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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 983/2002

New Delhi, this the 11th day of February, 2003

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri Hans Raj,
S/o Shri Mehar Singh,
Bungalow Khallasi,
Under Dy. Chief Electrical Engineer (C),
Shivaji Bridge, Northern Rly.,
New Delhi

Applicant

(By Advocate : Shri B.S. Mainee)

versus

Union of India, through

1. The General Manager,
Northern Railway,,
Baroda House, New Delhi
2. The Chief Administrative Officer (Constr.)
Northern Railway,
Kashmiri Gate,
Delhi
3. The Chief Electrical Engineer (C)
Northern Railway,
Tilak Bridge, New Delhi.
4. Shri Dinesh Chandra,
Dy. Chief Electrical Engineer (C),
Survey, Northern Railway,
Shivaji Bridge,
New Delhi

Respondents

(By Advocate : None)

O R D E R

As none has appeared on behalf of the respondents even on the second call, I proceeded to dispose of the present OA in terms of the provisions of rule 16 of the CAT (Procedure) Rules, 1987

2. Applicant impugns termination order dated 02.09.2000 and has sought reinstatement with all consequential benefits.

3. Applicant was appointed as a Bungalow Khallasi on 24.8.1998 and was deputed to work at the residence of one Shri Deepak Chandra. On his transfer, applicant was also transferred along with the officer. Despite transfer from Tilak Bridge to Shivaji Bridge, applicant continued to work with Shri Deepak Chandra.

4. Applicant approached this Court in OA No. 1768/2000 and after hearing both the parties, by an order dated 10.8.2001 the OA was disposed of with a direction to the respondents to treat the service of the order of termination dated 02.09.2000 as on 10.08.2001.

5. Applicant preferred an appeal against the order of termination. As no response has forth-come on the said appeal for six months, present OA has been filed.

6. Applicant contended that he was appointed on 24.8.1998 as a Bungalow Khallasi. He acquired temporary status on completion of four months and has relied upon the decision of the apex Court in Union of India vs. Basant Lal (SLJ 1992 (1) SC 190). It is contended that on acquirement of temporary status, the temporary status holders are entitled to all the rights and privileges as admissible to regular employees in view of the decision of the apex Court in Ram Kumar & Ors vs. Union of India (SLJ 1989 (1) SC 101). As on merit, it is contended that the applicant's services have been arbitrarily terminated on the alleged ground of mis-behaviour with the family of Shri Deepak Chandra.

with whom he was attached, to which he allegedly tendered a written apology on 10.08.2000, which is fabricated. Applicant was forced to submit written apology and having no option but to comply with the directions of Mrs. Deepak Chandra. The allegations levelled against him are itself arbitrary and since he has tendered written apolog, there was no occasion to have absconded from work. In this back-drop, it is stated that if a mis-conduct is levelled, in view of the applicant's temporary status, proceedings under Railway Servants (D & A) Rules, 1968 were to be resorted to.

7. By referring to the Full Bench decision of the Tribunal in the case of Shyam Sunder vs Union of India, it is contended that the same is not applicable because applicant has acquired temporary status on completion of 120 days and as per rule 123 of I.R.E. Code nothing inconsistent can be framed a rule. By further referring to rule 1515 of IREM, it is stated that a substitute will acquire temporary status after four months of service.

8. The applicant has lastly contended that the order of termination on the ground of misconduct and mis-behaviour without following disciplinary proceedings/issuing show cause note, it is against the principles of natural justice. The same is not sustainable in law and is also against law by the decisions of the apex Court in the cases of Harbal Singh vs. State of U.P. (ATR 1988 (1) 77, V.P. Ahuia

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vs. State of Punjab (SLJ 2001 (1) SC 140), Prem Chand Gupta vs. M.C.D. (ATJ 1998 (1) 146.

9. On the other hand, respondents have strongly rebutted the contentions of the applicant and stated that Bungalow Peons are neither casual labours nor substitute Khallasis, but are appointed on contract. At the time of appointment as per the terms and conditions if their performance is found unsatisfactory and if these Bungalow Peons are found unwilling to work, their services are liable to be terminated even without show cause notice.

10. Applicant was appointed as a substitute Bungalow Peon/Khallasi. He had accepted the terms and conditions of appointment. In the earlier OA, the applicant's termination order was treated as issued on 10.08.2001 and his representation submitted has been considered and rejected through a speaking order on 23.5.2002.

