

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1376 of 1999

New Delhi, this the 21st day of January, 2000

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

Shri Joga Ram
S/o Shri Jeet Ram
R/o CIA/68A, Janak Puri,
New Delhi.

..Applicant

By Advocate Shri S.K. Sawhney.

Versus

1. Union of India through
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Secretary-II
Chief Transport Manager,
Operating Department,
Baroda House, Northern Railway,
New Delhi.

..Respondents

By Advocate Shri R.L. Dhawan.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant is aggrieved of termination of his services from the post of Telephone Attendant-cum-Khalasi as his services were terminated vide Annexure A-1. According to the applicant his services have been terminated illegally in violation of the rules and he has prayed for quashing of the termination letter and has also prayed for reinstatement on the post of Telephone Attendant-cum-Khalasi with continuity of service with effect from 23.4.1998.

2. The facts in brief are that the applicant was appointed as Bungalow Khalasi vide letter dated 3.8.1995, Annexure A-3 and he continued on the said post till

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30.5.1997 and thereafter, the applicant was directed to work on the fresh post of Telephone Attendant-cum-Khalasi vide letter dated 30.5.1997, Annexure A-5.

3. It is further stated that before granting fresh appointment on the post of Telephone Attendant, the work of the applicant as Bungalow Khalasi has all along been found satisfactory and nothing adverse had ever been communicated to him.

4. It is further stated that as per the letter dated 3.8.1995, Annexure A-3, the applicant was to acquire temporary status on the post of Bungalow Khalasi on 3.8.1997 and his appointment on the post of Telephone Attendant-cum-Khalasi vide letter dated 30.5.97 was an act of manipulation to deny him the benefit of temporary status on the post of Bungalow Khalasi which was a regular post.

5. It is further stated that vide 30.5.1997 giving him an appointment as Telephone Attendant-cum-Khalasi, the respondents had taken into account his past service as Bungalow Khalasi and vide letter dated 30.5.97, Annexure A-5 the applicant was given a regular appointment on a temporary post of Telephone Attendant-cum-Khalasi.

6. It is further stated that the applicant has continued on the post of Telephone Attendant-cum-Khalasi for more than 10 months and he has been illegally removed

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from service and even otherwise, he has completed more than 120 days, so he had acquired status of temporary worker and his services could not have been terminated without service of a notice on him. As such he has prayed that his services have been terminated illegally and he should be reinstated in service with all consequential benefits.

7. The respondents contested this O.A. and have stated that no cause of action has accrued to the applicant and the application being without cause of action should be dismissed.

8. They further pleaded that the applicant was appointed afresh as Telephone Attendant-cum-Khalasi against a work-charged post of construction unit. It was also stated that earlier the applicant was appointed as substitute Bungalow Khalasi and his services were terminated in accordance with the terms and conditions of appointment which was of a contractual nature. The appointment as Telephone Attendant-cum-Khalasi was purely on temporary basis against work-charged post of construction unit and the services of the applicant were terminated on 23.4.1998, as he was no longer required. It is also stated that the project casual labourers are eligible for grant of temporary status on completion of 360 days of continuous employment, in terms of para 2005 of the IREM Vol. II.

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9. I have heard the learned counsel for the parties and have gone through the records.

10. Most important point in issue is whether the applicant has been appointed as a casual labourer on a work-charged basis on a particular project or he has been given a temporary appointment as Telephone Attendant-cum-Khalasi. The learned counsel appearing for the respondents submitted that letter Annexure A-5 vide which the applicant had been appointed goes to show that it was an appointment on project, and that too, as a casual labourer and since he had not completed 360 days on the job, so he has no case even for being considered as casual labour.

11. On the contrary, the counsel for the applicant submitted that the Annexure A -5, i.e., the appointment letter shows that appointment is made on temporary basis and it is made against regular pay scale, whereas casual labourers whether on open line or on a project, are never given a regular pay scale and even after they acquire temporary status, they are given salary on the basis of 1/30th of the pay scale of that post and thus are treated as monthly rated employees. But here in this case, the applicant has been appointed vide Annexure A-5 when he was given a pay scale of Rs.750-940 and if we read the letter this shows that he was appointed as Telephone Attendant-cum-Khalasi, of course the appointment is on a temporary basis. The counsel for the applicant thus

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submitted that the applicant was a regular employee appointed on temporary basis. He has also got the protection under Railway Servant Rules and Constitution of India and his services could not be terminated as it has been done vide Annexure A-1.

