

(2011) 01 MAD CK 0437

In the Madras High Court

Case No : Writ Petition No's. 23044 and 24473 of 2006, M.P. No's. 1 to 3 of 2006 in Writ Petition No. 23044 of 2006 and M.P. No. 1 of 2009 in Writ Petition No. 24473 of 2006

The Divisional Railway Manager

APPELLANT

Vs

Presiding Officer and Rambabu Kamath

RESPONDENT

Date of Decision : 12-01-2011

Acts Referred:

Constitution of India, 1950 — Article 311

Industrial Disputes Act, 1947 — Section 2, 25F, 25G, 25H, 2A

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9

Citation : (2011) 01 MAD CK 0437

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : P.H. Aravind Pandian, in W.P. No. 23044 of 2006 and N.G.R. Prasad, for Row and Reddy, in W.P. No. 24473 of 2006, for the Appellant; R. Vaigai in W.P. No. 23044 of 2006 and P.H. Aravind Pandian in W.P. No. 24473 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—W.P. No. 23044 of 2006 is filed by the Divisional Railway Manager, challenging the order of the Central Government Industrial Tribunal cum-Labour Court in I.D. No. 274 of 2004 dated 15th December 2005. W.P. No. 24473 of 2006 is filed by a dismissed temporary employee against the order of the Central Government Industrial Tribunal-cumLabour Court dated 12.06.2001 in I.D. No. 28 of 2001. The Petitioner in W.P. No. 24473 of 2006 seeks a direction to the Respondent Management to reinstate the Petitioner in service with effect from 28.08.1992 with all consequential benefits, including arrears and back-wages for the period during which the Petitioner was kept out of employment and giving other attendant service benefits to which the Petitioner would be entitled to in law. It may be noted that in both these writ petitions, the employee concerned was taken in service as Substitute Bungalow

Lascar.

2. The issues raised in both these writ petitions are substantially same as to and when an order of termination could be called stigmatic that the employer has to comply with the requirement of Article 311(2) of the Constitution of India and follow the procedure of holding enquiry before visiting the employee with an order of dismissal by way of punishment and whether a contract employee, being a temporary employee, is entitled to the protection of Article 311 of the Constitution of India.

3. The question as to the entitlement of a temporary employee to have the protection on a punishment meted out to a temporary employee came up for consideration in a series of decisions. In the decision reported in Champaklal Chimanlal Shah Vs. The Union of India (UOI), , referring to the decision reported in The State of Bihar Vs. Gopi Kishore Prasad, , the Apex Court pointed out that temporary servants are also entitled to the protection under Article 311(2) of the Constitution in the same manner as permanent Government servants when the Government takes action against the temporary employees by meeting out any one of the three punishments, namely dismissal, removal or reduction in rank. The Apex Court pointed out that this protection is available only when discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. The Apex Court pointed out that when a preliminary enquiry is first held, that enquiry is really for the satisfaction of the Government to decide whether punitive action should be taken or action should be taken under the contract or the Rules in the case of a temporary Government servant or a servant holding a higher rank temporarily, to which he has no right. In the preliminary enquiry, the explanation of the Government servant may be taken, document and even oral evidence may be considered. When such a preliminary enquiry makes out a prima facie case against the servant concerned, charges are then framed against him. The show cause notice is issued as to why disciplinary action should not be taken against him.

4. The enquiry officer appointed holds the enquiry in accordance with the principles of natural justice. In the formal departmental enquiry, the delinquent servant has an opportunity to cross-examine the witness tendered against him. He is also given the right to let in evidence. Thereafter, the enquiry officer makes a report for the authority concerned having power, to take action.

5. Where the competent authority accepts the report and determines tentatively that the punishment should be inflicted, then it communicates a copy of the report to the enquiry officer and its own conclusion and issues a show cause notice as to why the tentative punishment should not be inflicted upon him. The servant concerned has an opportunity of making his representation on the conclusions arrived at by the departmental authority as well as the punishment imposed. The Apex Court pointed out that when a preliminary enquiry is held, the same is not to be confused with a regular departmental enquiry. As far as preliminary enquiry is concerned, there is no question of being governed by

Article 311(2) and the preliminary enquiry can be held ex parte, since it is merely for the satisfaction of the Government. However, when the Government decides to hold a regular enquiry for the purpose of inflicting one of the three major punishments, then the Government servant gets the protection of Article 311(2) of the Constitution of India. The Apex Court pointed out that the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service Rule is irrelevant. Thus where a mere preliminary enquiry is held and following the enquiry, the services are dispensed with in accordance with the contract or specific Rule, the same would not mean termination of the service as amounting to a punishment within the meaning of Article 311(2) of the Constitution of India. Whether such termination would amount to dismissal or removal as a punishment, depended upon the facts of each case. The sum and substance is that where the termination, dismissal or removal from service is to act as a penalty or a punishment which stigmatizes the delinquent Government servant, necessarily the intended action has to conform to Article 311(2) of the Constitution of India.

6. Referring to the decision reported in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , the Apex Court pointed out that the protection under Article 311(2) of the Constitution of India is available only when discharge, removal or reduction in rank is said to be inflicted by way of punishment and not otherwise. The Apex Court further pointed out to the two tests mentioned in the above-said decisions namely,

"(i) whether the servant had a right to the post or

(ii) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the servant had been punished. "

Where a complaint is the basis for the dissatisfaction with the work and/or conduct of a temporary servant, the Government or the appointing authority may decide to dispense with the service of the servant without any action taken to punish him for his conduct/bad work. However, where the Government decides to punish such a servant, necessarily, the protection under Article 311(2) comes to the aid of the Government servant, irrespective of his status as a temporary employee or as a permanent employee.

7. In the decision reported in *Samsher Singh Vs. State of Punjab* and *Another*, followed in *Anoop Jaiswal Vs. Government of India and Another*, , the Apex Court pointed out that no abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated, it can never amount to a case of punishment in the facts and circumstances of the case. An authority may simply discharge a probationer on the ground of misconduct or inefficiency or for similar reasons without a proper enquiry and may simply discharge the probationer with a view to giving him a chance to make good in other walks of life without a stigma at the time of termination of probation. However, if the

probationer is faced with an enquiry or charges of misconduct, corruption, etc., and the services are terminated without following the provisions of Article 311(2) of the Constitution of India, he can claim protection. Thus the Apex Court pointed out that the form of the order is not decisive as to whether the order is by way of punishment. It pointed out "even an innocuously worded order terminating the services may, in the facts and circumstances of the case, establish that an enquiry into the allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provisions of Article 311. In such a case, the simplicity of the form of the order will not give any sanctity."

