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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1252 of 2001

New Delhi, this the 27th day of August, 2002

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri Harsh Mani Bhardula
S/o Shri Parvi Dutt
Khalasi
under Senior Operating Manager,
Northern Railway,
State Entry Road,
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 Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
- 3.. The Senior Divisional Operating Manager,
Divisional Railway Manager's Office,
State Entry Road,
New Delhi.

-RESPONDENTS

(By Advocate: Shri R.P. Aggarwal)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

In this OA the applicant impugns order dated 18.4.2001 (Annexure A-I) passed by the Divisional Personnel Officer (DPO) whereby the services of the applicant had been terminated in an arbitrary manner without holding any enquiry and without giving any opportunity on the plea that the services of the applicant had not been satisfactory.

- 2.. The applicant alleges that he was working as a Private Servant with Shri D.P. S.Sandhu, Senior

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Divisional Operating Manager, Northern Railway, New Delhi for the last 2 years and after said Shri D.P.S. Sandhu joined Delhi Division as Senior Operating Safety Officer, recommendation was made to the General Manager, Northern Railway for appointing the applicant as Bungalow Khalasi to be attached to the Bungalow of Shri D.P.S. Sandhu vide Annexure A-2. The General Manager granted the permission to appoint the applicant as Bungalow Substitute Khalasi and in pursuance of the sanction of the General Manager, the Divisional Personnel officer, New Delhi issued a notice on 23.4.98 appointing the applicant as Substitute Bungalow Khalasi in grade of Rs.2550-3200 and attached the applicant with Sr.DPO Shri D.P.S. Sandhu for a period of 3 months, unless further extended by the competent authority. It is also submitted that as per the said notice of the DPO dated 23.4.98 it was made clear that the applicant can also work with the next Sr.DOM if he chooses him to continue and if in any eventuality the applicant was found unsuitable and his performance is considered unsatisfactory, his services will be liable to be terminated as per rules. The applicant thus continued to work with Shri Sandhu and he says that his work has been found to be satisfactory. But even after he was appointed as Bungalow Khalasi he was utilised as domestic servant and since Mrs. Sandhu was not satisfied with the work she got annoyed with the applicant over petty matters but still the applicant had been tolerating all these humiliations.

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3.. It is further submitted that the applicant got married in November, 2000 but even then he was humiliated in the presence of his wife. Shri Sandhu was transferred from DRM's office to Headquarters Office and he was succeeded by another officer who was transferred from Moradabad, who brought his own private servant along with him and with a view to get his private servant to be appointed as Bungalow Khalasi, therefore, the DPO had issued the impugned order Annexure A-1 terminating the services of the applicant with immediate effect.

4.. The applicant further submits that he had acquired temporary status so his services could not have been terminated in this manner and he is entitled to the benefits of provisions of Article 311 of the Constitution of India as well as the statutory rules and could not be thrown out unceremoniously.

5.. The applicant's work had always been satisfactory as he had never misbehaved with any officer rather he was on the receiving end. The letter which is annexed as Annexure A-1 are forged letters and have not been given to the applicant about which there is any complaint for unsatisfactory working and unwillingness to work, so it is prayed that the impugned order be quashed and applicant be reinstated in service with all consequential benefits.

6.. The respondents are contesting the OA. The respondents admit that the applicant was appointed as Substitute Bungalow Khalasi on 8.5.98 vide notice dated 30.4.98, Annexure R-1 under Senior Divisional Operating

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Manager with clear instructions in his appointment letter that if in any eventuality he is found unwilling to work as Bungalow Khalasi or is found unsuitable or his performance is considered unsatisfactory, his services will be liable to be dismissed without any notice.

7. It is further stated that Sr.DOM vide his letter dated 4.9.2000 warned him to improve his working failing which necessary action will be taken against him but he did not improve and his working report for the period from September, 2000 to November, 2000 and December, 2000 to February, 2001 was reported to be unsatisfactory and his behaviour was unbecoming of a Government servant, therefore, he is unfit to continue in Government service. Sr.DOM has also issued another warning letter which was acknowledged by the applicant on 2.3.2001, Annexure R-4 for improving his working but without result and it was again reported that his work is unsatisfactory and unfit to continue in service and keeping in view the above note and the judgment of CAT/NDLS given by the Full Bench in OA 896/1995 Shri Shyam Sunder Vs. U.O.I., and Others, the services of the applicant had been terminated vide impugned letter dated 18.4.2001. He has been paid one month's salary in lieu of notice period which has been passed vide order AB No.729 dated 10.5.2001 and C07 No.302121-346 dated 10.5.2001.

8. I have heard the learned counsel for the parties and gone through the records of the case.

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9. The learned counsel for the applicant referred to IREM para 1515 and para 2055 of Volume II and submitted that after working for a period of 120 days Bungalow Khalasis gets a temporary status so his services cannot be terminated without any notice. The counsel for the applicant also submitted that appointment was made by General Manager so the DPO by its order could not terminate the services of the applicant. Counsel for the applicant also submitted that the impugned order is not simplicitor as it is based on the allegation of misconduct so the services could not have been terminated by resorting to removal of employee as if a temporary servant has been removed. In this respect the counsel for the applicant has referred to a number of decisions and submitted that if the impugned order is not a simplicitor one and is based on misconduct then the services cannot be terminated by issuing a simplicitor.

10. But in reply to this the counsel for the respondents has relied upon a Full bench judgment in the case of Shyam Sunder Vs. U.O.I. delivered on 12.2.99 in OA No.896/95 with OA Nos. 1764/1992 and OA 817/94 wherein the casual labourer who had acquired temporary status and had put in 3 years of service should be treated as par with temporary railway servant for the purpose of festival advance/flood advance on the same conditions as are applicable to temporary railway servants for grant of such advance provided they furnish two sureties from permanent railway employees. But in the same Full Bench judgment a reference has also been answered in the affirmative in the following terms "that Bungalow Peon/Khallasi's services can be terminated on

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the ground of unsatisfactory work without holding a departmental enquiry as discussed in paragraphs 14, 15 and 16 of this order". It was further held that the termination of the service of a substitute Bungalow Peon/Khallasi, 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 para 17 of this order. So in view of this clear findings given by the Hon'ble Full Bench, I find that the question of giving notice does not arise. As contended by the learned counsel for the applicant the services of the applicant had been terminated verbally and he had not been made payment of one month's salary in lieu of notice as pleaded by the respondents.


11. The next contention raised by the applicant is that the impugned order is not simplicitor as based on misconduct. That contention is also against the law declared by the Full Bench wherein the court had observed that the services of a Bungalow Khallasi can be terminated on the ground of unsatisfactory work without holding a departmental enquiry. The impugned order clearly shows that the service of the applicant in this case has also been terminated as his performance has also been found to be unsatisfactory as reported. The documents on record, as filed by the respondents, would also go to show that the department has been warning the applicant that his work has not been found satisfactory and as the applicant did not improve his performance and did not pay any heed to the same, so he was removed from service.

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12. In view of the above, I am of the considered opinion that there is no violation in the impugned order and the services of the applicant had been terminated in accordance with the law applicable to the case of Bungalow Khallasi.

13. No other contention has been raised before me.

14. In view of the above, OA is without any merits and the same is dismissed.


(KULDIP SINGH)
MEMBER (JUDL)

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