

Central Administrative Tribunal
Principal Bench

O.A. No. 1712 of 2000

New Delhi, dated this the 5 September, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Harish Kumar,
S/o Shri Jaman Ram,
R/o Servant Qr. No. 8,
Raisina Road,
New Delhi-110001.

.. Applicant

(By Advocate: Shri O.P. Gupta)

Versus

1. Secretary,
Railway Board,
Rail Bhawan, New Delhi.
2. Union of India through the
General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Shri S.L. Bhargava ED/RE,
Railway Board, Rail Bhawan,
New Delhi.
4. Shri R.G. Sharma,
Asst. Personnel Officer/H.Q. II,
Northern Railway,
Baroda House,
New Delhi. .. Respondents

(By Advocate: Shri Rajinder Khattar)

ORDER

S.R. ADIGE, VC (A)

Applicant who in the O.A. describes himself as a Bungalow Peon (Telephone Attendant Dak Khallasi or TADK for short) impugns respondents' order dated 14.1.2000 (Ann. A-1) terminating his services w.e.f. 14.2.2000. Applicant prays for reinstatement with backwages and other consequential benefits.

2. Heard both sides.

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3. Pleadings reveal that applicant was appointed as TADK and attached to Shri S.L. Bhargava Ex-Director Railway Board vide appointment order dated 26.5.98 issued by Asst. Personnel Officer, Headquarters, Northern Railway (copy taken on record) and he joined duty the same day (Ann. A-5). The aforesaid appointment order dated 26.5.98 made it clear that applicant's appointment was purely ad hoc and only three years after obtaining temporary status would he become eligible for being screened for regularisation. Till then applicant's service would be continued only after obtaining quarterly reports from the officer under whom he was serving, of satisfactory performance, but in the event his work was not found satisfactory or ^{was} found to be negligent, or ^{was} absent from work, or misbehaved, his services would be terminated without notice, and he would not be entitled to claim appointment against any other Group D post under the railways.

4. The fact that applicant joined duty on 26.5.98, makes it clear that he accepted the aforesaid conditions.

5. On 14.2.2000 Shri Bhargava reported (Ann. R-1) that further to his letter dated 12.1.2000 (copy not filed) applicant did appear in his office on 3.2.2000 but did not explain the reason for his absence for such a long time. Applicant was absent without information from 21.7.99 to 27.7.99, he was found drunk on 15.11.99; he was on unauthorised

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absence of duty from 15.11.99 to 20.11.99; and he had again been on unauthorised absence since 13.12.99. Accordingly he requested that applicant's service be dispensed with.

6. Meanwhile by impugned order dated 14.1.2000 the APO terminated applicant's services w.e.f. 14.2.2000 in terms of the conditions contained in the appointment order, after giving him one month's notice, against which the present O.A. has been filed.

7. We have heard applicant's counsel Shri O.P. Gupta and respondents' counsel Shri Khattar.

8. On behalf of applicant it has been argued that applicant was appointed as a regular Government servant, that the APO was not competent to terminate his services; that a regular departmental enquiry was essential before his services could be terminated; and that the penalty of termination of service was grossly disproportionate to the misconduct of ~~unauthorised~~ absence from duty. Various rulings have been cited by Shri O.P. Gupta in support of these contentions including SLR 1990 (2) 724; SLR 1968 (2) 77; AIR 1998 SC 1681; SLR 1988 (55) 269; AIR 1996 SC 484; SLR 1967 (1); SLR 2000 (144) 49; SLR 1982 (29) 864; and SLR 1995 (110) 228.

9. In our view, in the particular facts and circumstances of this case, none of the aforementioned grounds~~s~~ and/or rulings advance the claims of

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(10)

applicant. Applicant himself acknowledges that TADK, in which capacity he was engaged in service vide APO's order dated 26.5.98, corresponds to a Bungalow peon. A Full Bench of the Tribunal in its order dated 12.2.99 in O.A. No. 869/95 Shyam Sundar Vs. Union of India & Others and connected cases (copy on record) has conclusively held that even after the acquisition of temporary status, the services of a Bungalow Peon/Khaliasi can be terminated on account of unsatisfactory work without holding a departmental enquiry. In the present case, therefore, even if applicant is deemed to have acquired temporary status consequent to his appointment as ad hoc TADK w.e.f. 26.5.98, in the absence of any order shown to us by which he stood regularised, the termination of his service in accordance with the conditions of his appointment cannot be said to be arbitrary or illegal, as per the Full Bench order. Moreover as applicant's appointment order was signed by the Asst. Personnel Officer, his termination from service by the same functionary i.e. APO is fully in order. Furthermore applicant's termination from service was not merely because of his frequent absences from duty for whatever reason, but also for being found drunk on 15.11.99 and in his letter dated 22.11.99 (copy taken on record) applicant admits to this particular serious misconduct. Hence it cannot be said that the penalty of termination from service is disproportionate to the misconduct.

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10. Respondents' counsel has shown us copies of Tribunal's order dated 30.4.2001 dismissing O.As No. 2345/2000 and 2346/2000 as well as order dated 9.5.2000 dismissing O.A. No. 2941/97 in which those applicants who were also similarly placed Bungalow Peons/Khallasis had challenged the termination of their services in terms of the conditions of their appointment without holding any departmental enquiry. Nothing has been shown to us to establish that the aforesaid order dated 30.4.2001 and dated 9.5.2000 (supra) have been stayed, modified or set aside.

11. Under the circumstance, the O.A. warrants no interference. It is dismissed. No costs.

A Vedavalli

(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

karthik