

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
GUWAHATI**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer / Link Officer,  
C.G.I.T-cum-L.C., Guwahati.

**REFERENCE CASE NO. 09 OF 2022**

**PARTIES:** (1) Parash Balmiki, (2) Pintu Chandra Das, (3) Sumit Chandra Dey,  
(4) Krishna Chandra Ghosh, and (5) Bapan Stephan.

**Vs.**

(1) Management of Northeast Frontier Railway,  
(2) Divisional Railway Manager, N. F. Railway, Lumding Division, and  
(3) Senior Section Engineer (Loco), N. F. Railway, Badarpur.

**REPRESENTATIVES:**

For the Workmen: Mr. Parash Balmiki and 4 others (in person).

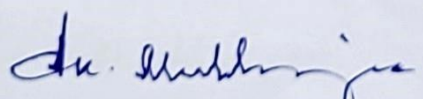
For the Opposite Parties: Mr. Deepjyoti Das, Advocate (for OP No. 3).

**INDUSTRY:** Railway.

**STATE:** Assam.

**DATED:** 30.10.2024.

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Presiding Officer/Link Officer,  
CGIT-Cum-Labour Court, Guwahati



**A W A R D**

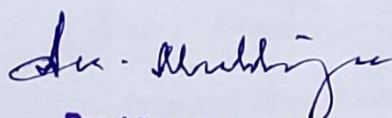
In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Guwahati, vide its Order **No. G/R. 8(07)/2022-CGIT** dated 14.06.2022 has been pleased to refer the following dispute between the employer, that is the (1) Management of Northeast Frontier Railway, (2) Divisional Railway Manager, N. F. Railway, Lumding Division, and (3) Senior Section Engineer (Loco), N. F. Railway, Badarpur Vs. (1) Parash Balmiki, (2) Pintu Chandra Das, (3) Sumit Chandra Dey, (4) Krishna Ch. Ghosh, and (5) Bapan Stephan, their employees for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of Divisional Railway Manager, N.F. Railway, Lumding and SSE/Loco/Badarpur, N.F. Railway, Badarpur in terminating the 05(five) non-contractual worker is legal and justified? If not, to what relief the 05(five) terminated/retrench worker are entitled? ”*

1. On receiving Order **No. G/R. 8(07)/2022-CGIT** dated 14.06.2022 dated 19.10.2020 from the Office of the Deputy Chief Labour Commissioner (Central), Guwahati, Ministry of Labour, Government of India, for adjudication of the dispute, **Reference case No. 09 of 2022** was registered on 27.07.2022 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

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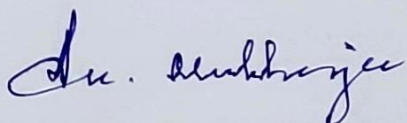


**Presiding Officer/Link Officer,  
CGIT-Cum-Labour Court, Guwahati**



2. The aggrieved workmen filed their claim statement through Parash Balmiki on 27.09.2022. The same is endorsed by Mr. Basanta Kumar Kalita, Secretary INTUC, though he was not a noticee in this case. In gist, the facts giving rise to the Industrial Dispute is that the workmen named above were employed by the Senior Section Engineer (Loco), N. F. Railway, Badarpur (hereinafter referred to as SSE(Loco)) for performing the work of Fuel Checker / Fuel Helper as casual workers (non-contractual). They rendered work under the Indian Railways on fixed pay for more than six years and in expectation to become permanent workers in the Indian Railways on fixed pay in terms with Railway Circular No. E/NG/II-71 CL.46 dated 08.06.1981. It is inter-alia stated that the aforesaid workmen were engaged against posts which became vacant due to death or retirement of the permanent railway personnel / employees. The workmen were verbally engaged at a monthly wage of Rs. 6,000/- (Rupees six thousand only) on shifting duties. The payments were made in cash by Opposite Party No. 3. It is the further case of the workmen that Parash Balmiki was employed under Northeast Frontier Railway (hereinafter referred to as N.F. Railway) since July, 2016 and Movement Pass was issued to him in January, 2020. Krishna Chandra Ghosh joined his service in January, 2018 and Movement Pass was issued to him in April, 2020. Pintu Chandra Das joined his service in May, 2016 and Movement Pass was issued to him in July, 2020. Sumit Chandra Dey joined his service in April, 2016 and Movement Pass was issued to him in March, 2020. Bapan Stephen joined his service in May, 2016 and Movement Pass was issued to him in April, 2020. The said workmen were terminated from their service on 03.08.2021 without notice. The terminated workmen have no employment at present and prayed for reinstatement in service with full back wages fixed for casual workers by the Railway Board and Rs. 1,25,000/- (Rupees one lakh twenty-five thousand only) as cost of litigation.