11. On merits, it is contended that as held by the Full Bench of the Tribunal in OA No. 896/1995 in the case of Shyam Sunder vs. Union of India even after conferment of temporary status, services of Bungalow Peons can be terminated if their performance has not been found satisfactory without holding an enquiry. In this back-drop, it is stated that applicant was working as Bungalow Khallasi at the residence of one Shri Deepak Chandra. His allegations of extraction of half of the salary and threatening to remove him from

service have been found false. Insofar as his performance is concerned, he was warned several times in the past. His work was slow and was lethargic. Applicant on 27.7.2000 mis-behaved with all the family members, used unparliamentary language and he voluntarily admitted his fault in his own writing as to the mis-behaviour and thereafter he absconded from duty and had not turned back. His contention that he was forced to sign the paper is not correct. The performance of the applicant has been found unsatisfactory. He was rightly terminated for which no enquiry or any opportunity is required to be given in view of the Full Bench decision which has been followed in OA 1781/2001 (Iek Narayan Vs. Union of India). The Division Bench of this Court in OA 2941/1997 has upheld the termination on unsatisfactory performance. It is stated that the termination of the applicant is as per the terms and conditions on the ground of his unsatisfactory performance.

12. I have carefully considered the pleadings on record. Full Bench of this Tribunal in Shyam Sunder's case (supra) held as follows:-

"6. Substitute Emergency Peons are also known as Bungalow Peons/Bungalow Khallasis, and the question whether

i) bungalow peons in Railways were Railway employees or not.

ii) their services were purely on contractual and they could be discharged in terms of the contract.

iii) upon their putting in 120 days continued service, they acquired the status of temporary employee or not, and if so, whether upon acquiring such status, their

services could be dispensed with for unsatisfactory performance only after conducting a departmental enquiry was referred to CAT Full (Principal) Bench in OA No. 896/95 Shyam Sunder Vs. UOI & Ors. and connected cases. The Full Bench in its order dated 12.2.99 answered the reference as under

i)&ii) Bungalow Peons/Khallasis in Railways were not railway employees, and their services being purely contractual in nature could be terminated at any time in terms of their contract so long as they did not acquire temporary status.

iii) As a general principle it could not be laid down that after putting in 120 days continuous service, a Bungalow Peon/Khallasi acquired temporary status. He acquired temporary status on completion of such period of temporary service as may be prescribed by the GM of the Railways under which he worked and which was current on the date of his employment as a Bungalow Peon/Khallasi. In the absence of any such rule or instruction, the general instructions or rule in that regard like the one given under Paragraph 1515 of the IREM issued or framed by the Railway Board and current on the date of employment may determine the period of his continuous service for conferment of temporary status. Even after conferment of temporary status by a Bungalow Peons/Khallasi, his services could be terminated on the ground of unsatisfactory work without holding a DE, and termination of the service of a substitute Bungalow Peon/ Khallasi who had acquired temporary status was not bad or illegal merely for want of notice before termination."

13. The aforesaid ratio has been followed by a Division Bench in OA 1589/1998 decided on 21/3/2001 in the case of Manoj Kumar Poddar vs. Union of India. If one has regard to the aforesaid ratio which is binding on me even after acquirement of temporary status and completion of 120 days on the ground of unsatisfactory work, services of a Bungalow Khallasi can be terminated even without holding a DE. Moreover, a notice of one month in lieu of salary has already been served on the applicant.

14. The ratio cited by the learned counsel of the applicant that the order is punitive cannot be countenanced in view of the decision of the apex Court in Dipti Prakash Banerjee vs. S.N. Bose National Centre for Basic Sciences, Calcutta & Others (JT 1999 (1) SC 396) wherein it is held that if findings were arrived at in enquiry so as to mis-conduct, behind the back of the Govt. servant, or the Department does not want to proceed further but on general performance does not want to keep the employee, the consideration can only be motive and order of termination is simple.

15. From the record, I find that applicant's performance was not satisfactory and he was warned several times in the past. Moreover, his employer has complained about his erratic behaviour where he has mis-behaved with the family members and also used unparliamentary language. Applicant himself has admitted his fault which is in his own writing and does not require any further probe. No material has been brought on record to establish that the same has been either taken forcibly or under threat. Moreover, subsequent conduct of applicant of not reporting to duty and his act of absconding from duty clearly shows that he was not interested in the performance of his duties.

16. As per the terms and conditions, to which he has agreed to by signing the declaration, that if his performance is unsatisfactory or he is unwilling to work, termination resorted to without holding an

enquiry/issuing notice is a simple termination which does not attract Article 311 of the Constitution of India. The decisions cited by the applicant are distinguishable and would not apply to the facts and circumstances of the present case.

17. For the foregoing reasons, the order passed by the respondents do not suffer from any legal infirmity and is accordingly upheld. The OA is found to be bereft of merit and is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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