

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9468 of 2016

1. The Union of India through General Manager, South East Central Railway, Bilaspur, Chhattisgarh.
2. The Divisional Railway Manager, South East Central Railway, Nagpur.
3. The Chief Engineer (Bridge), South East Central Railway, Bilaspur.
4. The Sr. D.E.N. (Co-Ordination), South East Central Railway, Nagpur.
5. Sr. Divisional Personnel Officer, South East Central Railway, Nagpur.
6. The Asst. Personnel Officer, South East Central Railway, Nagpur.
7. Sri A.K. Jha, Sr. D.E.N. (Co-Ordination), South East Central Railway, Nagpur.

.... Petitioner/s

Versus

Ashish Kumar Jha, S/o A.R. Jha, Ex. Bunglow peon under Sr. DEN (Co-Ordination), South East Central Railway, Nagpur at Bilaspur, resident of Village-Post Gosaigaon, P.S.- Naugachiya District- Bhagalpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar Sinha, Advocate
Mr. Ashish Sinha, Advocate
Mr. Yash Mathur, Advocate
For the Respondent/s : Mr. Prakash Singh, Advocate
Mr. Uma Kant Mishra, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 25-04-2017

Heard counsel for the petitioners and the
counsel private respondent.

2. Railways have filed the present writ
application for a judicial review of the decision dated



31.01.2012 passed by the Central Administrative Tribunal in O.A. No. 588 of 2005. The impugned order is Annexure-8 to the writ application. By virtue of this decision, the private respondent, who was the applicant before the Central Administrative Tribunal, sought quashing of the order of termination/ removal from the post of a Substitute Bungalow Peon, who was appointed on a pay-scale of Rs. 2550 – 3200/-. The reason for removal of the private respondent seems to be his so called unsatisfactory service and since he was under probation, therefore, termination simplicitor would suffice in such cases and no formal departmental enquiry or process of such enquiry was required to be carried out, as is the stand of the learned counsel for the petitioners.

3. The Tribunal, however, takes note of the fact that the private respondent was holder of a civil post. He had automatically acquired temporary status after completion of 120 days of continuous service as per the Indian Railway Establishment Manual and, therefore, the allegation of unauthorized absence, misbehaviour with the officer or family members or so called unsatisfactory service



was required to be established in a departmental proceeding.

4. The Tribunal further took help from a decision rendered by the Central Administrative Tribunal, Kolkata Bench where it was held that termination of an employee, who had acquired temporary status, cannot be effected without proper enquiry, especially if allegations and imputations of bad conduct were the reason for such removal.

5. Since the Tribunal has taken a view based on a settled principle of law and has further given leeway to the petitioners to hold an enquiry in terms of the provisions of the Railway Servant (Discipline and Appeal) Rules, petitioners are free to proceed against the said respondent in accordance with law. The simple order of termination, which has been held to be bad in law for the reasons of the status of private respondent, which he had acquired coupled with the fact that removal order was passed by a person lower than rank of appointing authority, seems to be valid reason for passing of such an order in favour of the private respondent.

6. The writ application, therefore, is



dismissed.

7. Let the Railway-authorities follow the process laid down in the Railway Servant (Discipline and Appeal) Rules.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.04.2017
Transmission Date	NA

