

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**Original Application Nos. 290/00047/2018,
290/00048/2018, 290/00049/2018 and
290/00050/2018**

RESERVED ON :27.08.2019
PRONOUNCED ON :06 .09.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

OA No.290/00047/2018

1. Sanjay Kumar s/o Sh. Om Prakash age about 40 years, R/o Quarter No. L 212-A, Railway Workshop Colony, Jodhpur
2. Govind Narayan s/o Shri Ram Bhajan age about 39 years, R/o Quarter No. T 145-A Behind RPF Line, Johdpur.
3. Ganraj Singh s/o Sh. Kan Singh age about 43 years, R/o Quarter No. L 153-A New Loco Colony, Jodhpur.
4. Abhay Singh s/o Sh.Jagdish Singh age about 44 years, R/o C/o Tej Singh Bhati, Umed Chowk Brahmano Ki Gali, Jodhpur.
5. Kamlesh Bhati s/o Sh. Kishan Lal Bhati age about 41 year, R/o C/o SSE Shop No 14, Carriage Workshop, North Western Railway, Jodhpur.
6. Lalit Kumar s/o Sh. Naval Singh age about 41 years R/o House No 47, Gali No 3 Shakti Colony, Ratanada, Jodhpur
7. Mohamid Ahamed S/o Sh. Ilmuddin age about 42 years, R/o Mannat old police line, Jodhpur.
8. Avinash Pathak S/o Sh. Shyam Narayan age about 46 years, R/o C/o S.S.E. Shop No 25, Carriage Workshop, North Western Railway, Jodhpur.

9. Sushil Kumar s/o Sh. Nihal Chand age about 39 years, R/o House No 23, Aashapurna Enclave, Pal Bye Pass Road, Jodhpur.
10. Sushil Kumar Ojha S/o Sh. Het Ram Ojha age about 43 years R/o Quarter No T 208-E, Nehru Park Colony, Jodhpur.
11. Yogesh Kumar S/o Sh. Kani Ram age about 42 years, R/o House No 1-B Sher Vilas Manmahal Colony, in front of officers mess, Ratanada, Jodhpur
12. Prem Raj Meena S/o Sh. Bheeru Lal age about 40 years, R/o Quarter No L 209-D, Workshop Colony, Jodhpur
13. Surendra Singh S/o Sh. Laxman Singh age about 45 years, R/o Quarter No L 209-B, Workshop Colony, Jodhpur.
14. Pradhuman Singh S/o Sh. Narayan Singh age about 42 years, R/o Chanakiya Nagar, Lal Sagar Road, Jodhpur.
15. Devender Singh S/o Sh. Shiv Ratan Singh age about 44 years, R/o Quarter No L 212-B, Workshop Colony, Jodhpur
16. Manish Saxena S/o Sh. Ravi Nash Sexana age about 43 years, R/o House No 1-B Sher Vilas, Manmahal Colony, in front of officers mess, Ratanada, Jodhpur.
17. Arvind Bharti s/o Sh. Vijendra Bharti age about 40 years, R/o White House Gulab Sagar, Jodhpur
18. Satya Narayan S/o Sh. Ram Chander age about 45 years, R/o House No. 292, Laxmi Ram Bhawan, in front of Shiv Mandir, Ratanada, Jodhpur.
19. Gaj Singh s/o Sh. Bheeru Singh age about 42 years, R/o Balaji Nagar Pal Balji, Jodhpur.
20. Pawan Kumar s/o Sh. Pyara Lal age about 43 years, R/o C/o Jagdish Singh Chouhan, near Olampic Cinema, Gali No 5, Jodhpur.
21. Daulat Ram S/o Sh. Shanker Lal age about 39 years, R/o Rajbagh, Soorsagar, Jodhpur.
22. Suresh Chand Sen s/o Sh. Mishari Lal age about 40 years, R/o Quarter No 2396 Railway Workshop Colony, Jodhpur.
23. Pappu Harijan s/o Sh. Laxman age about 44 years, R/o Quarter No L 71-G, old loco colony, Jodhpur
24. Manoj Kumar S/o Sh. Shawa Lal age about 47 years, R/o Quarter No L 47-G, Old Loco Colony, Jodhpur.

