

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.241/2001

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New Delhi, this the 12th day of October, 2001

Shri Sukumar Mandal
s/o Shri Gannder Mandal
304/1-A, Railway Colony
Chelmsford Road
New Delhi. ... Applicant

(By Advocate: Shri P.S.Mahendru)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Chief Administrativ Officeer (Const.)
Hd. Qrs. Office
Northern Railway
Kashmere Gate
Delhi.
3. The Deputy Chief Engineer (C)/Design
Office of the CAO/C
Northern Railway
Kashmere Gate
Delhi.
4. The Assistant Personnel Officr (Const.)
Office of the CAO/C
Northern Railway
Kashmere Gate
Delhi. ... Respondents

(By Advocate: Shri P.M.Ahlawat)

O R D E R

By Shanker Raju, Member (J):

The grievance of the applicant is directed against an order passed on 15.1.2001 wherein on account of unsatisfactory performance, the services of the applicant have been dispensed with after giving him a notice of one month by letter dated 11.12.2000.

The applicant seeks quashing of these orders.

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2. Briefly stated that the applicant was appointed as Casual Labour/Bungalow Khallasi on 7.4.1998 and had worked continuously. The applicant was attached to one Shri Sanjay Aggarwal, Deputy CE/II/JAT, Respondent No.3, and who has been transferred to Delhi, in March/April, 2000 along with the applicant. The performance of the applicant has not been found satisfactory on account of his absence, he has been issued a notice of discharge on 11.12.2000 and thereafter on 15.1.2001 his services have been dispensed with.

(3)

3. The learned counsel for the applicant contended that on 18.10.2000, the applicant fell sick and admitted in Central Hospital of Northern Railway till 1.11.2000 and was issued fitness certificate. The contention of the applicant is that having worked continuously for more than 120 days, he automatically acquires temporary status which entitles him for extension of the facilities as provided to a regular railway employee thus he is amenable to the Railway Servant (Discipline & Appeal) Rules, 1968. It is stated that before terminating his services no show cause notice was issued to him and principles of natural justice have not been observed. It is also stated that no disciplinary proceedings were taken against him before dispensing with his services. It is also stated that on acquiring temporary status some rights are conferred upon the Bungalow Khallasi which interalia includes duty passes for travelling as well as facility of medical treatment and privilege passes which are only admissible to a regular Railway servant. The learned counsel for the applicant has

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annexed those documents along with the rejoinder. Further the contention of the learned counsel for the applicant is that there was nothing adverse against the applicant except his sickness which was under the compelling circumstances. Placing reliance on a decision of Apex Court in State of U.P Vs. Chandra Prakash Pandey and Ors., JT 2001(4) SC 145, it is stated that the applicants are holder of civil post and as such are to be treated as regular incumbents in Railways and their services cannot be dispensed with without following the due process of law as envisaged under the Railway Servants (Discipline & Appeal) Rules ibid. Further placing reliance on the procedure of appointment of Bungalow Khallasi, it is stated that they are performing various duties including attending office, carrying files/papers to Bungalow and they can get temporary status after putting them 120 days uninterrupted service. It is also stated that the orders of termination have not been issued by a competent authority. It is stated that the Deputy General Manager is the appointing authority whereas the applicant has been terminated by an Assistant Personnel Officer. As regards the Full Bench decision in Prhallad Prasad Vs. UOI, OA 896/95, decided on 12.2.1999, it is stated that therein it is on the consent of both the parties without taking into consideration the provisions of Section (2)(34) of the Railway Act, Full Bench has observed that the Tribunal has no jurisdiction to deal with the cases of Bungalow Khallasis and the decision is per incurium of the Rules and regulations and in view of the decision of the Apex Court supra, the applicant has a regular status and his termination is illegal.

(A)



4. Strongly rubutting the contentions of the applicant, the learned counsel for the respondents states that engagement of the applicant was of purely temporary and on account of unsatisfactory performance his services have been dispensed with in accordance with his terms and conditions to which the applicant has agreed to at the time of his engagement. It is also stated that the applicant has represented against termination order but his services have been terminated on 15.1.2001. It is also stated that continuity of Bungalow Khallasi is to be considered after every three months and to be approved on receipt of the satisfactory work report and his services are liable to be terminated at any time if the same is found unsatisfactory. Placing reliance on a decision of the Full Bench in Prahalad Prasad's case supra, it is stated firstly that the Tribunal has come to the conclusion that for Bungalow Khallasi there is no jurisdiction of this Court and on merits too this has been laid down that even after acquiring temporary status there is no right of Bungalow Khallasi to be issued notice before termination of his services on account of unsatisfactory performance. Further placing reliance on Rule 6 of the Railway Servants (Discipline & Appeal) Rules, ibid, it is stated that under Claus 6 (viii) and (ix) the termination of services of a temporary Railway servant under an agreement in accordance with the terms of such agreement and discharge for inefficiency or failure to confer the standard of physical fitness does not amount to penalty for which a disciplinary proceeding is to be taken before dispensing with the services.

