

**IN THE HIGH COURT AT CALCUTTA  
(CONSTITUTIONAL WRIT JURISDICTION)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Partha Sarathi Chatterjee**

**WPA 10918 of 2012**

**Supriya Chatterjee  
-Vs.-  
Union of India & Ors.**

For the Petitioner : Mr. Kedareshwar Chakraborty,  
Mr. Saptarshi Chakraborty.

For the N. F. Railway : Mr. Pradip Kumar Das.

Heard on : 19.03.2025

**Judgment on : 02.04.2025**

**Partha Sarathi Chatterjee, J.:-**

1. In questioning the justifiability and propriety of the award dated 16<sup>th</sup> January 2012, passed by the learned Central Government Industrial Tribunal at Calcutta in Reference No. 31 of 2006, which declined to accept the petitioner's claim for reinstatement with back wages, but directed the payment of compensation of Rs. 50,000/- within the specified period.
2. Prior to venturing into addressing the contentious issue raised in the present writ petition, it would be apt to allude to the key facts, as projected in the writ petition, which are as follows:

- a) The petitioner was engaged as a substituted Emergency Peon attached to Divisional Railway Manager, Alipurduar Division Junction (DRM/APDJ) in a pay scale of Rs. 2550-3200/-, along with other allowances under the applicable rules, by a letter vide No. E/283/29/EP/AP©/6 dated 25<sup>th</sup> February, 2005, issued by the Divisional Railway Manager (P), N.F. Railway, Alipurduar Junction (hereinafter referred to as Divisional Manager), based on the approval accorded by the General Manager (P), N.F. Railway, Maligaon, as per his letter dated 7<sup>th</sup> February, 2005. He joined the service on 1<sup>st</sup> March, 2005.
- b) Upon the successful completion of 120 days' service, starting from 1<sup>st</sup> March, 2005, the petitioner was granted 'temporary status' as per an office order dated 22<sup>nd</sup> August, 2005, issued by the Divisional Manager. His service was further extended for a period of three months by another office order, also dated 22<sup>nd</sup> August, 2005.
- c) Smt. P. Babbar, the then Divisional Manager with whom the petitioner was attached, left Alipurduar on 24<sup>th</sup> July, 2005 to avail herself of 33 days' Ex-India Leave from 25<sup>th</sup> July, 2005 to 26<sup>th</sup> August, 2005. The petitioner was instructed to stay in her flat located at P.K. Road, New Delhi, and he complied with the instruction, staying there during the specified period. Prior to her departure from Alipurduar for the leave, the petitioner submitted an application dated

24<sup>th</sup> August, 2005, expressing his willingness to discharge his duties wherever Smt. P. Babbar would be stationed.

- d) Smt. Babbar was transferred to Mumbai as F.A. & C.A.O/Con on 29<sup>th</sup> August, 2005, but she did not return to Alipurduar to hand over the charge. Instead, she went directly to Mumbai. Following her instructions, the petitioner travelled to Mumbai on 3<sup>rd</sup> September, 2005 and performed the duties assigned to him by Smt. Babbar on 4<sup>th</sup> and 5<sup>th</sup> September, 2005.
- e) However, on 6<sup>th</sup> September, 2005, Smt. Babbar handed him a letter stating that, in July 2005, she had verbally counselled him to put in more effort in his work, hoping for an improvement on his part. She further stated that, since there was no indication of any effort towards improvement and his willingness to work hard and application of mind was deficient, his services were no longer required.
- f) The petitioner claimed that, on 22<sup>nd</sup> August, 2005, Smt. Babbar had certified that his service was satisfactory. However, just a few days later, on 6<sup>th</sup> September, 2005, the same person alleged that the petitioner had not made any effort to improve the quality of his work. The petitioner contended that this letter was issued solely to replace him with a person of her choice.
- g) As a result of the unkind action taken by Smt. Babbar, as reflected in the letter dated 6<sup>th</sup> September, 2005, the

petitioner, who had already crossed the maximum age limit to secure a job elsewhere, became distressed and even fell ill, as would be evident from the medical certificates submitted by him. Subsequently, by a letter dated 28<sup>th</sup> October, 2005, the petitioner's services were terminated, effective from that date.

