

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1374/2001

New Delhi this the 28th day of November, 2001.

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

Dinesh Chand Chaudhary,
S/o Shri Ram Avtar,
R/o Block No.246/5B, Railway Flats,
Panchkuiya Road,
New Delhi-110001.

-Applicant

(By Advocate Shri Anis Suhrawardy)

-Versus-

1. Union of India through its
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Chief Personnel Officer,
Northern Railway,
Baroda House,
New Delhi.
3. Delhi Metro Rail Corporation Limited,
(A joint Venture of Govt. of India),
NBCC Place, Pragati Vihar,
Bhishm Pitamah Marg,
New Delhi.

-Respondents

(Respondents 1 & 2 by Advocate Shri Rajinder Khatter)

(Respondent 3 by Advocate Shri Pankaj Gupta)

O R D E R

By Mr. Shanker Raju, Member (J):

The applicant has sought quashing of order dated 31.1.2000 and 30.1.2000, wherein he has been treated as on contractual appointment and the period for engagement has been extended till 12.1.2002 and further sought declaration to treat him as Railway servant and extent to him all benefits as admissible to a regular Railway employee.

2. Briefly stated, the applicant was initially appointed as a bungalow peon w.e.f. 16.12.97. He requested the respondents by letter dated 2.3.98 for his transfer to Delhi and work as a bungalow peon. His request was acceded to by an order dated 4.3.98 and he has been

transferred alongwith one Satish Kumar, bungalow peon in the pay scale of Rs. 2550-3200. The applicant has been appointed as Telephone Attendant in the Delhi Metro Rail Corporation (for short, DMRC) for a term of two years. The Railway Board by their letter dated 16.12.97 has intimated that the bungalow peons engaged as substitutes against posts in Railways establishment are entitled to attain temporary status on completion of 120 days service. The name of the applicant has figured in the letter dated 1.4.99 whereby he has been accorded temporary status on completion of 180 days in DMRC. He has been working on a contract basis with R-3 and has sought his regularisation as bungalow khallasi and a status of a regular Government servant.

3. At the outset, the learned counsel for the applicant stated that the status of the applicant is still to be ascertained which is not clear whether he is a bungalow khallasi or on contract basis with the DMRC. In this backdrop it is stated that having made repeated representations for regularisation he has been sent on deputation to DMRC and as such he is entitled for accord of regularisation having attained temporary status as envisaged under the rules and his service cannot be dispensed with, without following the due procedure of law. It is also stated that since he has been transferred on deputation on his request by the Railway Board to work for two years by letter dated 17.6.98 and has been deprived of the benefits. His deputation for two years cannot be treated as on contractual basis. The learned counsel for the applicant Sh. Anis Suhrawardy stated that as the applicant has been accorded temporary status as office peon

he is entitled for all attendant benefits as admissible under the Rules. It is also stated that the DMRC is one of the components of the Railways and having been under the control of the Government he is to be treated for all purposes as a Government servant. The applicant has been appointed in the capacity of a Railway servant and having worked as such cannot be allowed to be treated as a fresh candidate in the DMRC. It is also stated that DMRC is amenable to the jurisdiction of this court and for this purpose the learned counsel for the applicant has placed reliance on a decision of the Apex Court in Vikram Singh v. Union of India, 1991 (4) SCC 34 to contend that as the Indian Railway Conference Association, a body independent of the Government and for all practical purposes functions under the Railway Board the same has been treated to be a part of the Railway and its employees are treated to be the holder of a civil posts. It is stated that DMRC, in these circumstances is amenable to the jurisdiction of this court and having completed 180 days of continuous service the applicant is entitled to be treated as a regular Railway servant and not on contract.

4. The learned counsel for respondents 1 and 2 vehemently opposed the contentions of the applicant and stated that the applicant was appointed as a substitute bungalow peon on 16.12.97 and the person with whom he was attached was transferred to Railway Board and has further transferred to DMRC. The applicant has abandoned his service on 30.7.98 and as a fresh candidate joined DMRC on 14.7.96 at his own. As the lien of the applicant has in the Railways has been terminated and his request for accord of temporary service is rejected. It is stated that the