8. Thus, in the decision reported in *Anoop Jaiswal Vs. Government of India and Another*, , the Apex Court pointed out that it is always open to the Court to go behind the form and ascertain the true character of the order. Thus if the Court holds that the order, though in form is merely a determination of employment, is in reality a cloak for an order of punishment, the Court would not be debarred merely because of the form of the order, in giving effect to the rights conferred by law upon the employee. Thus if on reading the order, the Court reaches the conclusion that the alleged act of misconduct was a cause of the order and that but for that incident it would not have been passed, then it is inevitable that in the absence of an opportunity to defend himself, as provided under Article 311(2) of the Constitution given, the order of discharge should fall to the ground.

9. Thus in *Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar*, , the Supreme Court pointed out that where the order of termination was based on the findings in an enquiry and that the enquiry had been taken into consideration only for the purpose of judging the suitability of an employee, the same could not be said to be a foundation for terminating the probation. Thus a distinction exists between motive and foundation.

10. In the above-said decision, the Supreme Court pointed out that an enquiry as regards the alleged withdrawal of some amount from the Government fund and deposited in the personal Bank Account of the delinquent employee was found out, leading to the termination of the services of the employee, who was a probationer. The employer passed an order of termination on the basis of certain allegations of financial irregularities. On a challenge by the dismissed employee, the High Court directed reinstatement of the employee. On further appeal to the Supreme Court, it was held that the delinquent employee was not aware that his service had been terminated on a finding of misconduct or the fact that an enquiry had been conducted behind his back. Thus, if the employee had come to know at a later stage the real object and purport for which the termination order was issued, he could challenge the same. Thus if an order terminating the probation is innocuous on its face, it stood vitiated, when in effect and substance it was found to be stigmatic, founded on a finding of misconduct. A material which amounts to a stigma need not be contained only in the termination order, but may also be contained in an order or proceeding referred to in the order of termination or annexure thereto.

11. In contrast to this decision is the decision reported in Chaitanya Prakash and Another Vs. H. Omkarappa, where the delinquent employee therein suffered an order of termination during the period of probation, on the ground of the performance not being satisfactory. It was pointed out therein that the employer advised the employee to improve his performance. However, the employer ultimately terminated his services without any reasons therein. The said order was challenged before the High Court. It is seen that the said employee applied for the post of Managing Director in a company. He was not called for interview in view of the letter sent by the previous employer bringing to their notice the misconduct of the employee. The High Court allowed the petition, holding that the order of termination was stigmatic. On further appeal, the Apex Court considered the decisions reported in Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others, , Mathew P. Thomas Vs. Kerala State Civil Supply Corpn. Ltd. and Others, , Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, and Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, , applied the ratio laid down therein and held that the reasons given for terminating the services of the employee could not be said to be stigmatic. The Apex Court further pointed out that where an order of termination referred to unsatisfactory service of the person concerned, the same cannot be said to be stigmatic. It pointed out to the decision reported in Abhujit Gupta Vs. S.N.B. National center, Basic Sciences and Others, that expression like "want of application", "lack of potential" and "found not dependable" when made in relation to the work of the employee, would not be called stigmatic -Refer Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, . The decisions reported in Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, , State of Punjab v. Bhagwan Singh, (2002) 9 SCC 636 and Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others, are to the effect that where an order merely terminates the services of a candidate on the ground that the candidate was found not suitable, the service could be terminated without an enquiry during probation and that the same would not be styled as punitive or based on stigma. Hence, what amounts to stigma needs to be considered herein.

12. In the decision reported in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , the Supreme Court considered the criteria of differentiating between foundation and motive and what amounted to stigma. The Supreme Court referred to the decision reported in Samsher Singh Vs. State of Punjab and Another, as well as the decisions thereafter and pointed out in paragraph 21 as follows:

21. If findings were arrived at in an inquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the inquiry was not held, no findings were arrived at and the employer was not inclined to conduct an inquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of

motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

13. Referring to the decision reported in *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, , the Supreme Court held, where the imputation or the charge is in relation to the work and not for any other purpose and any person reading a letter or an order of compulsory retirement/dismissal would not be led to believe that there is something wrong with the employee as regards his conduct or character, the same would not amount to a stigma.

14. As His Lordship Justice Krishna Iyer, in the decision reported in *Samsher Singh Vs. State of Punjab and Another*, pointed out, when does motive trespass into foundation? When do we lift the veil of form to touch the substance? ... After all, between unsuitability and misconduct, the thin portions do their bounds divide. Referring to the dictionary meaning of the term "stigma", the Apex Court referred to the decision reported in *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, , which reads

as follows:

" 27. As to what amounts to stigma has been considered in *Kamal Kishore Lakshman Vs. Management of Pan American World Airways Inc. and Others*, . This Court explained the meaning of "stigma" as follows (SCC p. 150, para 8):

"8. According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign etc., indicating that something is not considered normal or standard. The Legal Thesuras by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary "stigma" is a matter for moral reproach. Similar observations were made in *Allahabad Bank Officers Association and another Vs. Allahabad Bank and others*, . "

Thus where the words used do not cast an aspersion on the reputation or character, but only in relation to the work or the suitability to the work, the order of dismissal or retirement could not be called as a punishment with stigma as a foundation. Hence, whether the order of termination stigmatizes an employee or not has to be seen on the facts and circumstances of each case and the language employed in the order of termination. Use of offensive words, per se, however, does not lead one to view an order of termination as causing stigma.

15. Learned Counsel appearing on either side referred to series of decisions of the Apex Court as to when an order of termination was only a motive and not the

foundation. In all these cases, one may notice the declaration of law that even though an order of discharge or dismissal may look plain and simple containing no words of stigma, yet, the words used therein offer a clue as to whether the order was the foundation or a motive. Where the order of termination or dismissal contains references to proceedings or orders or instances and on lifting the veil, points out to definite conclusions of misconduct, thus ultimately leading to an order of termination, then the order of termination is stigmatic, thus entitling the delinquent employee to the protection of Article 311(2) of the Constitution of India. Thus, the decisions relied on by the learned Counsel appearing for the second Respondent reported in *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, *M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another*, *H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc.*, *State of Punjab v. Bhagwan Singh*, (2002) 9 SCC 636 and *State of Haryana and Another Vs. Satyender Singh Rathore*, are all to be seen in the context of the facts therein. So too the decisions relied on by the learned Counsel appearing for the Petitioner in the respective writ petitions.

16. Nevertheless, it must be pointed out that all these decisions give us the legal background in considering the issue before this Court that irrespective of the status of an employee as a probationer or as a temporary service/contract service, in a case of an order of punishment which attaches a stigma, the compliance of the requirement under Article 311(2) is absolute.

17. In the background of the above-said decisions, the relevancy of Section 2(ii) of the Industrial Disputes Act and Section 25F need to be seen. Section 2(oo) of the Industrial Disputes Act defines retrenchment as follows:

" [(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;]

18. In the decision reported in *Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another*, the Supreme Court pointed

out to the Constitution Bench decision reported in *Hariprasad Shivshankar Shukla Vs. A.D. Divikar*, as to the meaning of the word "retrenchment" and held that the word "retrenchment" means discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action.