- h) Prior to the issuance of the termination letter, the petitioner submitted two applications - one dated 15<sup>th</sup> September, 2005 addressed to the General Manager, N.F. Railway, Maligaon, and another dated 15<sup>th</sup> September, 2005 addressed to the DRM, N.F. Railway. In these applications, he requested the authorities to provide him with any job in a Group-D post or to allow him to continue working as an emergency peon, but no heed was paid to his request.
- i) The petitioner averred that, having acquired the status of a temporary employee of the Railway, and being entitled to the rights and privileges accorded to a temporary railway employee, his service could not be terminated in such a manner and at the whim of a particular individual, especially without the initiation of any enquiry proceedings. According to him, such termination violated the principles of natural justice. Since his efforts to resolve the matter through correspondence with the authorities yielded no fruitful result, the petitioner was compelled to file an application before the Regional Labour Commissioner (C), seeking a

direction to the respondents for his reinstatement with back wages.

j) Based on the petitioner's application, a conciliation process was initiated, and two meetings were held at the office of the Assistant Labour Commissioner (C), Kolkata, on 12<sup>th</sup> January, 2006 and 6<sup>th</sup> June, 2006. Efforts were made to settle the dispute amicably, but they proved unsuccessful. However, the management of N.F. Railway refused to voluntarily refer the matter to arbitration under Section 10A of the Industrial Disputes Act, 1947, despite the petitioner agreeing to such a reference.

k) Subsequently, in exercise of the powers conferred by Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 1947 Act), the Ministry of Labour, Government of India, vide its letter dated 8<sup>th</sup> December, 2006, referred the dispute to the learned Central Government Industrial Tribunal for adjudication. The dispute was registered as Reference Case No. 31 of 2006. On 5<sup>th</sup> January, 2007, the learned Tribunal invited the petitioner to submit a statement of claim, which the petitioner filed on 28<sup>th</sup> May, 2007. The management then filed its reply to the petitioner's statement of claim, to which the petitioner subsequently filed his rejoinder.

l) After hearing the parties on various dates, the learned Tribunal declined to pass any order directing the petitioner's

reinstatement with back wages but awarded compensation in the amount of Rs. 50,000/-, to be paid to the petitioner within the specified period. Hence, this writ petitioner was preferred to question the legality of the award.

3. In the writ petition, it was specifically contended that the petitioner, having acquired temporary status with the Railway, should not have been terminated without following the prescribed procedure, particularly without being given an opportunity to oppose the termination. It was further contended that the provisions of Section 25F of the 1947 Act did not apply to this dispute. These issues were completely overlooked by the learned Tribunal, leading to an erroneous decision.
4. The record reveals that a coordinate Bench of this Court, having concluded that the writ petition should be decided after the exchange of affidavits by the parties, invited the affidavit-in-opposition from the respondents and the petitioner's response to that affidavit. The respondents filed their affidavit-in-opposition. However, the petitioner did not file his response thereto.
5. In the affidavit-in-opposition, it was averred that since the petitioner's service was found not satisfactory and as he was deficient in working hard and in applying his mind, Smt. P. Babbar by her letter dated 6.9.2005 declined to take him to her place of transfer. The new DRM had brought his own substitute emergency peon and therefore, the petitioner's service was terminated in terms of the paragraph 5 of CPO/MLG/Letter no. E/205/O/RP-Emergency Peon/PC/CON dated 15/18<sup>th</sup> February, 1999. The conciliation proceeding having been failed, the dispute was referred to the learned

Tribunal. However, the learned Tribunal refused to pass any order for his reinstatement with back wages but awarded a compensation to the extent of Rs. 50000/- in favour of the petitioner.

6. The crux of the defence raised in that affidavit is that there was no evidence in the record from the respondents to prove that the petitioner had been to New Delhi and stayed in Smt. Babbar's flat. It was denied that Smt. Babbar was supposed to return to Alipurduar to hand over the charge. While Smt. Babbar had advised the petitioner to improve the quality of his work, put in more effort, and apply his mind, he failed to improve. As a result, Smt. Babbar did not wish to take him to her new place of posting. There is a specific rule regarding substitute emergency peons, and since the petitioner was granted temporary status, he cannot claim any right to be continued in the post or demand reinstatement with back wages. There was no violation of the principles of natural justice or any applicable rule. The petitioner was paid the compensation awarded by the learned Tribunal, but the cheque was returned unpaid. There is no infirmity in the award passed by the learned Tribunal.
7. Mr. Chakraborty, learned advocate for the petitioner, argued that upon successfully completing 120 days of service, the petitioner was granted temporary status. Therefore, the rights and privileges applicable to a temporary employee of the Railway should squarely apply to the petitioner. According to him, a temporary employee of the Railway cannot be terminated with a mere stroke of the pen. On 26<sup>th</sup> August, 2005, the authority expressed satisfaction with the petitioner's service. However, on 6<sup>th</sup> September, 2005, based on the false claim that the petitioner had been warned to improve his work quality, put in hard work, and apply his mind verbally, it was stated by a

particular person that the petitioner's services were no longer required. Such action, according to him, was arbitrary and an example of high-handedness towards the downtrodden people of the country and employees of lower strata.