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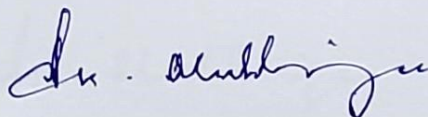
**Presiding Officer/Link Officer,  
CGIT-Cum-Labour Court, Guwahati**



3. After service of Notice Mr. Tamal Sengupta, SSE(Loco) appeared as OP No. 3. In his written statement filed on 09.12.2022 he has contended that he is not a necessary party in the proceeding and the Industrial Dispute is bad in law due to mis-joinder of party. In respect of the claim made by the workmen, OP No. 3 has denied that the workmen were deployed in shift duties under N. F Railway for several years. It is the case of OP No. 3 that he joined as Senior Section Engineer (Loco), N. F. Railway, Badarpur in the month of January, 2020 and there is no record in their office pertaining to the claim of the workmen that they were engaged as Fuel Checker / Fuel Helper as casual worker on a consolidated pay of Rs. 6,000/- per month at various times. Management also denied that the workmen had worked in the post of Fuel Checker / Fuel Helper for more than six years and was not aware about any Circular of the Indian Railways for converting them as permanent employees. It is further denied that the workmen were deployed against vacant posts on the death and retirement of permanent railway employees or were paid at the rate of Rs.6,000/- per month as wages. The specific case of the management is that during the lockdown due to COVID-19, to meet temporary contingency, entry passes were issued to the petitioners for maintaining public utility service of railway operational. It is denied that the workmen were employed on a regular basis, as such their claim against retrenchment is unsustainable. OP No. 3 stated that he is not vested with the authority to appoint any Fuel Checker / Fuel Helper as claimed by the petitioners and he denied that the petitioners were terminated from employment of the Railway. The management representative prayed for striking down his name as opposite party in this case.

4. Several representations were made by the workmen for urgent hearing and the case was specially fixed on 19.09.2024 for evidence of workmen and

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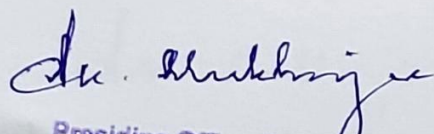


**Presiding Officer/Link Officer,**  
CGIT-Cum-Labour Court, Guwahati



management witnesses and hearing of argument. Parash Balmiki filed an affidavit-in-chief on behalf of all the petitioners along with some documents which have been marked as Exhibit -1 to 1/6. In the affidavit-in-chief it is stated that in the conciliation proceeding the Assistant Labour Commissioner (Central), Silchar, recorded that Mr. T. Sengupta, SSE(Loco) had stated that there was a shortage of Fuel Checker / Fuel Helper and since no staff were deputed there was a compulsion to engage worker on daily wages to run the train service and workers were hired only on a short-term basis as a daily wage earner. In Paragraph - 5 it is stated that the Identity Cards in the name of the petitioners appeared to have been issued by the contractor firm but no such contractor firm had engaged them or paid them any wages. It is inter-alia stated that the petitioners were terminated by Mr. Tamal Sengupta, SSE(Loco) on and from 03.08.2021. In his evidence-in-chief the witness stated that passes issued to them were prepared by Mr. Tamal Sengupta, SSE(Loco) for the purpose of entry in the Railway premises. Copies of the passes have been marked as Exhibit - 1 series and one essential service pass has been marked as Exhibit - 1/6. He further stated that all five of them are Fuel Checkers of Railway Engine and then went on to say that they were helpers to Fuel Checkers and that except Krishna Chandra Ghosh, who worked as a helper from 2018, all of them have worked for N. F. Railway from 2016 and received consolidated pay of Rs. 6,000/- per month. The witness stated that SSE(Loco) made payment of consolidated wages per month in cash and received their signatures on the Receipt Register. It is stated that no Notice was served upon them for discontinuation of job for which they raised Industrial Dispute at Silchar and thereafter this Reference has been made. None appeared for the Divisional Railway Manager, N. F. Railway, Lumding Division to cross-examine the witness. The SSE(Loco) was represented by Mr. Deepjyoti Das, learned advocate but declined to cross-examine the workmen witness on the plea that he has filed an

(Contd. Page - 6)

  
Presiding Officer/Link Officer,  
CGIT-Cum-Labour Court, Guwahati



application for striking down the name of Tamal Sengupta as opposite party no.3.

5. The short question for consideration is whether the termination of five non-contractual workers is legal and justified? If not, to what relief the terminated / retrenched workmen are entitled.

6. Though the case was fixed up for evidence and hearing of argument on 19.09.2024, after adducing evidence by Parash Balmiki on behalf of the workmen the witness was not cross-examined on behalf of the management of N. F. Railway. No evidence was adduced on behalf of the management of N. F. Railway and no argument was advanced on behalf of any of the parties.

