

(29)

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A. No. 1589/98

New Delhi: this the 21st day of MARCH, 2001.

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Manoj Kumar Poddar,

s/o Shri Shri Lal Poddar,

R/o 109, B.D. Estate Market,

Timarpur,

Delhi

.....Applicant.

(By Advocate: Shri Prakash Chandra)

Versus

1. Ministry of Railways,
through Secretary,
Railway Board,
New Delhi.

2. General Manager (P),
North East Frontier Railway,
Maligaon (Assam).

3. DRM,
Maligaon (Assam).

4. Appointing Authority,
Maligaon,
Assam

.....Respondents.

(By Advocate: Shri R.P. Agarwal)

ORDER

S.R. Adige, VC (A):

In this OA filed on 13.8.98 applicant challenges respondents' order dated 26.5.95 terminating his services in terms of Rule 301(1) IREC Vol.1 with one month's pay in lieu of one month's notice and retrenchment compensation @ 15 days' wages for each completed year of service. He seeks reengagement with back wages.

2. Applicant was appointed as Substitute Emergency Peon (Rs.750-940) attached to Dy. CE/TMC/MLG vide order dated 5.4.94 (Annexure-I) issued by the EA to CPO for GM (P) Maligaon. The appointment was a conditional one, and the conditions were specified in the aforesaid

(30)

order dated 5.4.94 itself.

3. Upon transfer of the Dy. CE with whom applicant was attached, as Dy. Chief Vigilance Officer, Maligaon, applicant went along with him to Vigilance Department vide order dated 27.1.95 (Annexure-R-2).

4. Respondents state that Substitute Emergency Peon is appointed on the wishes of the concerned officers and he continues to work till the officer so desired. The moment the officer does not want him, his services are terminated. Respondents state that the Dy. Chief Vigilance Officer, Maligaon with whom applicant was working, vide his Note dated 23.5.95 desired that applicant's services be terminated, and accordingly applicant's services were terminated.

5. We have heard both sides.

6. Substitute Emergency Peons are also known as Bungalow Peons/Bungalow Khallasis, and the question whether

- i) bungalow peons in Railways were Railway employees or not.
- ii) their services were purely contractual and they could be discharged in terms of the contract.
- iii) upon their putting in 120 days continued service, they acquired the status of temporary employees or not, and if so, whether upon acquiring such status, their services could be dispensed with for unsatisfactory performance only after conducting a departmental enquiry

was referred to CAT Full (Principal) Bench in OA No. 896/99 Shyam Sunder Vs. UOI & Ors. and connected cases. The Full Bench in its order dated 12.2.99 answered the reference as under

- i) & ii) Bungalow peons/Khallasis in Railways were not railway employees, and their services being purely contractual in nature could be terminated at any time

(31)

- 3 -

in terms of their contract so long as they did not acquire temporary status.

iii) As a general principle it could not be laid down that after putting in 120 days continuous service, a Bungalow Peon/Khallasi acquired temporary status. He acquired temporary status on completion of such period of temporary service as may be prescribed by the GM of the Railways under which he worked and which was current on the date of his employment as a Bungalow Peon/Khallasi. In the absence of any such rule or instruction, the general instructions or rule in that regard like the one given under Paragraph 1515 of the IREM issued or framed by the Railway Board and current on the date of employment may determine the period of his continuous service for conferment of temporary status. Even after conferment of temporary status by a Bungalow Peons /Khallasi, his services could be terminated on the ground of unsatisfactory work without holding a DE, and termination of the service of a Substitute Bungalow Peon/Khallasi who had acquired temporary status was not bad or illegal merely for want of notice before termination.

7. During the course of hearing applicant's counsel placed reliance on Railway Board's circular dated 29.1.91 on the subject of Substitutes, which provides inter alia that substitutes would be allowed all the rights and privileges as were admissible to temporary employees on completion of 4 months' continuous service. On the basis it was contended that applicant's service could not have been terminated without holding a DE. It was also contended that applicant was appointed under the authority of the GM(P) and the termination of his services by APO under his exclusive authority implied that his services were terminated by an authority lower in status than the appointing authority, which was illegal.

2

8. In our view neither of these grounds avail the applicant. The Full Bench in its aforesaid order dated 12.2.99 have clearly ruled that even after acquiring temporary status the services of a Substitute Emergency Peon (also known as Bungalow Peon/Khallasi) could be terminated on account of unsatisfactory work without holding a DE and the respondents in their reply have stated that the terms of applicant's appointment letter itself made clear that his services would be continued only if the same were found satisfactory, but the Dy.CVO, Maligaon in his Office Note dated 23.5.95 desired that applicant's services be terminated.

9. As regards the second ground, we have to go by the rank and status of the appointing authority, and the authority which terminated applicant's services as reflected in the relevant orders. Applicant was appointed by order dated 5.4.94 signed by the EA to CPO who is in the scale of Rs.2000-3500 (pre-revised scale). His services were terminated by order dated 26.5.95 signed by the Asstt. Personnel Officer who was also in the scale of Rs.2000-3500 (pre revised scale). In fact below the signature of the Asstt. Personnel Officer are the words "signature of the appointing authority or higher authority with designation" which makes it clear that respondents were conscious of the fact that the authority terminating applicant's services was to be the appointing authority or an authority higher in status.

2

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10. In this connection we note that respondents have raised the objection that the OA is hit by limitation under section 21 AT Act. Applicant has taken the plea that he was pressing his remedies in the High Court and only later was he advised that he had to approach the Tribunal in the first instance. Respondents have submitted that pursuit of ones remedies in the High Court, when applicant was required to approach the Tribunal in the first instance, does not extend the period of limitation under section 21 AT Act, but even without considering it necessary to discuss this point further, we find ourselves unable to grant the relief prayed for by applicant in the background of the preceding discussion.

11. The OA is therefore dismissed. No costs.

A. Kedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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