CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2346/2000
WITH
OA No.2345/2000

New Delhi, this the 30th day of April, 2001

HON'BLE MR. S.A.T.RIZVI, MEMBER (A)

OA No.2346/2000

Shri Rakesh Kumar,
s/o Shri Suresh Kumar,
aged about 30 years,
r/o B-107, South Nagar, Mother Dairy
Patparganj, New Delhi-92.

... Applicant

(By Advocate: Mrs. Ashan Jain Madan)

V E R S U S

1. General Manager,
Northern Railway,
Baroda House, New Delhi-1.

2. General Manager (P),
Rail Coach Factory,
Hussainpur, Kapurthala.

... Respondents

(By Advocate: Shri H.K. Gangwani)

OA No.2345/2000

Shri Radha Shyama,
s/o Shri Daneshwar Panda,
aged about 25 years,
r/o 396 E, Chuna Batti,
Srinagar, Shakurpur, Delhi-34.

... Applicant

(By Advocate: Mrs. Ashan Jain Madan)

V E R S U S

1. General Manager,
Northern Railway,
Baroda House, New Delhi-1.

2. General Manager (P),
Rail Coach Factory,
Hussainpur, Kapurthala.

... Respondents

(By Advocate: Shri H.K. Gangwani)

O R D E R (ORAL)

By S.A.T. Rizvi, Member (A):

The facts and the issues involved in both the OAs are similar and, therefore, with the consent of the

parties, both the OAs are being disposed of by this common order.

2. I have heard the learned counsel on either side, in detail, and have also perused the material placed on record.

3. First the facts of the case in OA 2346/2000. The applicant was appointed as Casual Bungalow Khalasi (for short CBK) w.e.f. 17.9.1998. He was posted to work with Dr. S.K. Gupta, Chief Medical Superintendent/RCF (for short CMS/RCF). The applicant was initially appointed for 3 months for the period upto 16.12.1998. He was re-engaged on the same basis from time to time without any break and continued to serve till 16.6.2000. He was declared medically fit right in the beginning and meanwhile his antecedents were also got verified from the Police authorities. Dr. S.K. Gupta, CMS/RCF with whom he was attached, was to retire on superannuation on 31.5.2000. Accordingly, by his letter of 31.5.2000, Dr. Gupta relieved the applicant with a direction to report to the Assistant Personnel Officer-II (Annexure 'F'). A day before that, Dr. Gupta, CMS/RCF, had commended the services of the applicant in his letter of 30th May, 2000 addressed to the Dy. Chief Personnel Officer-I (Annexure 'E'). In the same letter a request was made that the applicant may be engaged to work with any other officer or be adjusted against existing vacancies of class IV staff in LLR Hospital/RCF/Kapurthala. According to the applicant, from 1.6.2000 to 16.6.2000 he remained posted

in the Despatch Section of the Personnel Branch and was verbally told on 17.6.2000 not to report for duty any more. No notice of termination was served on the applicant. Thereafter, he made two representations on 20th July, 2000 and 24th July, 2000 respectively seeking further engagement. There has been no response, however, from the respondents. The applicant submits that the work of the kind he has been doing is still available and those, who joined service after him are still continuing. He also submits that fresh hands are likely to be appointed as CBKs as also in other class IV posts. The applicant has also referred to the practice of granting temporary status to such of the casual workers who have completed 120 days of continuous service and has placed on record a copy of Office Order dated 30th June, 1994 by which one Shri Vijay Kumar, a CBK, has been granted the same status (Annexure 'J'). Based on the aforesaid facts and circumstances, the applicant has prayed for a direction to the respondents to re-engage him against any class IV post and also to confer on him temporary status with effect from the date he completed 120 days of service as CBK. He also prays for regularisation with consequential benefits.

4. The applicant in OA 2345/2000 was engaged as CBK w.e.f. 18/19th February, 1999 and continued in that capacity upto 7th August, 2000. He has not been re-engaged thereafter. This applicant was attached to Shri S.K. Chopra, Dy. CPLE-III and initially he was also appointed for a period of three months from 19.2.1999 to 18.5.1999. Extensions were granted to him

also in the same manner as in the case of the applicant in OA No.2346/2000 and he also continued to work without any break right upto 7.8.2000. Shri S.K. Chopra with whom this applicant was attached, was to retire on superannuation in September, 2000. Shri Chopra vacated his quarter on 5.8.2000, that is, even before the date of his retirement. Accordingly, vide his letter of 5.8.2000, Shri Chopra relieved this applicant and advised him to report to the GM/P. This applicant's name was, in the circumstances, struck off from the rolls of the RCF w.e.f. 7.8.2000 and this was done without any show cause notice. The other facts and circumstances described by him are similar to the facts and circumstances brought out in the other OA (OA No.2346/2000). The reliefs sought are also similar.