19. Section 25F of the Industrial Disputes Act deals with conditions precedent to retrenchment of workmen. The said Section reads as follows:

"25F. Conditions precedent to retrenchment of workmen No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

[* * *]

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate government [for such authority as may be specified by the appropriate government by notification in the Official Gazette].

20. In the decision reported in *Manager (P and A), Oil and Natural Gas Corporation Ltd. Vs. G. Radhakrishnan*, a Division Bench of this Court pointed out that where a case falls u/s 2(oo) of the Industrial Disputes Act, the requirement of compliance of Section 25F is absolute, unless the case is covered under any of those excepted clauses mentioned in the said Section. This relates to a case of a contract labour for a period of 11 years and thereafter employed by the employer as security supervisor, wherein the employee was relieved from service on attaining the age of 58 years. The employee therein contended that considering the age of retirement below board level at 60, relieving him at the age of 58 years was illegal. The employee challenged the order that it was in violation of Section 25F of the Industrial Disputes Act. Dealing with the submission, particularly with reference to Section 2(oo)(bb) vis-a-vis Section 25F of the Industrial Disputes Act, this Court pointed out that term based employment would fall outside the scope of retrenchment, so long as the requirement of such fixed period of employment was bona fide required by the employer. This Court pointed out that even though the requirement of employment was perennial, by adopting the methodology or employing the person for a specific period as many a times, an unscrupulous employer can also have reason to abuse the provisions of Section 2(oo)(bb) to thwart the other statutory protection available to an employee u/s 2(oo), namely, the benefits u/s 25F of the Industrial Disputes Act. Thus the retrenchment spoken to u/s 2(oo)

expressly excludes termination of service as a punishment inflicted on a workman reaching the age of superannuation or a voluntary retirement.

21. In the decision reported in *Vikramaditya Pandey Vs. Industrial Tribunal and Another*, the Apex Court pointed out that "retrenchment", as defined u/s 2(oo) of the Industrial Disputes Act, covers every case of termination of service, except those which are given in the definition and discharge from employment or termination of service of a probationer would also amount to retrenchment. Thus if a discharge is simpliciter that it follows Section 2(oo) and the protection u/s 25F and if it is a penalty order, the same will have to follow the procedure for enquiry and ultimately to go by the procedure that offers protection as under Article 311(2). Keeping the above-said legal position in the background, the facts that gave rise to the proceedings before the Central Administrative Tribunal and now before this Court, need to be seen.

22. W.P. No. 23044 of 2006 is by the Divisional Railway Manager, Southern Railway. The second Respondent herein was appointed as Substitute Bungalow Lascar to work in the residence of the Divisional Railway Manager, Southern Railway, Chennai. The order of appointment was issued on 02.11.1998 by the Assistant Personnel Officer, Southern Railways. A show-cause notice was issued on 06.11.1998 that the second Respondent had failed to carry out his duties properly and to the satisfaction of the superiors, leading to a complaint from the Divisional Revenue Manager, Southern Railways. The show-cause notice called upon the second Respondent to show cause as to why his services should not be terminated as per Clause 1 in the offer of engagement dated 21.01.1998. Three days' time was granted to make his representation to the said proposal of termination. The aggrieved employee filed his appeal.

23. The second Respondent met the Railway Divisional Manager in person and assured that no action be taken against him. Thereafter, the second Respondent was permitted by the Divisional Railway Manager to take leave to go to his native place on a free Railway pass for his onward journey and for his return journey. However, by proceedings dated 18.02.1999, the service of the second Respondent was terminated with effect from 18.02.1999. The termination was challenged on the ground that it was violative of Section 25G and 25H of the Industrial Disputes Act and hence, illegal and unjust. The second Respondent took the plea that he was a "workman" as defined u/s 2(s) of the Industrial Disputes Act and without proper domestic enquiry against the second Respondent, the order of termination was bad. The second Respondent further contended that he had worked for more than 240 days in a continuous period of 12 calendar months; hence, sought for reinstatement with continuity of service and full back-wages and other attendant benefits. The said contention was countered by the writ Petitioner that the services in the post of Lascar is purely temporary in nature, that at any point of time, the second Respondent was liable to be discharged from duty. It is further pointed out that domestic servants were not covered under the definition of Section 2(s) of the Industrial Disputes Act

and hence, not "workmen" as defined u/s 2(s) of the Industrial Disputes Act.

24. Referring to the order of appointment, the Petitioner contended that the services of the second Respondent were liable to be terminated if found unsatisfactory or the services were not required or on the Officer getting transferred; that the second Respondent was not entitled to any notice of termination or compensation on such termination. Consequently, the conduct of a domestic enquiry, as such, did not arise and the order of termination did not attract Article 311 of the Constitution of India. The Tribunal raised the question as to whether the action of the Management in terminating the services of the employee with effect from 18.2.1999 was justified.

25. By its order dated 15th December 2005, the Tribunal rejected the contention of the Railways, the Petitioner herein, holding that the second Respondent had worked for more than 240 days in a continuous period of 12 calendar months and since no domestic enquiry was held against the alleged unsatisfactory work, the order of termination was bad. In the light of the view thus arrived at, the Tribunal directed the Petitioner herein to reinstate the second Respondent into service; that he was entitled to all other attendant benefits. As regards back-wages, the Tribunal held that in the absence of any evidence, the second Respondent would be entitled to only 50% of the back-wages.

26. Challenging the said order, the present writ petition in W.P. No. 23044 of 2006 is preferred by the Railways, contending that the Tribunal failed to note that Section 25G and 25H of the Industrial Disputes Act did not apply to the case of the second Respondent, since his services are governed by the terms and conditions of the contract. The second Respondent being a temporary employee, the termination is valid and did not attract the provisions of Article 311 of the Constitution of India. The mere fact that the second Respondent has completed 240 days of service in a continuous period of 12 months does not mean that he is entitled to claim reinstatement. As per the terms of appointment, his services can be terminated on the ground of unsatisfactory work.