25. Dinesh Kumar s/o Sh.Gajanand Phulwaria age about 39 years, R/o Quarter No 1056, New Railway Colony, Raika Bagh, Jodhpur.
26. Pankaj Sharma s/o Sh.Shyam Sunder age about 39 years, R/o Quarter No T 140-A, New Loco Colony, Jodhpur.
27. Rajander Choudhary s/o Sh. Dhana Ram age about 42 years, R/o Saran Nagar, Banar Road, Jodhpur
28. Kapil Bhardwaj s/o Sh. Vishnu Bhardwaj age about 44 years, R/o House No 47, Gali No.3, Shakti Colony, Ratanada, Jodhpur.
29. Arjun Lal Gameti s/o Sh. Hiraaji age about 42 years R/o Quarter No 1068 RPF Line, Jodhpur
30. Deep Singh S/o Sh. Madan Singh age about 42 years, R/o Quarter No 1063 Railway Nehru Park Colony, Jodhpur.
31. Jai Prakash S/o Sh. Nathu Singh, age about 42 years R/o House no 12/124, K.K. Colony, Basni, Jodhpur.
32. Dilip Singh Tak s/o Sh. Rakesh Kumar age about 40 years, R/o Paharganj 1st Mandor Road, Jodhpur.
33. Surender Kumar s/o Sh. Brij Mohan age about 42 years, R/o House No.17, Nehru Nagar, in front of B.R. Birla School, Jodhpur.
34. Shalesh Sharma S/o Sh. Jagdish age 41 years, R/o Quarter No. L 209-C, Railway Workshop Colony, Jodhpur

(All the applicants are presently working on the post of Helper Khallasi under Chief Workshop Manager, North Western Railway, Carriage Workshop, Jodhpur

...Applicants

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through The General Manager, North Western Railway, Jaipur (Raj)
2. Chief Workshop Manager, North Western Railway, Carriage Workshop, Jodhpur
3. Deputy Chief Personnel Officer, North Western Railway, Carriage Workshop, Jodhpur

...Respondents

(By Advocate: Shri Vinay Jain, Shri Kamal Dave and Shri Salil Trivedi)

OA No.290/00048/2018

1. Sunil Chouhan s/o Sh. RamDayal Chouhan, age about 47 years R/o Quarter No L-59-A Medical Colony, Jodhpur
2. Dinesh Anijwal S/o Sh. Vijai Kumar, age about 48 years, R/o Quarter No L 44-H, Old Loco Colony, Jodhpur
3. Sanjeev Kumar Sharma S/o late Sh. Hari Shanker Sharma, aged about 48 years, R/o In front of Pndit Suraj Raj Joshi Panchetia Hills, Jodhpur.
4. Ganga Sagar s/o Kanhiya Lal age about 48 years, R/o C/o S.S.E. Electric, North Western Railway, Jodhpur.
5. Naveen Kumar Sharma S/o Sh. Harish Chander Sharma age about 45 years R/o Quarter No E 23-E New Loco Colony, Jodhpur
6. Raju Singh S/o Sh. Harish Chander age about 42 years, R/o Quarter No L 24-C Old Loco Colony, Jodhpur
7. Rajender Kumar Saini S/o Sh. Atma Ram Saini, age about 46 years R/o Quarter no L 127-B New Loco Colony, Jodhpur.
8. Pramod Kumar S/o Sh. Sohan Singh, age about 43 years, R/o Quarter No 1066 Nehru Park Railway Colony, Jodhpur
9. Suraj Prakash S/o Sh. Dhalla Ram, age about 37 years, R/o Quarter No DL 12-G, Bhagat Ki Kothi, Jodhpur.
10. Aunj Kumar S/o Sh. Karam Singh, age about 39 years, R/o Quarter No L 17-A, Railway Club Road, Jodhpur.
11. Ramji Lal Meena S/o Sh. Bhoma Ram, age about 40 years, R/o Quarter no 2381, Jhapok Power House, Jodhpur.
12. Bihari Lal S/o Sh. Ram Karan Badal, age about 50 years, R/o Quarter No L 8-D Luni Railway Station, Luni.
13. Amit Kumar S/o Sh. Kishan Singh age 42 years, R/o Quarter No T 128-C Old Loco Colony, Jodhpur.

