

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 6776 of 2018**

K. Rakesh Roshan Rao S/o Late Shri K.A. Rao Aged About 45 Years By Post Peon At CPO Office, South East Central Railway (SECR), R/o Puttibada, Singhpur, Road, Ward No. 24, Shahdol, District Shahdol (Madhya Pradesh).

---- Petitioner

Versus

1. Union of India Through The General Manager, SECR, Zonal Office Building, Bilaspur Chhattisgarh.
2. Divisional Railway Manager, SECR, Bilaspur Chhattisgarh.
3. Chief Personnel Officer (W) / Senior Personnel Officer (W), Personnel Department, SECR, Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	: Shri J. A. Lohani, Advocate.
For Respondent/Railways	: Shri Abhishek Sinha, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board**Per Ajay Kumar Tripathi, Chief Justice****10/10/2018**

1. Original Application No. 810 of 2013 filed by the Petitioner before the Central Administrative Tribunal, Jabalpur, Circuit Sitting at Bilaspur, (for short 'the Tribunal') has been dismissed vide order dated 24.08.2017, therefore, the writ application.
2. The Petitioner was appointed as a Peon in the office of CPO/SECR/BSP. His services were terminated w.e.f. 22.04.2009 in exercise of power under the Indian Railways Establishment Code (for short 'the IREC), Vol. I,

Chapter-3, on the ground of unsatisfactory service. The Tribunal took note of the reason for issuance of the order of termination which is as under:

"The service of Shri K. RAKESH ROSHAN RAO who is working as a Substitute Peon in the office of CPO/SECR/BSP is hereby terminated w.e.f. forenoon of 22.04.09 in terms of IREC Vol - 1, Chapter-3 due to unsatisfactory service. He remained himself unauthorised absent from the office on many occasions apart fro the fact that he was also taken up under D&AR for consumption of liquor during office hours and misbehaviour with the supervisors. And at present, he is absent in different spells for 41 days on the following dates:-

Dates	Days
24.11.08	01
01.12.08 to 04.12.08	04
18.02.09 to 20.02.09	03
04.03.09 to 06.03.09	03
12.03.09 to 25.03.09	14
31.03.09 to 12.04.09	13
20.04.09 to till date	03
Total	41

- Submission was made before the Tribunal that there was a mandate under Rule 301 of the IREC to issue a show cause notice before the order of termination could be passed. Since no show cause notice was issued, the order of termination was required to be set aside.
- Against the said submission, the Respondent-Railways took a stand that sub-rule (4) of the same Rule i.e. Rule 301 also contemplates dispensing with the requirement of issuance of a show cause notice before termination provided that the employee is paid salary and allowances equivalent to the notice period. Admitted position is that the Petitioner was paid salary and allowances in lieu of one month salary.
- If this be so, then there is sufficient compliance of the requirement of Rule 301(4) of the IREC which also is part of the said Rule and is permissible.
- The facts being what they are, we do not feel that non-issuance of one month notice has been violated because in lieu of notice, the Petitioner has

been paid salary. No interference with the order dated 24.08.2017 passed in
OA No. 810 of 2013 is required.

7. The writ petition is dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE

Amit