27. In contrast to the facts, is the case in W.P. No. 24473 of 2006, the only difference herein being the Tribunal rejected the case of the temporary employee, the writ Petitioner in W.P. No. 24473 of 2006. The Petitioner herein was appointed as Substitute Bungalow Lascar under proceedings of the Assistant Personnel Manager, Personnel Branch, Southern Railway, Madras, on 19.02.1990 to be posted in the bungalow of the Divisional Railway Manager, Madras. The appointment order stated that the service of the Petitioner can be terminated if found unsatisfactory or his services are not required by the Divisional Railway Manager or his successor or any other Administrative Officer within three years. On the transfer of the Divisional Railway Manager as Chief Engineer (Construction), the Petitioner was later on transferred and posted as Substitute Bungalow Lascar to the Chief Engineer (Construction) by Office Order dated 05.02.1992. On 17.08.1992, the Petitioner was served with a notice by the Secretary to the Chief Engineer, containing the following allegations:

- " 1.A wrist watch was found missing about a year back.
2. Rs.300/-was found removed from the purse of guest to the house.
3. A gold ring of Officer's son was found missing and was found near the house after giving a Police complaint.
4. Office cycle has been reported to be stolen.
5. Of late, you have been disobedient, quarrelsome and argumentative with the lady member of the house and despite specific instructions you have not turned up for duty on 13.08.92 and 14.08.92.
6. Food stuffs under your charge and other minor things in the house had disappeared during your working hours. "

28. In the light of the above-said allegations, it was found that it was not desirable to continue the Petitioner further in service, as it led to a doubt over his integrity. The Petitioner refuted the allegations in his explanation given on 21.08.1995. However, by order dated 28.08.1992, on the view that the reply was not satisfactory and that the officer concerned had certified that the integrity of the Petitioner was doubtful and he was quarrelsome and disobedient, the Petitioner was directed to collect a compensation of Rs. 1,324/-and Rs. 1,986/-purported to be notice pay and compensation as per Section Section 25F of the Industrial Disputes Act. Aggrieved by the said order and that the termination was contrary to Rule 9 of the Railway Servants (Discipline and Appeal) Rules and violative of Article 311(2) of the Constitution of India, the Petitioner approached the Central Administrative Tribunal. However, the Petitioner's petition was dismissed in I.D. No. 28 of 2001 by award dated 12.06.2001, holding that the post of Bungalow Lascar was only a contractual post and that the Petitioner was not removed by way of punishment, but was discharged from service as per the terms of contract, that his service could be terminated without assigning any reason. It was further pointed out that since the Petitioner's services were found to be unsatisfactory, his services were terminated. Further, even though Section 25F did not attract the facts of the case and the termination was effected before the expiry of the period specified in the contract, it did not amount to retrenchment to attract Section 25 of the Industrial Disputes Act. Nevertheless, the Petitioner was paid retrenchment compensation.

29. As regards the claim that he was a Railway employee and that there was no proper enquiry, the Tribunal held that the action taken against the Petitioner was just and legal and could not be held as bad for want of proper enquiry on the charges levelled against the Petitioner. Referring to the order of the Principal Bench of the Central Administrative Tribunal, the Tribunal held that the services of the Petitioner could be terminated at any point of time. In the circumstances, the Tribunal upheld the action of the Southern Railway in terminating the services of the Petitioner.

30. Challenging the said order, the aggrieved contract labour has filed the W.P.

No. 24473 of 2006, contending therein that the order of termination was contrary to the decisions of the Apex Court and in violation of Article 311(2) of the Constitution of India. Further, if the explanation was found to be not satisfactory, the second Respondent should have held an enquiry on the allegations and granted an opportunity to the Petitioner in the enquiry. When the order of termination is not an order simpliciter, but by way of punishment with the stigma attached therein, holding that the integrity of the Petitioner was doubtful and that the Petitioner was quarrelsome and disobedient, the order of the Tribunal goes against the decisions of the Apex Court. Learned Counsel appearing for the dismissed employee contended that going by the facts therein, the Petitioner's case does not fall within the scope of Section 2(oo) of the Industrial Disputes Act. The order passed, in short, being punitive in nature, is liable to be set aside, it being contrary to the law declared by a series of decisions of the Apex Court.

31. On notice, the Railway Administration has filed a counter affidavit, reiterating the stand taken before the Tribunal. The Railway Administration further submitted that the services of the contract labour and temporary employees are governed by the terms of employment. Going by the appointment order dated 21.1.1998, the services of the Petitioner could be terminated at any time within three years, if found unsatisfactory or not required by the Divisional Railway Manager or his successor or any other Administrative Officer. The employer, in the order, also stipulated that the Petitioner would not be entitled to any notice of termination or compensation, except what is provided for under the relevant Rules under the Industrial Disputes Act. His absorption into the regular line would arise after three years of continuous service in the open line in the Construction Unit subject to the availability of vacancy. After regular absorption, if his services are not required in the bungalow, he would be transferred as Peon/Lascar against the existing Class IV vacancy and he would be considered for further promotion along with others Office Peons/Lascar, as per the existing channel of promotion. In terms of the above-said fact, the Petitioner being one of contract labour, is bound by the terms of the contract conditions. Consequently, no relief could be granted.

32. Ms. Vaigai, learned Counsel appearing for the second Respondent -dismissed employee in W.P. No. 23044 of 2006, while placing reliance on the decisions reported in The Manager, Government Branch Press and Another Vs. D.B. Belliappa, ; M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, ; Nar Singh Pal Vs. Union of India and Others, ,2005 (2) LLN 881 (Manager, P & A Oil and Natural Gas Corporation Ltd. Vs.G. Radhakrishnan) Management of Karnataka State Road Transport Corporation, Bangalore Vs. M. Boraiah and Another, ; M.C.D. Vs. Praveen Kumar Jain and Others, (Vikramaditya Pandey v. Industrial Tribunal and another) Chaitanya Prakash and Another Vs. H. Omkarappa, and Allahabad Bank Officers Association and another Vs. Allahabad Bank and others, , submitted that the temporary employee/contract labour are also entitled to the protection of

Article 311(2) of the Constitution of India, if the order of termination is based on allegations which cast a stigma on the employee. If an order of termination is not based on any allegation and the order of termination is only a motive and not the foundation, then it is open to the Administration to take shelter under the order of appointment. However, when after calling for explanation, the order is made based on a finding, then the order of dismissal is punitive in character and hence, the dismissed employee is entitled to protection under Article 311(2) of the Constitution of India. Referring to the show cause notice, the chain of events narrated therein clearly disclosed the character of the order of termination as one of punitive in nature. Hence, if the order is, pure and simple, an order of termination without any allegation or aspersion on the conduct, there being no motive, then the provisions of the Industrial Disputes Act u/s 2(oo)(bb) as a case of retrenchment would be available to the employer to support its stand. Hence, going by the series of decisions of the Apex Court, when the order of dismissal rests on allegations and not just on the performance, pure and simple, the one and only conclusion that could flow from the order passed is that it is punitive in character. Consequently, for the non-compliance of Article 311(2) of the Constitution, the dismissal order has to be set aside. She further pointed out to the Indian Railway Establishment Manual issued by the Ministry of Railways, particular to Chapter XV, dealing with the terms and conditions of Service in the Railway establishment as regards Substitutes in Temporary Services, non-gazetted staff. She referred to Paragraph 1502 wherein a person is appointed without a lien is appointed to hold a temporary post or to officiate in a permanent post, on the expiry of the sanction of the post or the expiry of the officiating vacancy, or of mental or physical incapacity, the services of a Railway servant could be terminated without further notice. When it is a case of dismissal on a disciplinary measure, after compliance of the provisions of Article 311(2), the services could be terminated. If the termination is due to some other cause, he would be entitled to one month's notice. She pointed out that the said Chapter specifically refers to the applicability of the Industrial Disputes Act. Paragraph 1501 defines who are all temporary Railway Servants and it specifically excludes casual labour, including casual labour with temporary status, the contract or part-time employee or an apprentice. Going by the said Manual and the appointment of the Petitioner as a Substitute Bungalow Lascar, the termination order, being violative of Article 311(2), is liable to be set aside.