14. Hemant Kumar s/o Sh. Puran Singh age about 42 years, Quarter No T 12-F Pali Railway Station, Pali.
15. Murad Khan s/o Sh. Sattar Khan, age about 46 years, R/o Quarter No T 128-D Old Loco Colony, Jodhpur
16. Deep Chand s/o Sh. Brij Mohan, age about 40 years, R/o Quarter No T 208-C Nehru Park Colony, Jodhpur.
17. Manoj Kumar Rao S/o Sh. Bajrang Singh, age about 46 years, R/o Quarter No 2382 Jhapok Power House, Jodhpur.
18. Mahaveer Singh s/o Sh. Ram Prasad Yadav, age about 50 years, R/o Quarter No 1042 Raika Bagh Colony, Jodhpur
19. Kapil Dev Verma S/o Sh. Ram Prasad, age about 49 years, R/o Quarter No L 158-B, New Loco Colony, Jodhpur.
20. Jitender Singh Rathore s/o Sh. Durga Prasad, age about 50 years, R/o Quarter No T 14-D Railway Station, Dhanera.
21. Ramesh Chander Yadav S/o Sh. Lekh Ram Yadav, age about 46 years R/o Quarter No L 144-B, Old Loco Colony, Jodhpur.
22. Jarnail Singh S/o Sh. Guru Charan Singh, age about 52 years, R/o Quater No L 59-A Medical Colony, Jodhpur
23. Rajesh Kumar S/o Sh. Har Prasad, age about 48 years, R/o Quarter No T-98-A, New Colony, Jodhpur.
24. Ota Ram S/o Sh. Mitha Ram, age about 52 years, R/o C/o SSE Signal and Telecom, North Western Railway, Jodhpur.
25. Harish Tak s/o Sh. Bal Kishan, age about 40 years, R/o Quarter No MH 8-C Pali Railway Station, Pali.
26. Nirmal Kumar S/o Sh. Kanhiya Lal, age about 43 years, R/o Quarter No L 49-B Old Loco Colony, Jodhpur.
27. Deepak Kumar S/o Sh. Mohan Lal, age about 44 years, R/o Quarter No E 23-F, New Colony, Jodhpur.
28. Suresh Kumar Jha S/o Sh. Shyam Babu Jha, age about 42 years, R/o Quarter No L-48-C Old Loco Colony, Jodhpur.
29. Manohar Khan s/o Sh. Hasti Khan, age about 43 years, R/o Quarter No L 26-F Old Loco Colony, Jodhpur.

30. Shailesh Kumar Solanki S/o Sh. Dita Bhai, age about 44 years, R/o Quarter No L 24-H Old Loco Colony, Jodhpur.
31. Hitesh Gupta S/o Sh. Ramesh Gupta age about 42 years, R/o Quarter No 2/137 KBHB Basani, Jodhpur.
32. Ratan Singh S/o Sh. Norat Singh age about 40 years, R/o Quarter No S-2-A Medical Colony, Jodhpur

(All the applicants are presently working on the post of Helper Khallasi under Divisional Railway Manager, North Western Railway, Jodhpur

.. Applicants

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Raj)
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
3. Disional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur

...Respondents

(By Advocate: Shri Vinay Jain, Shri Kamal Dave and Shri Salil Trivedi)

OA No.290/00049/2018

1. Latesh Kumar s/o Sh. Dawarka Prasad age about 41 years, R/o Quarter No L 7-G-4, Bhagat Ki Kothi Railway Colony, Jodhpur.
2. Ikram Ahmmed S/o Sh. Munir Khan age about 45 years, R/o Quarter No. 1228, D.S.Colony, Jodhpur
3. Kuldeep Dubey s/o Sh. Bijender Dubey, age about 43 years, r/o Quarter No 1159, D.S. Colony, Jodhpur
4. Salimudeen S/o Sh. Nasir Khan age 45 years R/o NWREMU Office, Railway Station, Jodhpur

