

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1963/2001

New Delhi, this the 19 day of September, 2001

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri Mohd. Masood Alam,
Shri Shri Gholam Hasnain,
Bungalow Khallasi,
C/o Dy C.E./MRTS
Northern Railway,
Baroda House,
New Delhi *P. S. Malhotra* ... Applicant
(By Advocate : Shri ~~B.S. Mainee~~)

Versus

1. Union of India
Through

The General Manager,
Northern Railway,
Baroda House,
New Delhi

2. The Deputy Chief Engineer/MRTS,
Northern Railway,
Baroda House,
New Delhi ... Respondents
(By Advocate : Shri R.L. Dhawan)

O R D E R

By respondents' notice dated 23.4.2001 (Annexure A-2) the applicant was appointed as substitute Bungalow Khallasi in the pay scale of Rs.2550-3200 to work with Shri Rajesh Arora, Dy. CE/MRTS for a period of three months with an indication that the aforesaid post was likely to remain available for a period of one year. By their letter of 23/27th July, 2001, the respondents have terminated the applicant's services w.e.f. 22.8.2001 after serving one month's notice. Aggrieved by the aforesaid order, the applicant has filed the present

OA.)
dv

(2)

2. I have heard the learned counsel on either side and have perused the material placed on record.

3. The learned counsel appearing in support of the OA has assailed the aforesaid impugned order on several grounds. Firstly, according to him, since the applicant was appointed with the approval of the General Manager, Northern Railway, New Delhi, respondent No.1 herein, his services could not be terminated by the respondent No.2 (Dy. CE/MRTS). The impugned order is bad also because the same has been issued by the respondent No.2 at whose bungalow the applicant used to work and, in the circumstances, the respondent No.2 has been made ~~to~~ judge in his own cause. For this reason also the impugned order cannot be sustained. The impugned order is also malafide as well as arbitrary inasmuch as a show cause notice was not served on the applicant before his services were terminated. According to the learned counsel, since the applicant's services have been terminated on the ground of unsatisfactory work, he was entitled to an opportunity of being heard in accordance with the principles of natural justice. That opportunity having not been given, the respondents have committed a serious breach of the aforesaid principle, thus rendering the impugned order again ~~as~~ bad in law. The learned counsel further submits that since the Bungalow Khallasis are appointed as substitutes against permanent/work charged posts, their services cannot be terminated by putting them on one month's notice, if such termination is sought to be made on the ground of

2

(3)

mis-conduct. In such a situation the applicant, according to the learned counsel, is liable for disciplinary action contemplated under Article 311 of the Constitution. The impugned letter is also bad inasmuch as the same does not spell out the actual mis-conduct nor does it contain the details of warnings, if any, given to the applicant to improve.

4. The learned counsel appearing in support of the OA, by placing reliance on the various provisions made in the Indian Railway Establishment Code Volume-I (IRE Code Volume-I), and the Railway Servants (Discipline & Appeal) Rules, 1968, has vehemently argued that a substitute Bunglow Khallasi is required to be considered as the holder of a civil post in the Railways. For the sake of convenience, the relevant portions relied upon by the learned counsel are reproduced below.

Railway Servants (Disciplinary & Appeal) Rules, 1968

"Rule 2 (e) - Railway servant means a railway servant as defined in clause 43 of rule 103 of Volume-1 of the Indian Railway Establishment Code (5th Edition - 1985)....."

"IRE Code Volume-I (5th edition - 1985) -"

Para 103 (43) - Railway servant means a person who is a member of a service or holds a post under the administrative control of the Railway Board. The term excludes casual labour."

"IREM Volume-I (Revised edition - 1989) -"

Para 1512. Definition. - "substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant

2

being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

5. Further, relying on the following provisions made in the P.S. No. 10960/95 dated January 1995 on the subject of appointment of Substitute Bungalow Khallasises, the learned counsel has also sought to advance the plea that the Bungalow Khallasises are engaged in railway operations and on this basis they are entitled to be treated as railway servants.