33. Countering the said stand, learned Counsel appearing for the Railway Administration contended that the appointment of the second Respondent as a Substitute Bungalow Lascar is not denied by the second Respondent. Considering the terms of appointment that the service of the second Respondent could be terminated at any time within three years if found unsatisfactory or the services not required, the Railway Administration passed the order of termination after putting the employee on notice. Based on the complaint from the Divisional Railway Manager, the services of the second Respondent was found unsatisfactory. This ultimately led to the termination of the services of the

second Respondent. Being a Substitute Bungalow Lascar, the termination of his services as per the terms of the contract is valid and does not attract the provisions of Article 311 of the Constitution of India.

34. The retrenchment of the second Respondent is governed by the terms and conditions of the contract and no exception could be taken to the order passed by the Administration. The Tribunal had failed to take note of the binding character of the terms of appointment. As such, when the order is not punitive in nature, Article 311(2) of the Constitution of India has no relevance in this case.

35. Mr. Arvind Pandian, learned Counsel appearing for the Railway Administration relied on the following decisions:

- (i) Champaklal Chimanlal Shah Vs. The Union of India (UOI), ;
- (ii) State of Punjab and Another Vs. Shri Sukh Raj Bahadur, ;
- (iii) M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam, Andhra Pradesh and another, ;
- (iv) State of Rajasthan and others Vs. Rameshwar Lal Gahlot, ;
- (v) Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others, ;
- (vi) H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc., ,
- (vii) State of Punjab v. Bhagwan Singh, (2002) 9 SCC 636 ;
- (viii) State of Haryana and Another Vs. Satyender Singh Rathore, ; and
- (ix) Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, .

36. As far as the grounds raised in both these writ petitions are concerned, common issues arise:

- (i) Whether in the case of temporary employee, protection under Article 311(2) is available and
- (ii) Whether the order of dismissal stigmatizes the employees that the order of dismissal itself is a foundation and not a motive.

37. As already noted in the preceding paragraphs, where the order of termination is punitive in nature, for the purpose of invoking Article 311(2) of the Constitution of India, the status as a contract employee or a temporary employee is totally immaterial. To find out the character of the order of termination, it is always open to lift the veil to go beyond the terminology used in the order of dismissal to find out whether, in effect and substance, the order is stigmatic in nature and whether the order is the motive or foundation. The decisions of the Apex Court are to the effect that if the misconduct is a foundation of an order of termination, in the absence of compliance of Article 311(2), the same would be bad in law. Even if the order appears to be innocuous and where there are materials to indicate that the order of dismissal is, in fact, an order of

punishment, the Court could always lift the veil to find out as to whether the order is one of punishment. When the foundation for an order of termination is not one on satisfactory performance, but the overt acts amounting to misconduct, the dismissed employee is entitled to the constitutional protection envisaged under Article 311 of the Constitution of India. If an order of termination refers to some proceedings which casts a shadow on the character of the employee as a mark of disgrace, disrepute or shame, the failure to follow the procedure beyond the preliminary enquiry certainly vitiates the order.

38. As far as W.P. No. 23044 of 2006 filed by the Railway Administration is concerned, it is not denied by the second Respondent that he was appointed as a Substitute Bungalow Lascar on 21.1.1998 purely on temporary basis. It is also true that the order of appointment states that his services could be terminated within three years:

(a) if found unsatisfactory;

(b) if the services are not required by the Divisional Regional Manager or his successor or any Administrative Officer within three years.

In such circumstances, a simple order of termination without any other reasons assigned, that his services are not required, would certainly have acceptance in law. Thus, where the termination is in terms of the letter of appointment, the decisions of the Apex Court are to the view that there being no stigma attached, the termination order is sustainable in law.

39. The following are the cases relied on by the Railway Administration wherein, the Apex Court upheld the order of dismissal that the order is only a motive and not a foundation:

(i) Kunwar Arun Kumar Vs. U.P. Hill Electronics Corporation Ltd. and Others, is a case where the candidate was found unsuitable in a particular post;

(ii) a discharge during probation after assessment of the work on the belief that he was unlikely to prove to be a good police officer State of Punjab v. Bhagwan Singh, (2002) 9 SCC 636 ;

(iii) Reversion of a probationer to a substantive rank - State of Punjab and Another Vs. Shri Sukh Raj Bahadur,

(iv) A termination simpliciter - Rajasthan State Road Transport Corporation and Others Vs. Zakir Hussain, , State of Haryana and Another Vs. Satyender Singh Rathore, and H.F. Sangati etc. Vs. R.G. High Court of Karnataka and Others etc., .

40. In all these cases, the Apex Court pointed out that the order of discharge did not cast any stigma and if the appointing authority has to look into the performance of the work and duties during the period of probation and then recorded a finding that during the probation period, the performance was unsatisfactory, they are entitled to terminate the services in terms of the letter of appointment, without conducting an enquiry, since such assessment did not

amount to any stigma. The reasons thus mentioned constitute motive and not foundation for termination of service.

41. The facts in the present case do not match with the situations considered in the above-referred to decisions and hence, they have no relevance to the case on hand. Going by the terms of the order of termination, I do not accept the plea of the Railway Administration that the case on hand is a simple case of termination that satisfies the conditions in the order of appointment. In the decision reported in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, , the Apex Court pointed out that the material which amounts to stigma need not be contained only in the termination order, but may also be contained in an order or proceeding referred to in the order of termination or annexure thereto. Applying the said decision to the facts herein, it is worthwhile to extract the portion of the show cause notice which touches on this aspect.

that the said Shri Ram Babu Kamnath, Substitute Bungalow Lascar to DRM/MAS while functioning as such has failed to carry out his duties properly and to the satisfaction of his superior resulting in a complaint from DRM/MAS.

42. Evidently, the copy of the complaint from the Divisional Railway Manager is not enclosed. However, a reading of the order of the Tribunal shows that there are no material placed before the Tribunal to substantiate the allegations which are based on a complaint from the Divisional Railway Manager.

43. It is no doubt true that the Petitioner has not given any written explanation. The second Respondent had worked for more than 240 days in 12 calendar months. On the issuance of notice after waiting for the reply, without even a preliminary enquiry, the services of the second Respondent were terminated by the Management. The Tribunal pointed out that it was not established before the Tribunal as to how the services were not satisfactory to the superiors and it was admitted by M.W.1 that no memo was issued to the Petitioner for his alleged unsatisfactory service. There are no contra material to accept the plea of the Petitioner Management herein and hence, no exception could be taken to the said findings. The question as to whether a temporary workman is entitled to a preliminary enquiry is well settled, as had been noted in the preceding paragraphs.

