon attached to DME/TSK.

As communicated by GM(P)/MLG about the approval of General Manager vide letter No. E/227/114(M) Pt. I Dt.23.04.2001 and on being declared passed in Medical category C/I (One) you are hereby temporarily engaged as substitute Emergency Peon in scale Rs. 2550-3200/- on pay Rs. 2550/- plus usual allowances as admissible from time to time and posted to the service of substitute Emergency Peon attached to DME/TSK with effect from 23.04.2001 on the following terms and conditions.

1. Your engagement will not confer upon you any right to claim for further appointment in this Railway and you are liable to be discharged without any notice when your services 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 ground or physical in-capacity or in the event of posting of approved hand.
2. You will be transferred with the officer for whom you are engaged as substitute emergency peon or will be discharged in the event of the Officer for whom you are engaged expressed his/her unwillingness to take you on transfer along with him.
3. The engagement of emergency peon of the first instance will be for a period of 3 (Three) months only and further extended on receipt of certificate from Controlling Officer that the services of the emergency peon is satisfactory and he can be continued further.

(A. K. Sinha)
(A. K. Sinha)
30/4/01

Asstt. Personnel Officer(II)
N.F.Railway, Tinsukia.

Copy forwarded for information and necessary action to :-

1. GM(P)/MLG.
2. O/S(P)/EM Bill at office in duplicate to draw his salary from 23.04.2001.
3. DAO/TSK.
4. BOS at office.
5. COS(P)/ EM .
6. DME/TSK.
7. COS(G) to DME/TSK . He will submit Master Roll of Sri Vinod Kumar Sarma every month.

For Divl. Rly. Manager(P)
N.F.Railway/Tinsukia

*Alleged
Sri Vinod Kumar Sarma*

N. F. RLY.

ANNEXURE-2/6

Office of the
Sr.DME(DIESEL)/NGC

OFFICE ORDER

In terms of DRM(P)/TSK's L/No.E/283/III(M) dt.5/10.7.2001 and ADME(C&W)/TSK's sparing letter No.E/1-G dt.10.7.2001 Sri Vinod Kr. Sarma, E/Peon attached to DME/TSK is hereby reported as E/Peon attached to Sr.DME(D)/NGC on 11.7.01(FN) on pay Rs.2550/- in scale of Rs.2550-3200/- (RS) w.e.f. 11.07.2001 against the existing vacancy.

17/07/2001
Sr.DME(DIESEL)/NGC

No.E/283/D/M/Pt.V/Minis

Dated 17.7.2001

Copy forwarded for information and necessary action to:-

- 1) FA & CAO/MLG
- 2) CMPE(D)/MLG
- 3) DFJM(P)/LMG & TSK
- 4) GM(P)/MLG
- 5) DAO/LMG
- 6) ADAO/GHY
- 7) DME/TSK
- 8) COS/G at Office
- 9) Bill Clerk at Office
- 10) Dealing Clerk at Office
- 11) Staff concerned through COS/G at Office
- 12) P/Case.

17/07/2001
Sr.DME(DIESEL)/NGC

*Alleged
by
Advocate*

82320

नाम/Name.....M.N.D.K.R.S.H.A.D.M.I.T.

पद्धनाम/Designation.M.T.C.H.EMERGENCY PERSON

पता/Address.....P.O. 034 of 034 reg.

हस्ताक्षर/Signature: M. N. D. Kumar Sharma

नियम अधिकारी के हस्ताक्षर
Sign. of Issuing Officer

दिनांक/Date.. 30.8.2000

दायें लगूठे वी छाप

L.T.I.

ऊचाई/Height..... 5' 5"

पहचान के निशान
Identification Marks

1 one tattoo on the chest.

2 one tattoo on the R/ side eye



Alleged
Dear Advocate

2663/NSC

81443

1. Name in full and Designation. V.I.N.O.D.

KUMAR SHARMA Age 23 yrs
MECHANIC AL/SEPMER/EN.CY.

2. Department... P.T.O. HAMPI

3. Residential Address... No. 2/ P.L.Y. Colony

4. Place of work... S.T.R. O.M.C. / DELHI

5. Health unit for treatment... M.S. / M.S.

6. Signature/thumb
impression of the
railway employee7. Signature & office
seal of the issuing
Authority

Date of issue

30-8-2007

A. S. Patel
Advocate

(200) SCW 253 -

14

2663/NSC

Card No.