P.S. No. 10960/95 dated January, 1995

"Procedure for appointment - On the Railways, Junior Administrative Grade Officers and above are entitled for services of Bungalow Peons at their residence to meet with official work arising out of Railway Operations at their residence also. Bungalow peons are engaged specifically to perform the following duties:-

- i) To carry official files/dak to the Bungalows of the Officers to whom they are attached.
- ii) To attend to official telephone calls at the officers Bungalow.
- iii) To deliver urgent messages to other officers.
- iv) To accompany the officers on tour at short notice.
- v) To carry telegrams in case of accidents.
- vi) To carry papers to officers bungalows and bring them back to the office on the next day.
- vii) Any other item of work as directed by the concerned officer to facilitate and in furtherance of official work.

6. I now proceed to examine the various contentions raised by the learned counsel. I will first take the contention raised with regard to

dv

(5)

substitute bungalow khallasies being treated as railway servants/holders of civil posts under the Railways. The aforesaid provision made in Rule 2 (e) of the Railway Servants (Discipline & Appeal Rules) 1989 read with para 103 (43) of the IRE Code Volume-1 would seem to imply that only that person can be treated as a railway servant, who is a member of a service or holds a civil post under the administrative control of the Railway Board. The various services under the Railways are classified in ~~para~~ ^{paras} 106, 107 and para 108 of the IRE Code Volume-1 and it is clear from a perusal of the provisions made therein that a substitute bungalow khallasi cannot be treated as a member of a service under the Railways. The post of a substitute bungalow Khallasi is also obviously not a post directly under the administrative control of the Railway Board. The definition of a substitute given in para 1512 of the IREM Volume-I reproduced above ~~also~~ implies just this much that a substitute is a person engaged on a regular scale of pay which might be applicable to the post against which he may have been employed for the time being. The matter has been clarified in the same para by laying down that a substitute is appointed against those posts which fall vacant on account of a railway servant proceeding on leave or on account of non-availability of a permanent or temporary railway servant to occupy the post. Thus, a substitute can, by no means, be deemed to have been appointed to such a post. He simply works against a post without being ~~appointed~~ ^{appointed} to it or in it.

A substitute, by the same definition, is called upon

to work against a post which falls vacant due to a railway servant proceeding on leave. Similarly, he is also called upon to work as and when permanent or temporary railway servants are not available for appointment to the posts or in the posts concerned. In the circumstances, in my view, it will be totally incorrect to hold that a substitute can be deemed to hold a post or else can be regarded as having been appointed to a post or in the post. The learned counsel appearing in support of the respondents has drawn my attention in this very context to the further provisions made in paragraphs 1514 and 1515 of the IREM Volume-I (Revised Edition - 1989). The aforesaid paragraphs read as under.

"Para-1514 : Emoluments payable to the Substitutes : Substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy"

"Para-1515 : Rights and privileges admissible to the Substitutes - Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service."

"Note : The conferment of temporary status on the substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts."

7. On a close reading of the aforesaid provisions, it is not difficult to conclude that substitutes are the ones who become entitled to avail of all the rights and privileges admissible to

2

temporary railway servants on completion of four months continuous service, without actually becoming a railway servant, regular or temporary. Even after temporary status has been conferred on the substitutes they are still to be absorbed/appointed to railway service which can take place only on the basis of their own position in the select list or alternatively if they have been selected for appointment to regular railway posts in the prescribed manner. The fact that they are entitled to be paid according to the regular scales of pay admissible to the posts against which they might, for the time being, be working is by no means sufficient to hold that the substitutes are holders of a regular post. Like-wise even though a substitute on attainment of temporary status becomes entitled to the rights and privileges admissible to temporary railway servants, ^{the same, &} will not lead to the conclusion that the substitute stands appointed to or in a regular post or that he holds a regular post.