44. The mere issuance of a show cause notice, per se, does not satisfy the requirements of law. It is relevant to note herein that even after the notice issued on 06.11.1998, the second Respondent was permitted to take leave to go to his native place and a Railway pass for his journey from Chennai to Howrah and Howrah to Chennai was also issued.

45. Learned Counsel appearing for the Railway Administration pointed out that the second Respondent being a temporary employee, the terms of the contract bind the second Respondent and that his services have been terminated within a period of three years from the date of appointment. As such, he cannot question

the termination. Paragraph 1512 of the Indian Railway Establishment Manual defines "substitutes" as persons engaged in the Indian Railway Establishment on regular scales of pay and allowances applicable to posts against which they are employed. Paragraph 1513 provides the circumstances under which substitutes can be recruited. Paragraph 1514 deals about the emoluments payable to the substitutes on regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy.

46. Paragraph 1515 dealing with the rights and privileges admissible to the substitutes, reads as follows:

" 1515. Rights and privileges admissible to Substitutes. --Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.

NOTE.--The conferment of temporary status on the Substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.

Substitutes who are appearing in Railway Recruitment Board Examination will be entitled to relaxation of age by the period of service as substitute subject to the age of 35 years not being exceeded, provided he has put in 3 years (at one stretch or broken) service as substitute/casual labour. Bd's No. E(NG)II/79/CL/17 dt. 28.4.79). "

47. Thus, the above-said paragraph makes it clear that substitutes would be entitled to all rights and privileges as are available to temporary Railway servants from time to time on completion of four months" continuous service. Paragraph 1501 defines temporary Railway servant to mean a Railway servant without a lien on a permanent post in the Railways or any other administration or even in the Railway Board. Temporary Railway service, however, does not include casual labour, including casual labour with temporary status, contract or part-time employee or apprentices. Paragraph 1502 deals with termination of service and period of notice. Sub para (6) of paragraph 1502 contains a non-obstante clause to Clauses 1, 2 and 4 that notwithstanding anything contained therein, if the Railway Servant or an apprentice is one to whom the provisions of the Industrial Disputes Act, 1947 applies, he shall be entitled to notice or wage in lieu thereof, in accordance with the provisions of the Industrial Disputes Act. The note appended below the said Paragraph states, where the temporary Railway servant remained absent on extraordinary leave beyond a limit of five years, for whom no show cause notice is required, as in the case of permanent Railway servant,

there is no need for issuance of any notice of termination. The Manual also contains Rules governing the pay and protection.

48. In the circumstances, on completion of 240 days of continuous service, a casual labour is entitled to all rights and privileges, as may be admissible to temporary Railway servants. Thus, the second Respondent herein, appointed as Substitute Bungalow Lascar on 21.1.1998, having put in continuous service for more than 240 days in 12 calendar months, is entitled to all rights and privileges attached to a temporary Railway servant, as laid down in the Manual. It must be noted that the rights and privileges are not restricted to enjoyment of certain monetary benefits like festival advance or flood advance, but goes beyond the same.

49. Thus going by the Regulations, the second Respondent, appointed as Substitute Bungalow Lascar, is entitled to the protection available to temporary Railway Servants and where the termination is based on a complaint that the second Respondent had failed to carry out the duties properly and to the satisfaction of the superior resulting in a complaint, one cannot read the order of termination as a simple order of dismissal that the order merely offers a motive for termination.

50. Going by the facts herein, applying the decision of the Apex Court reported in *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, and *Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar*, , I have no hesitation in accepting the plea of the dismissed employee and thereby rejecting the prayer of the Railway Administration that the order of dismissal is only a formal order which does not require compliance of Article 311(2) of the Constitution of India. Applying their own Regulations, the second Respondent is entitled to the protection under Article 311(2) when the order is punitive in character. The failure to file the written explanation to the show cause notice does not absolve the Railway Administration of its duty of holding an enquiry into the allegations, thereby giving an opportunity to the second Respondent to meet out the allegations.

51. Learned Counsel appearing for the Railway Administration placed reliance on Section 2(oo)(bb) of the Industrial Disputes Act. The acceptance of such a contention depends on whether the termination is a case of a simple termination in terms of the order of appointment. As already seen, the order of appointment dated 02.11.1998 stated that his services will be terminated at any time within three years, if found unsatisfactory, or his services are not required by the Divisional Railway Manager or his successor or by any Administrative Officer within three years. On such termination, the dismissed employee would not be entitled to any notice of termination of service or any compensation, except what is provided for in the relevant Rule under the Industrial Disputes Act. If the order of termination had simply recited what is stated in the order of appointment as a ground for termination, then the contention of the Railway Administration would go for acceptance without any difficulty. However, the facts are not how the

Railway Administration wishes them to be so. Admittedly, on 06.11.1998, a show cause notice was issued alleging that the second Respondent had failed to carry out his duties properly to the satisfaction of the superiors resulting in a complaint from the Divisional Railway Manager. In the circumstances, the second Respondent was asked to show cause as to why his services should not be terminated, as per Clause 1 in the offer of engagement dated 21.1.1998. If one has to go by the offer of appointment dated 21.1.1998, the termination simpliciter need not be preceded by a notice of termination of service.

52. All that the Administration needs to do is to go by the relevant Rule under the Industrial Disputes Act. Section 2(oo)(bb) of the Industrial Disputes Act states that the termination of service of a workman as a result of non-renewal of the contract of employment on its expiry or contract being terminated under a stipulation in their behalf contained therein, is not a retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act. Section 25F states that no workman who had put in a continuous service for not less than one year, shall be retrenched by the employer until the workman has given one month's notice, indicating the reasons for retrenchment and the period of notice has expired or that the workman is paid wages for the period of notice in lieu of such notice. Although learned Counsel for the Petitioner made serious attempt to bring this case under these provisions, the said contentions go against the very tenor of the show-cause notice issued, dated 06.11.1998.

53. As already pointed out, the show cause notice rests on a complaint from the Divisional Railway Manager. The second Respondent was given three days' time from the date of receipt of the memorandum of show cause notice, to make his representation. However, he had not made any representation. Immediately thereafter, on 18.02.1999, a memorandum was issued, terminating the services of the second Respondent with effect from 18.02.1999 that in lieu of the notice period, he would be paid allowances as due for the notice period. The memorandum further pointed out that the second Respondent had not made any representation to the show cause notice issued dated 11.11.1998 and received by the second Respondent on 11.11.1998.

54. As already pointed out, when the order of termination is not a termination simpliciter, but based on a complaint from the Divisional Railway Manager, I do not find any ground to accept the plea of the Petitioner that Section 2(oo)(bb) of the Industrial Disputes Act stands attracted to this case.