12. As far as casual labourers are concerned it is defined under Indian Railway Establishment Manual, Volume II, the extracts of the same are reproduced hereinbelow:-

"2001. (i) Definition of Casual Labour - Casual Labour refers to labour whose employment is intermittent, sporadic or extends over short periods or continued from work to another. Labour of this kind is normally recruited from the nearest available source. They are not ordinarily liable to transfer. The conditions applicable to permanent and temporary staff do not apply to casual labour.

Casual Labour on Railways should ordinarily be employed in the following types of cases:

XXXX XXXXX

(b) Casual Labour (Project)- Casual Labour are also engaged on Railways for execution of railway projects, such as new lines, doubling, conversion, construction of buildings, track renewals, Route Relay Interlocking Railway Electrification, setting up of new units etc. Casual Labour so engaged are referred to as 'Project Casual Labour'.

13. Paragraph 2001, which defines the Casual Labour, shows that the employment of casual labour is intermittent, sporadic or extends over short periods and can be continued from one work to another but the letter Annexure A-5 does not show that if it was for a short period or of a sporadic nature or for any intermittent

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period. It simply says that the applicant is appointed on the post of Telephone Attendant-cum-Khalasi in the pay scale of Rs.750-940. However, the appointment would be on temporary basis. So this type of letter of appointment neither fits in the definition of Casual Labour as given in sub-paragraph (i) of Para 2001 of the definition of casual labour nor fits in sub-para (b) of the casual labour, as referred above. The language of the appointment letter only suggests that the applicant was given an appointment on temporary basis.

14. Though the counsel for the respondents wanted to suggest that the letter has been issued by OPG Branch which means Operating Branch and the copy had also been endorsed to Dy.CE/C/West which means that the applicant was put under the unit of Deputy Chief Engineer (Construction)/West and his services were assigned to work on a particular project only. But this argument of the learned counsel for the respondents cannot be taken to interpret this letter to show that the applicant had been appointed as a casual labour on a project when especially it is mentioned that the applicant had been given appointment on temporary basis.

15. During the course of arguments, it was also suggested that Annexure A-5 is a bogus one and to rule out the controversy the previous file was summoned and original letter was also called for in the court which was shown to me by the learned counsel for the respondents and

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I find that there was only a small difference that at the end of letter Annexure A-5 there was a small sentence which reads in Hindi as "Yeh Nayukti Puranta Asthai Hai". Even if this sentence would have been there, it would not imply that the nature of appointment was of a casual labour on a project only.

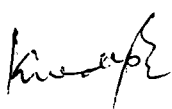
16. I have another reason to add that the appointment is on temporary basis because prior to this the applicant had worked as a Bungalow Khalasi continuously from 3.8.95 to 30.5.97 and though in the earlier round of litigation the respondents had stated that the applicant was appointed on contractual basis as Bungalow Khalasi and his services were terminated because he absented himself w.e.f. 1.6.97 and his work was not found satisfactory. But both these pleas of the respondents are contradictory because on 30.5.97 itself the applicant was given appointment as Telephone Attendant-cum-Khalasi. This shows rather that there was no break in service and the applicant had been continuously working since 3.8.95. Had there been allegation of his unauthorised absence and unsatisfactory work, then probably the respondents would not have given him the appointment of Telephone Attendant-cum-Khalasi. Hence it appears that considering his past services, the applicant had been given a temporary posting as Telephone Attendant-cum-Khalasi vide Annexure A-5. The Annexure A-5 does not show at all that he was given a fresh appointment as casual labour on project, so I have no hesitation to

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hold that the applicant had been given temporary appointment and he had been illegally removed from service and as such the impugned letter, Annexure A-1 is liable to be quashed.

17. In view of the above discussion, the O.A is allowed and the impugned letter at Annexure A-1 is quashed. The respondents are directed to reinstate the applicant in service with all consequential benefits as per rules and instructions on the subject. This order shall be complied with within a period of 3 months from the date of receipt of a copy of this order. No costs.


(KULDIP SINGH)
MEMBER (J)

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