

8

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1468/2002

New Delhi this the 24th day of January, 2003

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

Hukum Singh S/O Kanchan Singh,
R/O A-1/481 Nand Nagri,
Shahdara, Delhi-93.

... Applicant

(By Advocate Shri S.K.Sinha)

-Versus-

1. Union of India through
Secretary, Government of India,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Director General,
Research Designs & Standards Organisation,
Government of India,
Ministry of Railways,
Lucknow-226011.

... Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R

Applicant impugns determination resorted to by the respondents by an order dated 15.1.2002 and has sought direction to re-instate him with all consequential benefits and further direction to count his seniority for change of category and regularisation against Group 'D' post.

2. Applicant was engaged as Telephone Attendant-cum-Dak Khalasi (TADK) on 27.9.99 and her services were terminated on the ground of unsatisfactory performance of 16.12.99. Applicant was engaged as fresh face bungalow khalasi to OSD/Electrical w.e.f. 2.5.2000 and was accorded temporary status on 30.9.2000. Consequent

upon transfer of one J.K.D. Garg from Railway Board to Lucknow, applicant was also transferred and worked with him till the retirement of Sh. Garg upto 30.4.2002.

3. After retirement respondents have made efforts to adjust applicant on a vacancy of TADK under Senior ED/Signal and Senior ED/SE, but these officers after interview have not found him suitable and have refused to employ him. A proposal has been made to the competent authority to change the category of applicant but on his record and other factors and as one of the posts was down grade, resulting in abolition of TADK, his services have been dispensed with, giving rise to the present OA.

4. Shri S.K. Sinha, learned counsel appearing for applicant contended that after accord of temporary status on completion of 120 days applicant is to be treated at par with temporary Railway servants and all the benefits attached to temporary post are to be accorded and his termination has been resorted to without issuance of a show cause notice and opportunity. By referring to para 1501 of IREM-I it is contended that a temporary servant, inter alia, includes bungalow khalsi and as per para 1515 substitutes are also to be accorded all the rights and privileges as admissible to temporary railway employees from time to time. Relying on a decision of the Single Bench in OA-1192/1999 - Rajeshwar Mandal v. Union of India & Anr., decided on 30.6.2000 it is contended that termination has been set aside for non-issuance of show cause notice to identically situated TADK. Further Sh. Sinha contended that the Full Bench decision in Shyam Sunder v. Union of India & Ors. (OA No.896/95 & connected matters) decided on 12.2.1999 is per incuriam of PS

10
No.11506/97 issued by the General Manager, according to which bungalow peons who have been conferred temporary status on completion of 120 days are to be provided with all facilities as to other temporary staff/substitutes and are also to be considered for absorption and the respondents admittedly accepted the prospectivity of this circular. According to him Full Bench decision is not applicable in this case as statutory provisions were not considered. Further, it is contended that one junior to applicant Pradeep Kumar has been continued and now adjusted amounts to hostile discrimination under Articles 14 and 16 of the Constitution of India.

5. In so far as adjustment of applicant on other engagement is concerned, it is stated that in absence of any material regarding unsatisfactory performance of applicant, as applicant had worked with Mr. Garg and his services have been observed to be above par, action of the respondents is not legally sustainable. After retirement of Garg applicant has been posted in office for other purposes as well, as such the termination is punitive and is liable to be set aside.

6. On the other hand, respondents' counsel Sh. R.L. Dhawan denied the contentions and by referring to the Full Bench in OA-896/1995 (supra) contended that a substitute bungalow khalasi has been observed to be in service on purely contractual basis and are liable to be terminated at any time till they acquire temporary status. Apart from it, even after 120 days continuous work a bungalow khalasi does not acquire temporary status and even after acquisition of same, his services are liable to be terminated on the ground of unsatisfactory work without

holding an enquiry. In so far notice pay is concerned, the Full Bench reference has observed it to be beyond scope and jurisdiction of the Tribunal. According to him, as the decision in Raieshwar Mandal's case (supra) is per incuriam of the Full Bench the same is not binding and Full Bench decision (supra) holds the field, according to which applicant has no right or valid claim.

7. Furthermore, relying upon the decision of a coordinate Bench in OA-1781/2001 - Tek Narain v. Union of India & Anr. decided on 16.4.2002 it is contended that in a similar situation relying upon Full Bench the claim of applicant therein has been rejected.

8. At the outset, Shri Dhawan stated that applicant has not come with clean hands and has suppressed the fact of his being terminated due to unsatisfactory performance on 16.12.99. According to him applicant was adjusted and engaged afresh bungalow khalasi to OSD (Electrical) w.e.f. 2.5.2000 and was granted temporary status in September, 2000. However, he continued till Sh. Garg retired on 30.4.2001. Thereupon efforts have been made to adjust applicant against another vacancy of TADK but the officers after interview have not found applicant suitable. However, with regard to Scheme of appointment of TADK for change of category before completion of three years as applicant has not completed three years service as TADK, DG, RDSO who was empowered to change the category before three years a proposal has been mooted but was not agreed to by the competent authority, as applicant's performance has not been found suitable. Moreover, one of the posts of Senior ED was downgraded as such the post of ADK was abolished, resulting in termination of applicant.