55. As already pointed out, when the order of termination is the result of a complaint and the same is made without holding an enquiry, rightly the Tribunal accepted the case of the second Respondent that the order of termination is contrary to law. I agree with the reasoning of the Tribunal. In the circumstances, I have no hesitation in confirming the order of the Tribunal dated 12.2.1999 and thereby dismissing the writ petition. The Tribunal pointed out that the second Respondent is entitled to the relief of reinstatement with all attendant benefits. However, as regards back-wages, the Tribunal granted 50% of the back-wages

since no evidence was let in by the second Respondent that he was without any employment during the period from 18.2.1999 till the date of the order passed by the Tribunal.

56. As far as the other writ petition filed by the dismissed employee in W.P. No. 24473 of 2006 is concerned, he was appointed as a Substitute Bungalow Lascar in the pay scale of 750-12-870-EB-14-940 in the bungalow of Sri.N. Kritivasan, Divisional Railway Manager under order dated 19.2.1990, subject to the following conditions:

"1. His services will be terminated within 3 years if found unsatisfactory or his services are not required by DRM/MAS or his successor or any other Administrative Officer within 3 years.

2. He will be eligible for regular absorption as Peon/Lascar in scale of 750-940 after three years continuous service either in open line or construction, provided vacancy exists.

3.If after regular absorption, he is not required in the Bungalow due to transfer of the Officer concerned or his successor he will be transferred as Lascar/Peon only in office against existing Class IV vacancy and he will seek further avenue along with office Peon/Lascar as per existing channel of promotion. "

57. Consequent on the transfer of N. Kritivasan as Chief Engineer (Contract), the Petitioner was also transferred for being posted as Substitute Bungalow Lascar to the said Chief Engineer. On 17.8.1992, based on the report from the said Officer on the allegations contained therein, a show cause notice was issued calling upon the Petitioner to submit his reply within three days as to why his services should not be terminated. The allegations are as follows:

" 1.A wrist watch was found missing about a year back.

2. Rs.300/-was found removed from the purse of guest to the house.

3. A gold ring of Officer's son was found missing and was found near the house after giving a Police complaint.

4. Office cycle has been reported to be stolen.

5. Of late, you have been disobedient, quarrelsome and argumentative with the lady member of the house and despite specific instructions you have not turned up for duty on 13.08.92 and 14.08.92.

6. Food stuffs under your charge and other minor things in the house had disappeared during your working hours. "

58. On 21.08.1992, the Petitioner submitted his reply stating therein that the wrist watch said to have been missing, was not from the house, but lost somewhere outside by the said Officer's son. As to the missing cash of a guest in the house of the said Officer, the Petitioner replied that the guest had gone out for shopping and the allegation itself was made long thereafter. As to the third

allegation on the missing gold ring belonging to the Officer's son, the Officer gave a complaint to the Police who enquired the Petitioner and a Sweeper. The Police inspected them to check the house again. The Sweeper found the ring from the garden at the back side of the house. The Police complaint was thereafter withdrawn by the Officer. As such, the Petitioner could not be held responsible for the missing ring.

59. As regards the missing bicycle, the Petitioner stated that while he was standing in the crowd to get the milk from the booth, somebody committed theft of the bicycle parked therein. This was immediately reported to the Officer concerned and a police case was also registered by the Chief Security Commissioner.

60. As regards the charges relating to the missing food stuff, the Petitioner stated that he had to go for shopping for getting provisions, vegetables, milk, etc. and the family members always gave the Petitioner fruits, snacks and anything else bought by the Officer; as such, he had no necessity for taking food stuff without the owner's knowledge. He also disputed the averment that he was quarrelsome with the lady member of the family. He left for his home town on 13th and 14th of August 1992 to perform his first thread changing ceremony. There he suffered an accident. He reported to Chingleput for his medical treatment. On account of the sudden demise of his uncle, he informed the Officer concerned through his number on 15th August 1992 and on 17th August 1992, he reported for duty. In the circumstances, the Petitioner disputed the allegations. It is relevant to point out herein that none of the allegations pointed out to the date of occurrence. However, on 27.8.1992, the explanation were found not satisfactory. It was pointed out that that the Petitioner had not reported to the Railway Hospital about the accident. Further, in the case of theft, he was one of the parties involved therein thus making his integrity doubtful, proving his tendency to steal things. Apart from that, as he was quarrelsome and disobedient to the lady member of the house, his conduct was not satisfactory. Consequently, the authorities came to the conclusion that it was unreasonable to continue him in service and that his services should be terminated with effect from the afternoon on 28.08.1992, after giving him the necessary compensation due. Thus, in view of his lack of integrity and misconduct, the said authority felt that his services should be terminated and action be taken accordingly as per the Industrial Disputes Act. The termination order was issued on 28.9.1992 stating that the Officer under whom the Petitioner was engaged as Substitute Bungalow Lascar, was not satisfied of the explanation and it was also certified by him that "the Petitioner's integrity is doubtful and he was quarrelsome and disobedient." Thus terminating his services from the afternoon of 28.08.1992, he was required to receive a sum equivalent to the amount of pay and allowances for a period of one month towards notice period and an amount towards retrenchment compensation determined in accordance with Section 25F of the Industrial Disputes Act. Subsequently, the Petitioner approached the Central Administrative Tribunal. By order dated 01.10.1992 in Original Application No. 1185 of 1992,

the Tribunal rejected the application, directing the Petitioner herein to approach the Tribunal if he is aggrieved by the order.

61. Accordingly, the Petitioner moved before the Assistant Commissioner of Labour (Central), Madras u/s 2A of the Industrial Disputes Act. However, the Management did not agree. Ultimately, a reference was made to the Central Government Industrial Tribunal for adjudication. By order in W.P. No. 8306 of 1999 dated 06.12.1999, this Court directed the Union of India to refer the dispute to the Industrial Tribunal within four months from the date of communication of the order. Accordingly, by proceedings dated 08.01.2000, the said dispute was referred for adjudication to the Industrial Tribunal on the following question:

Whether the action of the Management of Southern Railway, Madras and terminating the services of Shri.D. Suresh, Ex-peon/Lascar without holding proper enquiry levelled against him is just, proper and legal. If not to what relief the workman is entitled to?

62. By proceedings dated 12.06.2001 in I.D. No. 28 of 2001, the Industrial Tribunal rejected the petition of the Petitioner herein, holding that the action of the Management of Southern Railways in terminating the services without holding proper enquiry on the charges levelled against him is just, proper and legal. Aggrieved by the same, the present writ petition is preferred by the Petitioner.