8. The learned counsel appearing on behalf of the respondents has further argued that the requisite provisions governing the appointments of substitute Bungalow Khallasis are available only in P.S. No. 10960/95 dated January 1995 as modified by P.S. No. 11506/97 dated 31.12.97, and not anywhere else in the IRE Code or the IREM in the manner relied upon by the learned counsel for the applicant. That being so, according to him, the engagement of a Bungalow Khallasi is made purely on contractual basis and accordingly his services can be terminated on the

d

(8)

ground of unsatisfactory performance in terms of the aforesaid P.Ss. After initial appointment for a period of three months, the services of a substitute Bungalow Khallasi are extended in different spells of three months each on receipt of satisfactory working report from the officer concerned. The learned counsel has drawn my attention also to the specific provisions made in the notice dated 23rd April, 2001 by which the applicant was appointed as a substitute Bungalow Khallasi. The same unmistakably provides that the applicant's services can be extended further beyond the initial period of three months only upon his services being found to be satisfactory during the quarter, and so on. The same also equally clearly provides that on his services being found to be unsatisfactory, he will be liable to be removed without prior notice. The learned counsel has next proceeded to draw my attention to the declaration made by the applicant as part of his application for appointment as a substitute Bungalow Khallasi (Annexure-B of PS No. 10960/95). The aforesaid declaration is evidently to the same effect as the aforesaid provisions made in the letter of appointment. Thus, in short, according to the learned counsel, the applicant is prevented from raising ^{grievance} ~~grievance~~ if in the event of his performance being found unsatisfactory his services are terminated by the respondents. The impugned letter of 23/27th July, 2001 has, in the circumstances, been ^y ~~be~~ correctly issued keeping in view the unsatisfactory performance of duties by the applicant.)

9. The learned counsel appearing for the respondents has next relied on the judgement rendered by the Full Bench of this Tribunal on 12 February, 1999 in OA No. 896/1995 connected with OAs No. 1764/1992 and ~~00~~ No. 817/1994. Amongst others, the following questions were posed for an answer by the Full Bench...

"Whether after acquisition of temporary status by a Bungalow Peon/Khallasi, his services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry?"

10. After consideration, the aforesaid question was answered by the Full Bench in the affirmative by holding as under.

"After acquisition of temporary status by a Bungalow Peon/Khallasi, his services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry....."

11. The following further questions were also posed before the Full Bench in the aforesaid case.

- "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."

The aforesaid questions were answered by the Full Bench in the following terms:

- "I. Question No. 1 does not arise as stated in paragraph 3 of this OA.
- II. This question also does not arise for similar reasons given in paragraph 3 of this order."

d

The aforesaid paragraph 3 of the order of the Full Bench dated 12th February, 1999 provides as under:

"3. At the outset, we may say that the first two questions of law do not arise in any of the cases referred to because the learned counsel for the parties conceded that the Bungalow Peons/Khallasi in the railways were not railway employees and that 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."

10. In the present case too the applicant not having completed 120 days of service as substitute Bungalow Khallasi cannot be said to have acquired temporary status. In this view of the matter, in terms of the findings of the Full Bench recorded above, the Bungalow Khallasis are not to be regarded as railway employees and their services are subject to termination at any time in accordance with the term of the contract. For these reasons, there is no option before this Tribunal but to hold that the applicant is not a railway employee/servant nor does he hold a civil post under the railways and further that his services are to be determined wholly in accordance with the terms of the contract awarded to and accepted by him. For the very same reasons, I am unable to persuade myself to accept the plea advanced by the applicant that his services could not be terminated by the respondent No.2 (Dy. C.E./MTRS). The impugned letter dated 23/27th July, 2001 merely notifies that the applicant's service contract has been determined in terms of the conditions stipulated in the letter of offer dated 23 April, 2000. Since the applicant was

2

(11)

engaged to work with the Dy. C.E/MRTS and ~~was~~ ^{2 was} required to work satisfactorily during the period of contract, it is immaterial that the impugned letter of 23/27 July, 2001 has been issued over the signatures of the Dy. C.E/MRTS. The impugned letter is, by no means, a letter or an order terminating the services of a regular and properly appointed railway servant. As stated, the same merely notifies the termination of a contract mutually accepted by the parties. In view of the aforesaid findings recorded by the Full Bench that the applicant appointed as a substitute Bungalow Khallasi on contractual basis cannot be regarded as railway employee and his services were liable to be terminated in accordance with the terms and conditions of the contract, I do not consider it necessary to go into the various other questions raised in this OA on behalf of the applicant.

11. For all the reasons mentioned in the preceding paragraphs, the OA is found to be devoid of merit. The same is, therefore, dismissed. The parties will bear their own costs.



(S.A.T. RIZVI)
MEMBER (A)

/pkr/

13