9. Shri Dhawan further contended that in accordance with terms and conditions of appointment and as per para 301 of IREC-I applicant's services have been dispensed with and Pradeep Kumar, TADK whose category was changed to peon with the approval of competent authority cannot be compared as he has not been made a party and his performance was found above Board to change the category. In this manner, he denies any discrimination under Articles 14 and 16 of the Constitution of India.

10. Shri Dhawan has further relied upon the decision of the Apex Court in State of U.P. v. Kaushal Kishore Shukla, 1991 (2) SLJ 96 to contend that if senior is found unsuitable termination resorted to and keeping the juniors would not be violative of Articles 14 and 16 of the Constitution of India.

11. I have carefully considered the rival contentions of the parties and perused the material on record. In Full Bench decision in Shyam Sunder's case (supra) the following questions of law have been put before the Full Bench:

- "(i) Whether bungalow peons in Railways are Railway employees or not;
- (ii) whether their services are purely contractual and they can be discharged in terms of their contract;
- (iii) whether upon putting in 120 days continuous service they acquire the status of temporary employees or not, and if so whether upon acquiring such status whether their services would be dispensed with for unsatisfactory performance only after conducting a departmental enquiry."

12. The aforesaid questions of law have been answered as follows:

"To sum up, our answers to the questions referred, reframed and framed by us are as follows:

(i) Question No. (i) does not arise as stated in paragraph 3 of this order.

(ii) This question also does not arise for similar reasons given in paragraph-3 of this order.

(iii) (a) No. As a general principle it cannot be laid down that after putting in 120 days' continuous service, a bungalow peon/khalasi acquires temporary status. He acquires temporary status on completion of such a period of continuous service as may be prescribed by the General Manager of the Railway under which he works and which is current on the date of his employment as bungalow peon/khalasi. In the absence of any such rule or instructions from the General Manager, the general instructions or rule in that regard, like one given under paragraph 1515 of the Manual, 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, as discussed in paragraphs 10 and 11 of this order.

(b) Yes. After acquisition of temporary status by a bungalow peon/khalasi his services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry, as discussed in paragraphs 14, 15 and 16 of this order.

(iv) No. The termination of the service of the substitute bungalow peon/khalasi, who has acquired temporary status is not bad or illegal for want of notice before termination. In such a case, he may be entitled to pay for the period of notice in lieu of notice, as discussed in paragraph 17 of this order. The question whether for want of retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947 the termination of the service of a substitute bungalow peon/khalasi who has acquired temporary status is bad or illegal is beyond the scope and jurisdiction of this Tribunal as discussed in paragraphs 19 and 20 of this order."

13. If one has regard to the aforesaid decisions of the Full Bench, which is binding on me, this it been held that even after putting 120 days continuous service and on conferment of temporary status the services

can be terminated on the ground of unsatisfactory work even without holding enquiry and no notice is required. What is required is salary in lieu of the notice but the same cannot be gone into by this Tribunal.

14. Applicant, who was terminated earlier on unsatisfactory performance was engaged by respondents as bungalow khalasi on the terms and conditions which clearly indicate that if the report regarding work is unsatisfactory the respondents can resort to termination. Being a contractual service, as not disputed, and held in Full Bench applicant has no right to continue or stake any claim for regularisation. Moreover, the contention that General Manager issued instructions that on conferment of temporary status after working for 120 days one acquires right as akin to temporary employees with all facilities the same has been taken into consideration by the Full Bench and accordingly a finding has been recorded that even assuming that 120 days confer upon applicant temporary status, service can be dispensed with or terminated on account of unsatisfactory work without holding an enquiry. The services are not held to be bad or illegal for want of notice and what has been made entitled in such cases his pay in lieu of notice, which cannot be gone into by this court. As such the ratio laid down by the Full Bench is clearly applicable to the facts and circumstances of the present case.

15. Applicant's resort to PS of 1997 cannot be of any avail as the same has been considered by the Full Bench and being conscious of this fact reference has been answered.

16. In so far as the plea that juniors have been retained we find from the record that applicant who was engaged with one Garg on his retirement respondents have made efforts to adjust him against another post of TADK and the respondents after holding interview have not found him competent and suitable, as such keeping in view his earlier performance he was terminated. As such he could not be adjusted. Moreover, one TADK post was also abolished due to downgrading of Senior ED post, respondents further made efforts in relaxation of the rules to seek the permission of competent authority to change his category but the same has not been acceded to on the basis of the record of applicant. As such, as he was not found suitable, his services have been dispensed with on account of his performance which has been judged by respondents and on non-availability of post such a termination neither casts upon applicant a stigma nor is punitive.

17. In so far as juniors are concerned, they have been found fit and are continued. In Shukla's case (supra) the Apex Court has clearly laid down that in the event a senior is found unsuitable, retention of junior would not amount to any discrimination under Articles 14 and 16 of the Constitution of India. Moreover, the termination is as per the terms and conditions of his appointment and is a simple order of termination.

18. In this view of the matter I do not find any merit in the OA, which is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

san.