5. Sayeed Riyasat Ali S/o Sh. Sayeed Liyakat Ali age about 44 years R/o Shakti Colony, Ratanada, Jodhpur
6. Dal Chand s/o Sh. Devki Nandan age about 41 years, R/o Quarter No L 50-F, Old Loco Colony, Jodhpur.
7. Ram Das S/o Sh. Shiv Ram age about 41 years, R/o Quarter No L 50-F, Old Loco Colony, Jodhpur.
8. Bhupender Kumar S/o Sh. Gyarsi Lal age about 43 years, R/o Quarter No 20-B Bhagat Ki Kothi Railway Colony, Jodhpur.
9. Mohd Yakub S/o Sh. Unus Ali age about 47 years, R/o Quarter No D 44-H Railway RPF Line, Jodhpur.
10. Harish Chander S/o Sh. Tej Singh age about 53 years, r/o C/o Harish Kureshi Gulab Bag Near Badi Idga, Jodhpur.
11. Abdul Hamid s/o Sh. Abdul Mazid age about 40 years R/o Quarter No L 48-G-4, Old Loco Colony, Jodhpur.

(All the applicants are presently working on the post of Helper Khallasi under Divisional Railway Manager, North Western Railway, Jodhpur

.. Applicants

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Raj)
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
3. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur

...Respondents

(By Advocate: Shri Vinay Jain, Shri Kamal Dave and Shri Salil Trivedi)

OA No.290/00050/2018

1. Rajender Singh Rajput s/o Sh. Raju Singh, age about 42 years, R/o In front of P.B.M. Hospital, Behind Dhirubai Dharamsala, Bikaner, Rajasthan.
2. Ramesh Chander s/o Sh. Hukma Ram, age about 45 years, R/o Quarter No. T 41-G, A.E.N. Railway Colony, Mertaroad, District Nagaur, Rajasthan.

(All the applicants are presently working on the post of Helper Khallasi under S.S.E. Signal, Mertaroad, District Nagaur, Rajasthan).

...Applicants

(By Advocate: Shri S.K.Malik)

Versus

1. Union of India through The General Manager, North Western Railway, Jaipur (Raj)
2. Divisional Railway Manager, North Western Railway, Jodhpur Division, Jodhpur
3. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur

...Respondents

(By Advocate: Shri Vinay Jain, Shri Kamal Dave and Shri Salil Trivedi)

ORDER

Per Mrs. Hina P.Shah

Since common question of law and facts is involved in these OAs, therefore, these are being decided by this common order. For the sake of convenience, we are referring pleadings of OA No.47/2018.

2. In these OAs, the applicants have challenged the impugned termination notice dated 5.1.2018 and the notices of the similar nature of different dates, with the prayer that the respondents may be directed to conduct selection process for Group-D post and they may be allowed to continue in service depending upon the result of the said selection.

3. The factual background of the case is that the railway administration invited applications for the purpose of engagement of fresh face substitutes in Group-D services vide circular dated 10.09.2004. The consideration of the candidates was restricted from amongst the act apprentices who were given apprenticeship training by the Railways under the Apprenticeship Act, 1961. In that regard, a policy decision was taken by the General Manager of the Northern Railway on 30.08.2004 and the same was challenged before this Tribunal by way of OA Nos. 265, 238, 264 of 2004 by some of the candidates having apprenticeship training certificates from the institutes other than the Railways. The said Original Applications were allowed by this Tribunal vide order dated 24.2.2005 and the policy decision dated 30.08.2004 of the railways was set-aside. While setting aside the said policy decision, this Tribunal also quashed all

subsequent proceedings with a further direction that the railway administration shall not be precluded to take recourse of engaging fresh face substitutes against Group-D services, in case the same is considered emergent in service exigencies. The order dated 24.2.2005 passed by this Tribunal became the subject matter of challenge in DB Civil Writ Petition No. 4272, 4273 and 4274 of 2005 at the instance of Union of India before the Hon'ble High Court of Rajasthan at Jodhpur. Initially, when the matter came up for preliminary hearing on 3.8.2005, the Hon'ble High Court, while issuing notices, stayed operation of order dated 24.2.2005 passed by this Tribunal. However, the stay order dated 3.8.2005 was modified on 22.8.2005 and the following order was passed:-

"Heard learned counsel for the parties.