DETAILS OF FAMILY OF

Shri... V.I.N.O.D. KUMAR SHARMA

Name	Age	Relationship
V.I.N.O.D. Kumar	23 yrs	self.
Shri. S. S. D.	20 yrs	child.
0		
1		
2		

"Family" includes only wife or husband, children or step children and dependent, as are covered under Pass rules.

(CONFIDENTIAL)

U.P. Railway

29

NO. SDME/D/SS/3-pt. I

Office of the
Sr.DME (Diesel)/NGC
Dated 08-10-2001

To
Sr.DMO (IC)
NGC
Health Unit.

Sub:- Medical Check-up of Shri Binod Kumar
Sharma, Emergency peon of SDME (DSL)/NGC.

Shri Binod Kumar Sharma, has been engaged by the undersigned as Emergency Peon in April/2001. For the last 3 (three) months, he is not able to perform duties of Emergency peon saying that he is physically very weak. Due to this, I am facing a lot of problem.

In view of this, you are requested to arrange for Medical Examination of Shri Binod Kumar Sharma, by a Medical Board and issue Fit/Unfit certificate in his favour, so that necessary action may be taken from our end.

(M. SRINIVAS)
Sr. DME (Diesel)/ NGC
N.F.Railway.

Allesed
Jeev
Advocate

Office of the
Medical Director,
Central Hospital,
Maligaon, G.M.-781 011.

No. 14/87/5 (S&C)

Dt. 01-11-2001. 80

To:-

Sr.DME(D)NGC,
N.FIRLY.

Sub:- Medical Examination of Mr. Binod Kumar Sharma,
E/Peon under Sr.DMO/Diesel/NGC.

Ref:- Your L/No. SDME/D/SS/3-Pt.I, Dt. 22-10-2001.

In terms of your letter under reference, it is
to inform you that Sri Binod Kumar Sharma, E/Peon attached to
Sr.DME(D)NGC is being made temporarily UNFIT for 3 months. He
may be directed to report to Sr.DMO/NGC with Sick Memo for
taking him under sick list.

MEDICAL DIRECTOR/CH/MLG.

Copy to:- 1) Sr.DMO/I/C/NGC.
2) Sri A.K.Ghosh, ACMT/D/NGC.

MEDICAL DIRECTOR/CH/MLG.

*Binod
Kumar
Sharma*

N.E. RAILWAY

OFFICE ORDER

In terms of rule 301 (1) on Indian Railway Establishment code Vol-I the services of Shri Vinod Kumar Sharma Sub Emergency Peon in scale Rs. 2550-3200/- attached to Sr.DME/DsI/NGC is hereby terminated w.e.f. 19.12.2001 (FN) with 14 days pay in lieu of 14 days notice.

This issue has the approval of competent authority.

(S.P. Sengupta)
APO/II/LMG.
for Divnl.Rly. Manager (P).
N.E. Railway, Lumding

No. E/283/D/M/E Peon (Loose)

Dated: 18.12.2001

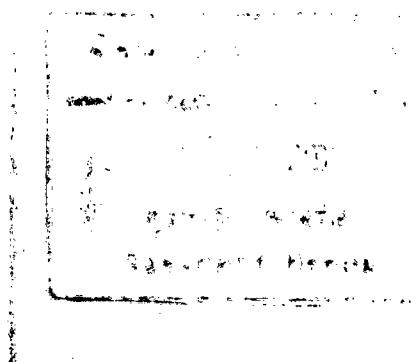
Copy forwarded for information & necessary action to:

- (i) DRM (P)/LMG, TSK,
- (ii) DAO/LMG,
- (iii) Sr DME/D/NGC, in reference to his NOTE No. E/283/D/M/E Peon (Loose) dtd. 08.12.2001.
- (iv) COS/G/D/NGC. He may obtain acknowledgement from Shri Vinod Kr Sharma, Sub-Emergency Peon (in duplicate) after serving the termination notice and the same may be submitted to APO/II/LMG for record.
- (v) MS/IC/NGC Name of Shri Vinod Kr Sharma may be deleted from the sick list today itself as his services will be terminated in the forenoon of 19.12.2001.
- (vi) Shri Vinod Kr Sharma, (through COS/G/D/NGC) may draw the payment of 14 days wages in lieu of 14 days notice from Cash Office/GHY. The bill has been passed under AB No. 49ES dtd. 13.12.2001 and CO7 No 05/06 dtd 14.12.2001.

for Divnl.Rly. Manager (P),
N.E. Railway, Lumding.