8. He argued that words used in the letter dated 6.9.2005 casted aspersion and stigma on the petitioner's carrier and thus, the petitioner was required to be afforded an opportunity to defend himself. Without providing such opportunity, the respondents acted in contravention of settled legal procedure. Drawing my attention to clause 1502 of an extract of chapter-XV containing terms and conditions applicable to Railway Servants and Substitutes in Temporary Service, he contended that the respondents were required to take discipline measure before terminating the petitioner's service. In support of his contention, he cited a decision, reported at *AIR 1999 SC 983 (Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre for Basis Sciences & Ors.)*.
9. Lastly, he submitted that if the Court does not accept his contention, it may consider awarding a lump sum amount of compensation, enabling the petitioner to sustain himself by utilizing the compensation for his livelihood.
10. Mr. Das, learned advocate for the respondents, inviting my attention of petitioner's letter of engagement dated 25.02.2025, argued that the petitioner was engaged for a period of three months and attached with DRM/APDJ on certain terms and conditions. One of conditions was that he will be discharged in the event of the officer for whom he was engaged expressed his unwillingness to take him on transfer along with him and such engagement will not confer upon him any right to claim for further appointment and he

will not be entitled to any benefits other than those admissible to substitutes emergency peon. Although the petitioner was granted temporary status, it was specified in the order that such status would not confer upon him any right for regular appointment in the Railway Service. He asserted that there was no violation of any established principle or rule in terminating the petitioner's engagement, and that there was perversity in the award.

11. Therefore, what emerges from the pleadings and documents relied upon by the parties is that the petitioner was engaged as a substituted emergency peon for a period of three months against existing vacancy and was attached to DRM/APDJ under certain conditions. These conditions included that the engagement would not confer upon the petitioner any right to claim further appointment in the Railway, that the petitioner could be discharged without notice if his services were no longer required, and that he could be discharged upon the officer's unwillingness to take him along on transfer.
12. Upon completing satisfactory service for 120 days, the petitioner was granted temporary status through an order dated 22.08.2005, which indicated that he was entitled to the rights and privileges available to temporary Railway employees. However, this temporary status did not confer upon him any right to a regular appointment in the Railway Service, seniority, promotion, or other benefits, unless he was selected by the screening committee. The terms and conditions of his service were to remain the same as outlined in the letter of his initial engagement.
13. According to an office order dated 15.02.1999 issued by the General Manager (P), Maligaon, all officers up to JAG and Senior Scale Officers were entitled to an emergency peon. The order specified that, upon joining duties in

N.R. Railway, officers would normally continue to utilize the emergency peon attached to their predecessor. A change in the peon could be made with the General Manager's approval, but only once. The initial appointment of an emergency peon was for three months, extendable upon a satisfactory service certificate from the controlling officer. Emergency peons were eligible for regularization in Group-D posts after three years of continuous satisfactory service. If an officer was transferred, the emergency peon could be moved with the officer, provided the peon requested the transfer in writing. If an officer left N.F. Railway due to retirement, death, resignation, or transfer, the peon's service would be terminated with notice unless the peon had completed one year of continuous service. Additionally, if the officer did not want the peon to accompany him on transfer, the peon's service would be terminated.

14. Undoubtedly, a temporary employee may be appointed or engaged by the State (in this case, the Railway) to meet specific contingencies. The terms and conditions of their service are governed by the terms incorporated in the offer of appointment or applicable rules. It is well settled principle that Article 311 of the Constitution of India applies to both permanent and temporary posts. A temporary employee has no right to the post, even if appointed to a substantive vacancy, as long as the terms specify that their service can be terminated at any time without notice. If a temporary employee is terminated through an order without casting any stigma, they cannot claim the benefits of Article 311. Even if an enquiry is conducted to assess their suitability or continuous service, it does not constitute a punitive proceeding, and the termination is not considered penal action. Whether the termination is punitive or carries any stigma must be determined by the language used in the

termination order. There is no presumption of arbitrariness or *mala fide* action unless a strong case is made out.