The order dated 3.08.2005 passed by this Court is modified to the extent that the selection made by the respondents pursuant to the order of Tribunal Annexure 1 dated 24.02.2005, but the same shall be subjected to the final decision of the instant petition.

Let the writ petition itself be posted for hearing on 2nd September, 2005."

The order dated 22.08.2005 was again modified by the Hon'ble High Court on 05.01.2006 and the following order was passed:-

"It is pointed out by the learned counsel for the petitioners that there is some confusion with respect to order dated 22.8.2005. We make it clear that if any selections are made pursuant to the policy decision, then the same shall be subject to final decision of the instant writ petition.

Let the writ petition be posted for hearing in the 2nd week of February, 2006."

4. Perusal of the aforesaid two orders reveal that appointments of the applicants herein as fresh face substitutes pursuant to policy decision dated 30.08.2004 were subject to the final outcome of decision of the Hon'ble High Court of Rajasthan in DB Civil Writ Petition No.4272-4274 of 2005. Those DB Civil Writ Petitions were finally decided by the Hon'ble High Court of Rajasthan on 5.12.2007. The order dated 24.2.2005 passed by this Tribunal to the extent of setting aside the policy decision of the Railways dated 30.08.2004 was affirmed. However, the directions qua setting aside the subsequent proceedings were not allowed to stand for the reason that during the intervening period not only the proceedings were conducted, but the same were completed and fresh face substitutes (applicants) were engaged with a clear understanding that they would be continued in service of the railways till regularly recruited Group-D employees are available. While disposing of the DB Civil Writ Petition

No.4272-4274 of 2005, the Hon'ble High Court clarified that the railways should complete the process of direct recruitment as expeditiously as possible, but not later than four months and in case the railways fail to complete the process of selection within the period of said four months then fresh face substitutes will have to be discontinued pursuant to their engagement based on circular dated 30.08.2004.

5. The Railways, however, failed to complete the process of regular selection within the aforesaid stipulated period and, therefore, the services of the applicants were ordered to be terminated vide order dated 25.08.2008. Faced with this situation, the applicants, who initially did not opt to challenge the order dated 24.2.2005 passed by this Tribunal before the Hon'ble High Court of Rajasthan, preferred Special Leave Petition before the Hon'ble Supreme Court of India. The leave was granted by the Hon'ble Supreme Court and now the Civil Appeals No.5027-5029 of 2012 arising out of the said SLPs have been dismissed vide order dated 20.9.2017. Consequent thereto, the impugned orders dated 05.01.2018 and other orders of similar nature terminating the services of the applicants have been passed by the Railways.

6. Now the contention of the applicants is that the respondents have not ordered any selection nor any selection process is on as submitted before the Hon'ble Supreme Court by the respondents. The respondents ordered termination of their services without ordering fresh selection, which is arbitrary and illegal.

7. Here, it would be relevant to refer to the observations made in Para 12, 13 and 14 by the Hon'ble Apex Court while dismissing Civil Appeals No.5027-5029 of 2012 vide order dated 20.9.2017, which are in the following terms:-

"12. As far as the second issue raised by Mr. R.Venkatramni, learned senior counsel is concerned, we may have sympathy with the appellants but we cannot direct that they be continued in service. The courts below held that they have been employed in violation of general directions issued by the Railways from time to time wherein there is no restriction of limiting the field of choice to Railways trained apprenticeship. It is only in Bikaner Division of the Railway that this limitation was placed.