*Relesed
Jee
Parvate*

*Received
18/12/01*



Filed by
G. Johnson, Esq.
Advocate
15/5/02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GUWAHATI BENCH

D. A. No. 54/2002

Vinod Kumar Sarma

...Applicant

versus

Union of India & Ors.

...Respondents

Written statements on behalf of the Respondents.

The answering Respondents

beg to state as follows :

1. That the answering Respondents have gone through the copy of the above DA and have understood the contents thereof. Save and except the statements made in the said DA which are specifically admitted herein below, other statements made therein are categorically denied. Further the statements which are not borne on records are also denied and the Applicant is put to the strictest proof thereof.
2. That with regard to the statements made in paragraphs 4.1 and 4.2 of the DA, the answering Respondents do not admit anything contrary to the relevant records.
3. That with regard to the statements made in paragraph 4.3 of the DA, it is stated that the Applicant was temporarily engaged as Substitute

emergency peon. It was not a permanent and/or regular appointment pursuant to any selection. As per clause 3 of the order of appointment, his such service was for a period 3 months and was liable to be extended on receipt of report/certificate of the controlling officer about the satisfactory services.

4. That with regard to the statements made in paragraph 4.4 of the OA, it is denied that the Applicant continued to work to the satisfaction of his superiors. The performance of the Applicant was not found satisfactory and because of his un-satisfactory service, the required certificate regarding satisfactory service performance was not issued. He was advised orally on several occasions to improve in his service performance.

5. That the answering Respondents categorically denied the statements made in paragraph 4.5 of the OA and the Applicant is put to the strictest proof thereof. The Applicant neither took any sick memo from the office as required in case of any illness nor did he approach the senior DME/D apprising him about his alleged illness. The Applicant was never asked to prepare breakfast and he had never been forced to work when he was in any difficulty. It is really unfortunate that the Applicant could go to the extent of making a false statement only with the view to make out a case and draw sympathy of this Hon'ble Tribunal. The Applicant was never meted out with any threat as alleged by him.

6. That the answering Respondents categorically deny

the averments made in paragraph 4.6 of the OA. He was directed to Central Hospital, Maligaon for special medical examination on 22.10.2001 vide letter No. SDME/D/SS-3/Pt.I dated 22.10.2001 based on MD/Central Hospital/MLG's Letter No. H/0-4/MD dated 8.10.2001. Be it further stated here that the statement made by the Applicant that he went back to Lumding and resume duties under Respondent No. 3 is incorrect inasmuch as the Respondent No. 3 viz. the Senior DME/D/NGC is at New Guwahati.

7. That with regard to the statements made in paragraph 4.7 of the OA, the answering Respondents deny the allegations made therein. It is stated that the order of termination was served on the Applicant on 19.12.2001 and not on 18.12.2001 as mentioned by the Applicant. He was not shunted out by any Gate Keeper as alleged by the Applicant. There was also no scope for the same as there is no Gate Keeper. Thus the statements made by the Applicant is entirely false.

8. That with regard to the statements made in paragraphs 4.8 to 4.11 of the OA, while denying the contentions raised therein, the answering Respondents state that the services of the Applicant has been terminated with effect from 19.10.2001 with 14 days pay in lieu of 14 days notice as per Rule. His service has been terminated on ground of unsatisfactory service and as per terms of appointment. Because of such unsatisfactory service, the certificate of performance certifying satisfactory service could not be given and/or was withheld enabling the Applicant to improve

his performance. However, there was no improvement and eventually the impugned action had to be resorted to. Even otherwise also, the Applicant being only an emergency peon and that too a substitute, he does not have any right to continue in service. By the very nature of his appointment, it was temporary for a period of three months only, the extensions thereto depending upon satisfactory performance of service.

9. That the answering Respondents submit that the impugned order of termination being an order of termination simpliciter, no interference is called for to the same and the Applicant is not entitled to the reliefs sought for in the OA. The answering Respondents crave leave of the Hon'ble Tribunal to refer and rely upon the Rules and Regulations holding the field at the time of hearing of the OA and to produce the records.