applicant has not been sent to DMRC on deputation basis and as per PS 10960/95 regarding engagement of bungalow peon on contractual basis the same is extendable from time to time and only on completion of two years continuous service the person is granted temporary status. As per PS No.11506/97 the bungalow peon are engaged as substituted and they are to be accorded temporary status on completion of 120 days of continuous service. However, a certificate of satisfactory service of bungalow peon after three months of his continuous working will be submitted by the concerned officer. As the applicant has left the service he cannot be accorded the benefits claimed for. The learned counsel for the respondents 1 and 2 has further placed reliance on a decision of the Full Bench in OA-896/95 decided on 12.2.99 wherein while dealing with the issue of bungalow khallasi it has been held that even after acquisition of temporary status by bungalow peon his services can be terminated on the ground of unsatisfactory work and the same would not be illegal and the only entitlement is a notice in lieu thereof or salary. Further placing reliance on a decision of the coordinate Bench in OA-1963/2001, Mohd. Masood Alam v. Union of India & Anr. decided on 19.9.2001 after meticulously going into all the relevant provisions regarding bungalow khallasi it has been held that engagement of a substitute bungalow khallasi is on contractual basis and he cannot be regarded as a Railway employee. Further placing reliance on the decision of the Division Bench in OA-2941/97 decided on 9.5.2000 it is contended that the bungalow khallasi has no right to continue in service. It is also stated that the merely because the applicant has been accorded the regular pay scale would not make any difference and the same is

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envisaged in the rules. As the certificate of satisfactory service after three months has not been submitted the applicant cannot be regularised after completion of 120 days. In this backdrop, and further placing reliance on a communication signed by the applicant it is shown that the applicant himself has wished to join DMRC as a fresh candidate w.e.f. 14.7.96 and as such as he himself has abandoned the service and was not terminated there is no question of according him temporary service. It is also stated that by an order dated 2.7.98 it has been communicated by the respondents to DMRC that the applicant cannot be transferred on deputation as a regular Railway employee and as he had been engaged only w.e.f. 16.12.97 he has not completed three years and also yet to be accorded the temporary status.

5. R-3 in MA-1808/2001 has taken the objection that as DMRC is a joint venture of public sector undertaking, in the absence of any notification under Section 14 of the Administrative Tribunals Act, 1985 has no amenability to the jurisdiction of this court and it is also shown by certificate of incorporation issued by the Registrar of Companies to state that it is a limited corporation. It is also stated that as the applicant is working with them on contract basis, he has no right to be regularised and having given up his job with the Railways the appointment of the applicant in DMRC is as a fresh candidate. He has been accorded temporary status after completion of 180 days purely on contract basis for a period of one year and the same has been extended to one

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more year. As such in this backdrop it is stated that the status quo orders passed by this Tribunal on 30.5.2001 be vacated and the OA be dismissed.

6. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view the applicant has no valid or justifiable claim to be treated as a regular Railway employee and he has no right to be accorded the benefits as available to a regular Railway employee. The applicant having been appointed as a bungalow khallasi w.e.f. 16.12.97 has been, on transfer of the officer, brought to Delhi but thereafter one Satish Kumar has joined DMRC and the applicant thereafter abandoned his services and by his communication to the DMRC to the Chief Personnel Officer, Northern Railway, he wished to join as bungalow peon in DMRC as a fresh candidate. In consequence thereof he has been appointed as a Telephone Attendant-cum-Dak Khallasi by DMRC and has not been accorded any temporary status by the official respondents. As a bungalow khallasi the relevant rules do indicate as meticulously dealt with in Masood Alam's case (supra) that on completion of three months service a certificate is to be given by the authorities under whom the khallasi is working. The nature of appointment is contractual and merely because the applicant was accorded a definite scale of pay, which is provided under the rules, would not construe that the applicant was holder of temporary status. It is also stated that the bungalow khallasi has no right to regularised except when he completes three years continuous service which the applicant has failed to complete. The respondents have not terminated the services of the applicant rather he himself

abandoned his services. In this view of the matter he is not even entitled for a notice as envisaged by the decision of the Full Bench (supra). The claim of the applicant for regular appointment by contending that he has been sent on deputation cannot be countenanced and is also not valid and justified. Having appointed afresh with the DMRC and having attained the temporary status on contractual basis and having regard to the fact that there is no control of the Railway Board over the DMRC, which is an independent corporation incorporated under the Companies Act and in absence of any notification under Section 14 ibid, no direction can be issued to R-3 as they are not within the jurisdiction of this Court.

7. As the lien of the applicant has already been terminated from the Railways and having joined DMRC as a fresh candidate, he has no right to continue and to be accorded temporary status and further regularisation.

8. In the result and having failed to establish his right to claim regular status as a Railway servant the OA fails and is dismissed, but without any order as to costs.

9. The interim order passed on 30.5.2001 is vacated.

S. Raju
(Shanker Raju)
Member (J)

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