7. Under the given situation it is necessary for this Tribunal to consider the pleadings of the parties and the evidence on record. The Reference has been made by the Government of India through Deputy Central Labour Commissioner (Central), Guwahati, wherein the parties to the dispute have been mentioned in the Notice. There is no scope of the Tribunal to go beyond the order of Reference and strike down any of the parties. The Tribunal is vested with the jurisdiction only to consider the question referred to it and it would not be legally prudent to transcend the dispute referred. In the claim statement the workmen have stated that they have been working under the management No. 3 for more than 6 years in the post of Fuel Checker / Fuel Helper as casual worker (non-contractual) at a consolidated monthly pay of Rs. 6,000/- and shifting duties were allotted to them verbally. It is an admitted position which may be gathered from Paragraph - 5 of the claim statement that no order of employment was ever issued to them. They were only provided working passes from their resident to work place during the pandemic period of COVID-19 lockdown. In their evidence-in-chief respective date

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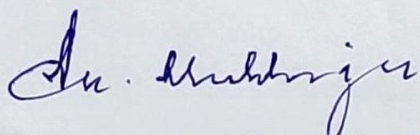
Presiding Officer/Link Officer,  
CGIT-Cum-Labour Court, Guwahati



of appointment of the five aggrieved workmen have not been sated. The witness failed to provide any document to substantiate the claim that Rs. 6,000/- was paid to them by the management of N. F. Railway. Pleading of workman is absolute silence regarding performance of continuous service for 240 days in a year by the workmen before their alleged date of termination on 03.08.2021.

8. On perusal of Exhibit W-1, 1/1, 1/2, 1/3, 1/4, 1/5 and 1/6, it appears that Movement Pass were issued to the workmen involved as a Fuel Checker / Fuel Helper, Fueling Point / Helper at BB Loco Wing to perform their duties. The passes were issued on various dates from 30.03.2020 to 14.05.2021. It may be gathered from the pleadings of both the parties that the passes were issued to enable the petitioners to attend the emergency works at the Railway Station Yard at Badarpur during the COVID-19 period. There is no evidence on record to establish that the workmen performed continuous work for over six years or any particular year under the N. F. Railway. There is no order of appointment, placement, disclosing any regular nature of work. Though the management has not come forward to refute the case of the workmen about their engagement at the Railway Loco Yard to carry out the work of Fuel Helper, the pleading and evidence of the workmen are found silent about performing continuous service by them under the N. F. Railway. The petitioners who had worked as Fuel Checker / Fuel Helper therefore were engaged as daily wage casual labours. There is no evidence on record that they have been engaged against any sanctioned post of the Railway. There is no evidence to prove that the attendance of the workmen was being recorded in the office of the N.F. Railway, Badarpur. Discontinuation of work of the petitioners therefore does not give rise to any right of retrenched workmen under Section 25-F of the Industrial Disputes Act, 1947.

(Contd. Page – 8)



**Presiding Officer/Link Officer,  
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9. Section 25-F of the Industrial Disputes Act, 1947 lays down the conditions precedent to retrenchment of workmen. The provision may be reproduced as follows :

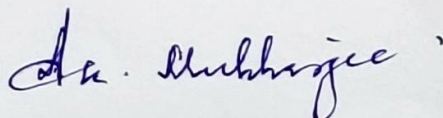
*" 25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*

- (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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette. "*

In the instant case the petitioners have not made any assertion in their pleading that they have rendered continuous work, not less than one year under the employer. Therefore, discontinuation of work of such casual daily wage labour does not create any right of retrenchment benefit or compensation in their favour. Though the management of N.F. Railway has not contested the case by adducing evidence, the petitioners seeking reinstatement and litigation cost are bound to prove their case by adducing positive evidence which is missing.

10. In my considered view the petitioners have miserably failed to establish that they had been continuously engaged by the N.F. Railway or any legal right exists

(Contd. Page - 9)



**Presiding Officer/Link Officer,  
CGIT-Cum-Labour Court, Guwahati**



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in their favour for the purpose of their reinstatement in service or to receive any retrenchment benefit / compensation. In view of my findings, I hold that the petitioners are not entitled to any relief in this case and the Industrial Dispute is dismissed ex-parte against the OP No. 1 and 2 and on contest against OP No. 3.

Hence,

**ORDERED**

that the petitioners are not entitled to any relief of reinstatement, retrenchment compensation or litigation cost. The Industrial Dispute is dismissed ex-parte against the OP No. 1 and 2 and on contest against OP No. 3. Let an Award be drawn up in the light of the above discussion. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.



*Ananda Kumar Mukherjee*  
(ANANDA KUMAR MUKHERJEE)  
Presiding Officer / Link Officer,  
C.G.I.T-cum-L.C., Guwahati.  
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