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The learned counsel for the respondents further stated that there is no master and servant relationship and only in case of a misconduct an enquiry has to be held under the Railway Rules supra. As regards the duty passes is concerned, it is stated that these are only special duty passes and are issued after three years and this has nothing to do with the regular status of a Bungalow Khallasi. It is also stated that the applicant has been appointed by Assistant Officer who is competent to appoint Class-IV employees which the applicant is and his termination by APO who is an Assistant Officer is legal and by a competent authority. By referring to Railway Board's letter dated January, 1995, it is stated that the General Manager's prior approval is taken before appointment of substitute Bungalow Khallasi and it is on contractual basis. It is also stated that the extension is to be approved and this would be upto the total period of two years and after that he would be accorded temporary status. As the applicant's performance was found not upto the mark, his services have been dispensed with. It is also stated that Railway Servant Pass Rules 1986, does not apply to personnel in casual employment or in daily wages. Lastly, placing reliance on a decision of this Court, in co-ordinate Bench in Azad Singh Vs. GM, OA 65/2001 dated 23.8.2001, it is contended that similar circumstance Bungalow Khallasi who has challenged his termination, his request for not acceded to and the case has been dismissed on the basis of decision of the Full Bench, which is in all fours covers the case of the applicant as such the case of the applicant is also liable to be dismissed.

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5. I have carefully considered the rival contentions of the parties and perused the material on record. The contention of the learned counsel for the applicant placing reliance on the decision of the Apex Court would be of no avail to him. What has been held by the Apex Court is with reference to Kurk Amins who have been appointed on commission basis and therein it has been held that they are Government servants, in the facts and circumstances of that case, would not be applicable to the present controversy. The applicant has been appointed as Casual Labour Bungalow Khallasi and is continuance is dependent on an approval of satisfactory working report. It is also provided that in case his job is not found satisfactory the same would be terminated as he has been appointed on temporary basis. Letter dated 13.1.1995 also stipulates the procedure of extending services and approval of regarding satisfactory performance every three months. The contention of the applicant is that after rendering 120 days of service he acquires temporary status would have no application in the present case.

6. As regards the contention of the learned counsel for the applicant that as he has been issued duty passes and medical attendance card, which are only admissible to a regular Railway servant is to be treated as holder of civil post in railway and amenable to the Railway Servants (Discipline & Appeal) Rules ibid and before terminating his services it was incumbent upon the respondents to have proceeded him in disciplinary proceedings and after affording him an

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opportunity, his services could have been dispensed with, is not legal sustainable. The special duty passes is issued not to a regular railway servant but in cases even if casual labour undertakes an official duty he is entitled for such pass. As regards the privilege passes are concerned the same are issued after every three years and has no nexus and if would not be construed that the applicant holds a status of regular Railway servant. The same is also applicable in the case of medical card issued to the applicant. Apart from it Rule 6 (viii) and (ix) of Railway Servant (Discipline & Appeal) Rules ibid do not envisage the termination of service and discharge of satisfactory performance as a penalty as such no disciplinary proceedings are to be taken up before dispensing with the services of Bungalow Khallasi.

7. As regards the jurisdiction is concerned, the Full Bench in Prahallad Prasad's case supra clearly laid down that the Bungalow Khallasi is not amenable to the jurisdiction of this Court and the aforesaid decision of the Full Bench has not been modified or reversed by the High Court as such being a binding precedent and having been reiterated in Azad Singh's case supra the same is binding on me and I respectfully agree with the same. In this Full Bench a reference has been answered in negative as regards the conferment of temporary status upon the Bungalow Khallasi on rendering continuously 120 days in service. It is also held in the Full Bench that even after acquisition of temporary status his services can be terminated on account of unsatisfactory work without holding a departmental enquiry and the same

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would not vitiate for want of notice before termination but he may be entitled for the period of, in lieu of notice, and the applicant has been accorded the same as such there is no legal infirmity in the order passed by this Court.

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8. In this view of the matter and for the reasons recorded above, having found no merit in the present OA, the same is accordingly dismissed without any order as costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/