13. The appellants were well aware that their appointment made when the original applications were pending before the Tribunal or when the writ petitions were pending before the High Court were subject to the result of the litigation. They did not choose to file any application for intervention before the High Court. After the Railways lost in the High Court and did not carry the matter further, they approached this Court. They were granted stay and have been continuing on the basis of stay order. They knew that their fate depended upon the result of litigation. Once their

appeal is dismissed they cannot be permitted to be continued in employment because they have been permitted to continue due to the interim orders.

14. At this stage, we may note that the learned Solicitor General had informed us that fresh regular recruitment for Group-D posts and other posts in Bikaner Division of the Railways is under process. On 24th August, 2017, 14 original applicants were granted age relaxation for a period of 13 years and they were permitted to appear in the selection process wherein their cases would be considered on merit. Mr. R.Venkatramni, learned senior counsel had sought time to take instruction from his clients in this regard. He now submits that his clients, having served for more than 10 years, are not in a position to appear in the test. We are concerned with a large number of appellants and in case the process for selection is still on, we direct the Railways to give relaxation of age to the appellants by deducting the period of service for which they have worked and they may also be considered at par with the original applicants by allowing them to take part in the selection process. In case the appellants or any of them do not take part in the selection process, they will not be given relaxation of age in any further selection process. As far as the intervenors are concerned, no relief can be granted to them. "

From a perusal of the above observations, it transpires that the right of the applicants were secured to the extent of granting age relaxation and if the appellants or any of them do not take part in the selection process, the benefit of the age relaxation will not be available to them. No relief was granted to the intervenors. In para-13 (supra), the Hon'ble Apex Court has specifically mentioned that once their appeal is dismissed they cannot be permitted to be

continued in employment because they have been permitted to continue only due to the interim orders.

8. It would be pertinent to mention here that during the pendency of DB Civil Writ Petitions No.4272-4274 of 2005 before the Hon'ble High Court of Rajasthan, the appointments of the applicants were made subject to the final decision of the said Writ Petitions by virtue of interim order dated 22.08.2005 and 5.1.2006. The Hon'ble Supreme Court, while adjudicating upon the Civil Appeals preferred at the instance of the applicants also noticed the said fact and in its order dated 20.09.2017 have observed that the applicants were well aware that their appointments were made when the Original Applications were pending before the Tribunal or when the Writ Petitions were pending before the Hon'ble High Court of Rajasthan, and those appointments were subject to the result of the litigation. The applicants even did not choose to file an application of intervention before the Hon'ble High Court. After the Union of India lost in the High Court and did not carry the matter further, the applicants herein had approached the Hon'ble Supreme Court and they were granted stay and continued on the basis of the said stay order. They knew that their fate depended upon the result of the litigation and after

dismissal of their appeal by the Hon'ble Supreme Court on 20.09.2017, they cannot be permitted to continue in employment only because of the fact that they were permitted to continue due to interim orders. Even during the course of arguments before the Hon'ble Supreme Court, it was pleaded on behalf of the applicants that they may be permitted to continue in employment looking towards their working for more than 10 years. However, the said argument did not find favour with the Hon'ble Supreme Court and direction for continuance of the applicants herein in service was declined. It was clearly observed that keeping in view the services of the applicants for more than 10 years, the Hon'ble Supreme Court has already issued a direction to railways to give them relaxation of age by deducting the period of service for which they have worked.

9. The learned counsel appearing for the respondents before the Hon'ble Apex Court submitted that the proposal for making selection on regular basis has already been sent to the Railway Board and after its approval, the process for making selection shall be finalised. He further submitted that candidature of the applicants will also be considered by giving them relaxation of age in terms of order dated 20.09.2017 passed by the Hon'ble Supreme Court.

10. In view of the finality of the issue pertaining to the rights of the applicants to allow to continue to work as fresh face substitute, which is specifically declined by the Apex Court, seeking the same relief by filing the present OAs, is nothing but a sheer misuse of the judicial process, which amounts to under-estimating the authority of the Apex Court. The applicants after having full knowledge about the final outcome of the Hon'ble Apex Court in the matter have approached before this Tribunal against their termination, which, in our view, is required to be rejected with exemplary cost for their intention to mislead this Tribunal in seeking the said relief of continuation on the post.