15. The term 'stigma' refers to a mark of disgrace, disrepute, or shame; it implies a moral reproach. Failure to improve the quality of work, in itself, does not constitute a stigma. In the case of *Dipti Prakash Banerjee (supra)*, it was held that whether there is a stigma depends on the specific facts and circumstances of each case. In the present case, although Smt. Babbar, in her letter to the petitioner, mentioned that while certifying his service as satisfactory in July 2005, he was verbally counselled to put in more effort with the expectation of improvement, his work did not reflect any such effort. She found a lack of willingness to work hard and insufficient application of mind, leading her to conclude that she could not rely on him for support in her day-to-day work. Basically, it is a communication between the petitioner and Smt. Babbar.
16. The termination letter stated that the petitioner was attached to Smt. P. Babbar, who had been transferred to Central Railway. A. Rakshit, who joined as DRM/APDJ, brought Sri Basudev Subudhi as his emergency peon from his previous posting. The petitioner had not completed one year of continuous service as an emergency peon. Smt. P. Babbar expressed her unwillingness to accept the petitioner as her emergency peon at her new posting. The petitioner was entitled to 14 days' wages. Therefore, the termination letter did not contain any language that would suggest a stigma had been attached to him. Thus, the mere fact that Smt. Babbar made certain remarks about his performance while expressing her unwillingness to retain him does not imply that an inquiry proceeding was required before his termination.

17. Clause 1502 of Chapter XV, which outlines the terms and conditions applicable to Railway servants and substitutes in temporary service, as cited by the petitioner, specifies that if the termination of a temporary employee is due to the expiry of the post they hold, the expiry of an officiating vacancy, compulsory retirement due to mental or physical incapacity, or dismissal as a disciplinary measure under Clause (2) of Article 311 of the Constitution of India, the employee is not entitled to any notice of termination. However, if the termination is for any other reason, the employee is entitled to one month's notice if engaged on a contract for a definite period, unless the contract specifies a different notice period, or 14 days' notice if not engaged on a contract. In this case, the termination was due to dissatisfaction with the petitioner's performance, as the officer with whom he was engaged expressed her unwillingness to take him to her new posting.
18. The letter issued by the General Manager (P), Maligaon, which serves as the guideline for the conditions of engagement, absorption, and termination of service for substituted emergency peons, stipulates that upon termination, due notice or pay in lieu of notice must be provided. For an emergency peon who has completed 120 days of service, a 14-day notice is required for termination, or alternatively, 14 days' wages in lieu of notice should be given. In the given case, the respondents resorted to 14 days' wages in lieu of notice.
19. In that letter, reference of the provision of Section 25F of the 1947 Act was made. It is undisputed that Section 25F applies to workers employed in any industry who have completed at least one year of continuous service. The petitioner was engaged from 1.3.2005 to 28.10.2005, thus failing to complete one year of service. An emergency peon becomes eligible for regularization to

a Group-D post only after completing three years of continuous satisfactory service. Therefore, in this case, the provisions of Section 25F of the 1947 Act do not apply, and the petitioner cannot claim regularization to a Group-D post.

20. However, the learned Tribunal, considering the petitioner's temporary status and the nature of his engagement, observed that the compensation should not be a meagre amount, and awarded compensation of Rs. 50,000/-. Mr. Chakraborty suggested awarding a lump sum amount of compensation to help the petitioner find an alternative means of livelihood. However, in the absence of any specific rule or authority, and without concluding that the respondents acted illegally, thereby causing harm to the petitioner, and in such circumstances, the appropriate remedy would be to grant compensation to address the injury, it would be difficult to award a lump sum compensation. Moreover, there are no guidelines for assessing compensation in such cases. In 2012, a sum of Rs. 50,000/- was awarded in favour of the petitioner. Given the normal accrual of interest, the increase in the price index, and the rise in the salary of a Group-D employee under the Railway since that time, I believe that, in the exercise of this Court's equitable discretion, justice would be best served by directing the respondents to pay the petitioner compensation of Rs. 2,00,000/- (two lakhs).

21. Therefore, based on the discussions in the preceding paragraphs, it can be concluded that the petitioner's claim for reinstatement with back wages lacks merit. The learned Tribunal, after assessing the evidence and/or materials placed before it, has arrived at a specific finding and passed a reasoned order. I do not find any infirmity or perversity in the award that

would warrant interference. Therefore, no interference is called for in this writ petition. However, the concluding part of the award is modified only to the extent that the respondents are directed to pay compensation of Rs. 2,00,000/- (Rupees Two Lakhs only) within a period of two months from the date of receipt of a copy of this order.

22. With these observations and order, the writ petition is, thus, disposed of. There shall be no order as to the costs.

**(Partha Sarathi Chatterjee, J.)**