10. That the answering Respondents submit that the instant OA has been filed entirely on a wrong notion of the matter and the same is not maintainable. None of the grounds urged by the Applicant in support of his case is sustainable and the Applicant is not entitled to any relief. No any material has been furnished towards attributing malafide against the Respondent No. 3.

11. That under the facts and circumstances stated above the instant OA is not maintainable and liable to be dismissed with cost.

VERIFICATION

I Shri M. SRINIVAS, aged about 32 years,
son of M. SATYANARAYANA, resident of ^{New Guwahati} ~~Maligaon~~,
Guwahati-11, presently working as
Sr. DME(DIESEL)/NGC, N.F. Railway do hereby verify
and state that the statement made in paragraphs
_____ 1 are true to my knowledge and
those made in paragraph 2 to 8 being
matters of records are true to my information derived
therefrom, which I believe to be true and the rest of
my humble submissions before this Hon'ble Tribunal. I
am also authorised to competent to sign this
verification on behalf of all the Respondents.

And I sign this verification on this 13th day of
May 2002.



Deponent

19.11.2002

RECEIVED
Guwahati Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

In the matter of :

O.A. No. 54 of 2002

Shri Vinod Kumar Sharma

~VS~

Union of India & Ors.

~And~

In the matter of

Rejoinder submitted by the applicant in reply to the written statement submitted by the Respondents.

The applicant above named most humbly and respectfully begs to state as under :

1. That the applicant categorically denies the statements made in paragraphs 3 and 4 of the written statement and begs to state that though the applicant was initially appointed as Substitute Emergency Peon for a period of three months, but his terms of services were extended subsequently beyond three months due to his satisfactory performance only and at no

Filed by the applicant
through Srin G. M.
Chakravarty advocate
on 12-6-02.

point of time he was advised to improve his performances as stated by the Respondents which is a false statement.

2. That with regard to paragraph 5 of the written statement the applicant begs to submit that he fell sick on 6.10.2001 and as such he could not prepare the Breakfast for Respondent No.3 or could not go to the market when he was threatened by the said Respondent of being thrown out of job.
3. That the applicant denies the statements made in paragraphs 6 of the written statement and begs to state that as directed, the applicant duly reported to the Central Hospital, Maligaon, where he was examined by the Doctor and a medical certificate was issued declaring the applicant ~~unfit~~ ^{unfit} for three months vide letter dated 01.11.2001 (Annexed as page 6 to the Original Application). The applicant thereafter obtained the required Sick-memo and observed the formalities for being enlisted in the Sick list as per the procedure. But meanwhile the applicant was kept engaged in his normal duties as usual by the Respondent No.3 even during his period of sickness and the contained to attend all his duties including personal services to the Respondent No.3 as usual till the date of his termination when he was driven out from the Bungalow by the Respondent No.3. Paradoxically, when he was sick and was terminated after he recovered from his illness following completion of treatment and when he was still under the sick list for three months as per direction of the Medical Director, Central Hospital.
4. That the applicant categorically denies the statements made in paragraph 7 and 8 of the written statement and begs to

submit that the initial terms of services of the applicant was extended on the basis of his satisfactory performance only and the order of termination of his services was issued as a punitive measure only in order to satisfy the personal grudge of Respondent No.3 who after the issuance of the order of termination did not even allow the applicant to enter into his office and the applicant was shunted out by the Gate Keeper under the instructions of the Respondent No.3 which itself bears the testimony of the attitude of the Respondent No.3 towards the applicant.

5. That the applicant categorically denies the statements made in paragraphs 9,10, and 11 of the written statement and begs to state that the order of termination being on grudging motive and with malafide intention, the applicant is entitled for the reliefs sought for in the application. Further, the grounds shown in the O.A. are full of justification and having force of law and as such the application is full of merit.
6. That in the facts and circumstances stated above, the application deserves to be allowed with costs.

VERIFICATION

I, Sri Vinod Kumar Sharma, Son of Late Kalika Sharma aged about ... years, Resident, of Gr. No. 750(G), South Hill Colony, Lumding District Nagaon Assam, do hereby verify that the statements made in Paragraph 1 to 6 of this rejoinder are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 19/6 day of June, 2002.

Vinod Kumar Sharma