63. Mr. N.G.R. Prasad, learned Counsel appearing for the Petitioner in W.P. No. 24473 of 2006, taking me through the charge memo, pointed out that there are serious allegations as to the integrity of the Petitioner which casts a stigma to his character. He pointed out to the complaint to the Police as regards the missing ring and that the Petitioner was enquired therein and found that the Petitioner was not, in any way, involved in that. So too as regards the removal of cash from the guest and also for the missing gold ring, leading to a Police complaint, there are hardly any material linking the Petitioner to the missing cash. Thus the entire allegations, including the allegation on the Petitioner being quarrelsome and argumentative, are nothing short of casting a shadow on the character of the Petitioner and hence, the grounds of termination cannot but be called as stigmatic. They are a direct attack on the integrity of the Petitioner. Going by the said aspect, the Tribunal should have considered the contentions of the Petitioner with reference to the decisions of the Apex Court on the order of punishment. He further pointed out that even if the Petitioner's service is of a temporary character under a contract, yet, when the order terminating the services of the Petitioner contained allegations, the same would not fall for consideration u/s 2(oo) of the Industrial Disputes Act, attracting Section 25F of the Act. A reading of the proceedings thus would show that the order of termination was punitive in character. Rightly, the Petitioner took the plea as regards the violation of Article 311(2) of the Constitution of India. However, the Tribunal rejected the said contention without even advertting to the same on the simple premise that there

is no specific Rule for appointment of Bungalow Lascar and the appointment is contractual in nature.

64. Learned Counsel further submits that when the second Respondent had called for an explanation on the allegations made and the same was found to be not satisfactory, then they ought to have conducted an enquiry, granting the Petitioner a reasonable opportunity to meet the allegations. Placing reliance on the decisions cited by him, particularly the decision reported in *Anoop Jaiswal Vs. Government of India and Another*, , the Tribunal should have gone beyond the formal order of discharge to find out the real cause of the order of dismissal. When on the reading of the show cause notice as well as the order of termination, it was very evident that the allegations were the foundation of the order of dismissal, then the second Respondent should have followed the dictum of the Supreme Court to hold an enquiry in compliance of Article 311(2) of the Constitution of India.

65. Admittedly, the Petitioner is a workman and the service regulations clearly pointed out to the relevancy of the provisions of the Industrial Disputes Act. When the termination is by way of a disciplinary action, the second Respondent should have conducted an enquiry to take further action thereon.

66. Learned Counsel appearing for the second Respondent reiterated the plea that he had taken in the writ petition filed by the Railway Administration. As has already been noted, the foundation of the order of dismissal rests on the allegations of theft of cash, theft of gold ring, theft of cycle, quarrelsome and argumentative behaviour, missing food stuff and "other minor things". A reading of the show cause notice as well as the order of termination make no secret about the grave allegations made against the Petitioner. It is not as though the Respondents found the Petitioner's conduct not satisfactory with reference to the particular job assigned to him. On the other hand, it stigmatizes the Petitioner which touches on the reputation and character of the Petitioner. For understanding the character of the order thus passed, one need not even go to the extent of lifting the veil to find out whether the misconduct is the foundation of an order of termination.

67. As held in the decision reported in *Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar*, , the Railway Administration is well aware that the order of termination rested on the allegations of serious nature and the termination is only the foundation. While there can be no denial of the fact that an employer is at liberty to initiate action against an erring employee, all that is required of an employer, particularly in the case of allegations of the nature herein is, to follow the dictum of Apex Court that irrespective of the status of the employee, Article 311 requirements have to be complied with, *stricto sensu*. A mere holding of the preliminary enquiry calling for an explanation from the employee, *per se*, does not satisfy the requirements of the law in a case where the order of discharge is punitive in character.

68. As rightly pointed out by the learned Counsel for the dismissed employee - writ Petitioner, the Tribunal had not touched on this aspect of Article 311(2) where the order is punitive in character, particularly when a specific issue was made before the Tribunal by the Petitioner. The view of the Tribunal that contract labour or temporary employees are governed only by the terms of the contract would be acceptable if and only when the termination, as given in terms of what is listed in the order of appointment, is a ground for termination. Thus, if the order made by the second Respondent had merely rested on the services of the Petitioner found unsatisfactory without attributing any of those allegations as found in the show cause notice and even on lifting the veil one finds no such allegation that tinkers with the character of an employee, then, the order of termination would pass the test that even without a regular departmental enquiry, an order of termination could be held as legally valid. However, when on the face of the order, one finds that misconduct has been the basis of the show-cause notice, the Tribunal committed a serious legal flaw in overlooking the law declared by the Apex Court. In the circumstances, the case pleaded by the Petitioner is fully supported by the law laid down by the Apex Court as to what stigma means *Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others*, .

The fact that the appointment is for a fixed period, or under a contract, is of no relevance herein, in the context of the misconduct alleged.

69. Learned Counsel appearing for the second Respondent pointed out to the decision reported in *State of Haryana and Another Vs. Satyender Singh Rathore*, that the misconduct alleged might have provided only a motive for termination order, but it, by itself, was not a foundation. The termination order was the outcome of deliberation. Consequently, learned Counsel appearing for the Railway Administration contended that the Tribunal rightly upheld the order of dismissal. He also pointed out that this Court cannot sit in appeal over the order of the Tribunal. I do not agree with the said submissions. The decision relied on, reported in *State of Haryana and Another Vs. Satyender Singh Rathore*, does not, in any manner, advance the cause of the second Respondent.

70. The decision reported in *State of Haryana and Another Vs. Satyender Singh Rathore*, has to be understood on the strength of the facts found therein and hence, has no relevance to the case on hand. As pointed out by the Apex Court in a series of decisions which are referred to in the preceding paragraphs, what amounts to stigma or whether the order of dismissal is an order simpliciter, has to be looked at from the facts placed for consideration. The order is not on an outcome of a deliberation on the suitability or performance of the Petitioner in a particular post for a particular work. On the other hand, the second Respondent made no secret of its mind as to the grounds for dismissing the Petitioner from service. Having made allegations of a serious nature that touches on the character of the person, the present contention of the second Respondent that the order is a simple order of termination, is too far fetched to accept the plea

that Article 311(2) has no relevance. The contention of the Railway Administration as to the scope of interference by this Court also deserves to be rejected straight away, when the impugned order is contrary to the law declared by the Apex Court on the subject under consideration.

71. In the light of the above, I have no hesitation in accepting the plea of the dismissed employee, the writ Petitioner in W.P. No. 24473 of 2006, thereby allowing the writ petition and setting aside the order of the Tribunal. Consequently, the order of dismissal, as confirmed by the Tribunal in its order dated 12.06.2001 in I.D. No. 28 of 2001, stands set aside.

72. In the above circumstances, the writ petition is allowed and the first Respondent in W.P. No. 24473 of 2006 is directed to reinstate the Petitioner therein in service. He is entitled to all other attendant benefits. However, as regards the back-wages, although the Petitioner contended that he was out of employment ever since the date of termination, in the absence of any evidence, in fairness to the claim of both the parties herein, this Court feels that the Petitioner is entitled to 50% of the back-wages from the date of termination on 28.8.1992 till the date of this order.

In the result, the writ petition filed by the Railway Management in W.P. No. 23044 of 2006 stands dismissed and W.P. No. 24473 of 2006 filed by the dismissed employee stands allowed. No costs. Connected M.P. Nos. 1 to 3 of 2006 in W.P. No. 23044 of 2006 and M.P. No. 1 of 2009 in W.P. No. 24473 of 2006 are closed.