11. The respondents have stated that since the applicants were very well aware at the time of their initial appointment that their appointment is subject to the final outcome of DBCWP No.4272/2005 and thereafter the matter was also taken up by them to the Hon'ble Apex Court in Civil Appeal No.5022-5029 of 2012. As the matter attained finality before the Apex Court vide its judgment and order dated 20.9.2017, the applicants cannot come and question the termination notices dated 5.1.2018. The question of continuity of the applicants has already been considered by the Hon'ble Apex Court wherein in para-13, it has been

observed that – “They knew that their fate depended upon the result of the litigation. Once their appeal is dismissed they cannot be permitted to be continued in employment only because they have been permitted to continue due to the interim orders.” In view of above, the applicants have no right to continue and their services are required to be terminated. It is a clear case of abuse of the process of court/law/fraud on court and therefore, the respondents pray for exemplary costs.

In support of their contention, the respondents have heavily relied on Para 40,41 and 42 of the judgment of the Apex Court in **B.Srinivasa Reddy vs. Karnataka Urban Water Supply & Drainage Board Employees Association**, 2006 (11) SCC 731 wherein the Hon’ble Apex Court observed as under:-

“40. In the instant case, the Employees’Association approached the High Court with unclean hands. The employees who approach the Court for such relief must come with frank and full disclosure of fact. If they fail to do so and suppress material facts, their application is liable to be dismissed.

41. The Constitution Bench of this Court in Naraindas v. Govt. of M.P. held that if a wrong or misleading statement is deliberately and wilfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of

judicial proceeding and thus amount to contempt of court.

42. It is thus crystal clear that the Employees'Union has approached this Court by suppressing the material facts and has snatched an order on the basis of wrong averments when the Employees' Union had no locus standi to maintain the writ petition on the date relevant in question. The court cannot grant any relief to a person who comes to the court with unclean hands and with malafide intention/motive. The writ petition filed by the Employees'Association is liable to be thrown out on this single factor. Though it is eminently a fit case for awarding exemplary costs, considering the employees' financial aspect and taking a lenient view of the matter, we are not ordering any costs."

The respondents have also relied upon para 48 of the judgment in the case of **Rakesh Kumar Goel and Ors. vs. Uttar Pradesh State Industrial Development Corporation Limited and Ors.**, (2010) 8 SCC 263, which

Uttar Pradesh State Industrial Development Corporation Limited and Ors., (2010) 8 SCC 263, which thus reads:-

"48. But this case certainly calls for exemplary costs to the appellants. We wish to make it absolutely clear that this Court is not for manipulators, speculators and land grabbers. The litigation in this Court is not like buying a lottery ticket that, if luck favours, might bring a windfall (even though illegitimate) but would costs no more than the expenses of litigation. That is not the way of this Court. We, accordingly, impose costs of Rs. 2 lakhs on each of the two appellants. The amount of cost must be paid to the Supreme Court Legal Aid Committee within 12 weeks from today. In case receipt showing payment of the cost is not filed within the time as directed, the amount of costs shall be

realised from the appellants as find under the provisions of the Code of Criminal Procedure."

12. This Tribunal at the time of considering the prayer of the applicants on interim relief elaborately discussed the matter and the interim relief prayed for by the applicants was rejected on 2.2.2018. Yet the applicants still wanted that this court should take adverse decision which on the very face of it should have been withdrawn by the applicants, but instead they still entered into litigation and wasted the valuable time of the court. Therefore, when the applicants did not come to the Tribunal with clean hands and tried to snatch an order on the basis of the grounds and footing presented by them, which should not have been done by them after passing of the order by the Hon'ble Apex Court as the said issue had attained its finality.

13. Though, it is a fit case for awarding exemplary costs considering the facts of the present case, but since the services of the applicants have been terminated and considering their financial aspect, we take a lenient view in the matter and do not order for any costs.

14. In view of above, the order passed by the respondents dated 5.1.2018 and the orders of similar nature of different

dates, do not require any interference. All the OAs are accordingly dismissed with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/