

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1768/2000

Hon'ble Shri Shanker Raju, Member (J)

New Delhi, this the 10th day of August, 2001

(17)

Shri Hans raj
s/o Shri Mehar Singh
Bungalow Khallasi
under Dy. Chief Electrical Engineer(C)
Shivaji Bridge, Northern Railway
New Delhi.
r/o C/o Prakash Chand
Qr. No.167/6
Minto Bridge
Rly. Colony
New Delhi.

... Applicant

(By Advocate: Shri B.S.Mainee)

Vs.

1. Union of India through
General Manager
Northern railway
Baroda House
New Delhi.
 2. The Chief Administrative Officer (Const.)
Northern railway
Kashmeri Gate
Delhi.
 3. The Chief Electrical Engineer (C)
Northern Railway
Tilak Bridge
New Delhi.
 4. Shri Dinesh Chandra
Dy. Chief Electrical Engineer (C)
Survey, Northern Railway
Shivaji Bridge
New Delhi.
presently working at
Dy. Chief Electrical Engineer (C)
Northern Railway
Aligarh (UP).
- ... Respondents.

(By Advocate: Shri V.S.R.Krishna)

O R D E R

By Shanker Raju, Member (J):

In the present OA the applicant has assailed an apprehended action of the respondents to dispense with his services in an arbitrary manner on the basis of malafides. The applicant has prayed for a direction to allow him to perform his duty and to

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quash any adverse orders which Respondent No.4 might have passed on the back of the applicant with all consequential benefits.

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2. Briefly stated the applicant has been engaged as Bungalow Khalasi on 24.8.1998. The grievance of the applicant is that one Deputy Chief Electrical Engineer (P) Survey, Tilak Bridge with whom he was deputed and has used him for domestic help and further raising malafides by stating that his half of the salary was being taken by the wife of the said officer to whom he impleaded as Respondent No.4. It is also stated that he has been forced to sign paper whereby his alleged confession has been recorded.

3. The applicant has stated that on completion of 120 days and in accordance with rules as per Para 15.11 of the Indian Railway Establishment Volume No.1 and in view of the decision of the Tribunal in Basant Lal Vs. Union of India, ATJ 1990(1) 606 which has been affirmed by the Apex Court there has been an automatic conferment of temporary status by the applicant and after that his services cannot be dispensed with without following the provisions of Article 311 of the Constitution of India as well as the laid down Railway Rules. It is also stated that whereas he has been appointed by the General Manager his services have been terminated by the Deputy Chief Technical Engineer who is an authority subordinate to his appointing authority and this also violates the Article 311 of the Constitution of India. It is also the case of the applicant that the order of termination is apparently a simple order

but, in fact, it is founded on a specific misconduct of the applicant and without following the procedure laid down under Article 311(2) *ibid*, the termination order is bad in law. It is also stated that during the period of two years his performance was excellent and the confession made is not voluntarily and cannot be taken cognizance of. 19

4. On the other hand, rebutting strongly the contentions of the applicant, the learned counsel for the respondents has drawn my attention to an order passed on 2.9.2000 where the services of the applicant have been terminated on by paying one month salary in lieu of one months notice. It is stated that the aforesaid termination order has been sent to the applicant along with the Cheque of salary but the family members of the applicant refused to receive the communication on the ground that the applicant was resides in Delhi and they have not disclosed the address. It is also stated that as firstly the applicant has not automatically acquired temporary status and placed reliance on the decision of Full Bench in *Shyam Sunder Vs. Union of India* and also has stated that the applicant services have been terminated as his work was not founded satisfactory but on a specific misconduct and the misconduct was only a motive not the foundation. As regards the notice, it is contended that the same has been sent along with the termination order on the same has been refused by the applicant's family. Lastly, and most importantly, it is stated that the OA is not maintainable in the present form as there is no challenge to the order passed on 2.9.2000 terminating

the services of the applicant and no statutory remedy has been exhausted by the applicant against that order. As regards the prayer 8.2 is concerned, it is stated that there should be a specific challenge to a particular order and merely having blanket challenge to an order passed or to be passed by the respondents is not legally tenable. It is also stated that the applicant's services have been terminated on 2.9.2000 whereas he has filed the OA on 6.9.2000 despite knowing about the termination order with a view to circumvent the requisite procedure and notice taken, it is stated that the application is misconceived. 20

5. I have carefully considered the rival contentions of the parties and perused the material on record. In my considered view, the present OA is not maintainable in the present form without any challenge to the order of termination passed by the respondents on 2.9.2000. The applicant has assailed an anticipated action of the respondents of dispensing with his services and in relief clause 8.2 it is prayed that any order adverse to him might have passed by the respondents on the back of the applicant be set-aside. It is settled principle of law that unless the impugned order is specifically incorporated in the pleadings, and is challenged the Court cannot take cognizance of the same. As provided under Section 19 of the Administrative Tribunals Act, 1985 one has to challenge an order against which he is aggrieved. The case of the applicant is not that an oral order of termination is passed. Once the order has been passed by the respondents and even if the service of the same is disputed, the fact remains that there is an order h

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of termination which has not been put to challenge by the applicant in the present OA. Moreover, the applicant has to exhaust the available remedy against the termination order before resorting for redressal of his grievance and before approaching this Court as provided under Section 20 of the Administrative Tribunals Act, 1985. (21)

6. Having regard to the reasons recorded above, I am of the confirmed view that without any challenge to an order passed on 2.9.2000, the application is not maintainable. However, the ends of justice would be met if the present OA is disposed of with a direction to the respondents to treat the service of order of termination dated 2.9.2000 as on today and further the applicant is also directed to exhaust the available remedy against the order of termination and is at liberty to assail any order passed thereon before the Court in accordance with law. The OA is accordingly disposed of without going into the rival contentions of both the parties and without expressing any opinion on the merits of the case. No costs.

S. Raju

(SHANKER RAJU)
MEMBER(J)

/RAO/