5. In order to appreciate the facts and circumstances disclosed in these OAs and the rules which could possibly be applied, it is necessary to take a look at the letter of appointments issued to the applicants. I find that both the applicants were appointed on temporary posts lasting three months to begin with. The appointment letter clarifies that the appointment made is entirely temporary and accordingly the services of the applicant could be terminated even before the expiry of three months period if his work was not found to be satisfactory or else his services as CBK were not required. Similarly, his services were liable to be terminated if he himself was not willing to work as CBK. That the applicant will not prefer any claim for regular appointment in group 'D' posts on the basis

of services rendered as CBK was also clarified through the letter of appointment. By the same letter the applicant has been directed to work with the concerned officer stipulating further that he could continue to work with the successor officer also provided such successor officer desires to engage the applicant, otherwise the applicant will be relieved from service. The aforesaid formulation being part of the letter of appointment, clearly shows that the tenure of CBK is generally speaking co-extensive with the tenure of the officer with whom he is attached and who wishes to keep him as CBK. This implies that the engagement of anyone as a CBK is dependent entirely on the wishes of the officer with whom the CBK is to be attached. That the appointment is entirely temporary and subject to termination on the performance being found to be unsatisfactory has also been made abundantly clear. The appointment letter goes to the extent of providing that the services of CBK are liable to be terminated if and when it is found that his services were no longer required.

6. In response to the claim made by the applicants, the respondents have placed reliance almost exclusively on the policy circular dated 16.9.1994 issued by the Rail Coach Factory, Kapurthala. A copy of the same has been placed on record at R-14. I have gone through this document carefully and find that in accordance with the policy till then in existence, a CBK used to be granted temporary status after completion of 120 days of continuous service. Subsequent to

conferment of temporary status, the CKBs used to be screened after completion of a minimum of 3 years of continuous service for the purpose of regular absorption in group 'D'. The same further provides that if after the temporary status had been conferred on a CBK, the Controlling Officer with whom he is attached to work is transferred out of RCF before he is screened for regular absorption, such a CBK was to be posted temporarily in staff canteen, rest house, TTS, hospital against the vacancies of catering class IV staff until his regular absorption in group 'D'. The aforesaid position has since undergone a change. Thus the very same circular of 16.4.1994 stipulates a new procedure to be followed for engaging CBKs w.e.f. 28.8.1994. The revised policy aforesaid provides that if, in any eventuality, a CBK is unwilling to work or is found unsuitable or his performance is found to be unsatisfactory, his services would be liable for termination without any notice and further that a CBK will not have any prospective right/claim for alternative class IV appointment in the Railways. The services of a CBK will, as hitherto, be extended at the rate of three months on each occasion subject to satisfactory performance upto a total period of two years. After two years of service, temporary status is to be conferred on CBK and he also becomes eligible for screening for regular absorption in a group 'D' post. (emphasis supplied)

7. The applicants have been engaged after the aforesaid policy circular was issued on 16.9.1994. Thus, their services will be governed by the aforesaid

provisions brought into force w.e.f. 28.8.1994. I have already pointed out in the previous paragraph that according to the revised policy which would apply to the applicants, temporary status can be conferred only after the completion of two years of service as CBK. None of the applicants has completed two years of service as CBK, and, therefore, none is eligible for the grant of temporary status in accordance with the aforesaid circular of 16th September, 1994.

8. From the documents placed on record, I find that the respondents have made efforts to secure re-engagement of the applicants as CBKs by approaching certain officers entitled to keep CBKs. However, none agreed and, therefore, in accordance with the policy followed by the respondents, the applicants could not be re-engaged.

9. The learned counsel appearing on behalf of the respondents has, during the course of argument, placed reliance also on the order dated 12th February, 1999 passed and clarifications rendered by the Full Bench of this Tribunal in OA Nos.896/95, 1764/92 and 817/94. The following two questions were posed before the Full Bench:-

1) whether bungalow peons in Railways are Railway employees or not;

2) whether their services are purely contractual and they can be discharged in terms of their contract.

10. The aforesaid questions were answered by the Full Bench by observing that the learned counsel for the parties themselves conceded that the bungalow peons/khalasis in the Railways are not Railway employees and that their service being purely contractual in nature could be terminated at any time in terms of their contract so long as they did not acquire temporary status. The following further question posed before the Full Bench was answered in the negative:-

1) Whether upon putting in 120 days continuous service, a bungalow peon/khalasi acquires temporary status.

11. In the totality of the facts and circumstances narrated in the preceding paragraphs and having regard to the legal position clarified by the Full Bench of this Tribunal, I find no force in these OAs. The same are, therefore, dismissed without any order as to costs.

(S.A.T. Rizvi)
MEMBER (A)

(pkr)

Original Judgement placed in OA 2346/2000.

Attested
30.4.2001
C.O.C