

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

No. OA 694 of 2015

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. C.V.Sankar, Member (A)

N. Chenchu Naidu, aged bout 29 years, S/o Bhogesu, At-Magathapadu, PO-Koduru, Mandal-Polaki, Dist-Srikakulam-532430, State of Andhra Pradesh.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, East Coast Railways, Bhubaneswar, Dist-Khurda.
2. Chief Personnel Officer, East Coast Railways, Khurda Road, At-Bhubaneswar-751017, Dist-Khurda.
3. Chief Administrative Officer (Con), Personnel Branch, East Coast Railways, Bhubaneswar, Dist-Khurda.
4. Dy. Chief Engineer/C/Plg./BBS (Con.), East Coast Railways, Khurda Road, At-Bhubaneswar, Dist-Khurda.
5. Mr.A.K.Sinha, Sr.DEN(CO-ORD), Eng. Department, Divisional Railway Manager Office, Gandhi Nagar, S.C>Railway, Vizayawada, Andhra Pradesh-520001.

.....Respondents.

For the applicant : Mr.B.S.Tripathy-I, counsel

For the respondents: Dr.C.R.Mishra, counsel

Heard & reserved on : 28.1.2021 Order on : 09.02.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- “(i) Quash the impugned order dt. 19.8.2015 under Annexure 17 by concurrently holding the same bad, illegal and arbitrary in law and thereby;
- (ii) Direct/order/command the respondent No.2 to 4 to forthwith allow the applicant to continue in his former post of Substitute Bungalow Peon in the office of Dy.CE/C/KUR at BBS with all consequential service and monetary benefits including salary from July, 2011;
- (iii) pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case.”

2. The facts of the case in a nutshell are that appointment letter was issued in favour of the applicant as Substitute Bunglow Peon on 9.12.2010. On being found medically fit, the applicant was engaged as Substitute Bunglow Peon on 17.12.2010 in the PB of Rs.4440-7440/- with GP of Rs.1300 and was attached

to Sri A.K.Sinha, Dy.CE/C/KUR at BBS of Eng. Department of CON. Upon transfer and posting of Shri A.K.Sinha the applicant was transferred against the existing vacancy on 8.6.2011 and was released from office on 13.6.2011 with a direction to report to office of Dy.CE/C/Plg/BBS. On 16.6.2011 respondent No.2 transferred the applicant to Dy.CE/C/Plg/BBS to work under Sri A.K.Sinha in his existing pay. On July 2011 Sri A.K.Sinha on his transfer to Hyderabad without releasing the applicant as per instructions in letter dt. 16.6.2011, took the applicant with him to Hyderabad on the pretext that the applicant has been attached to him. On 1.8.2012 the applicant went to his village to see his ailing father, where he fell ill. He informed the fact of his illness to Sri A.K.Sinha on 18.10.2012 and prayed for release of salary from July 2011 which was not paid due to want of LPC. On 7.11.2021 he made representation to the respondent No.2 and 3 for transmission of is LPC for release of salary. On 12.11.2014 he came to know that he was not supposed to go to Hyderabad along with Sri A.K.Sinha as his post has been attached to the office of Dy.CE/C/Plg/BBS and since he has not been released by Sri A.K.Sinha, his salary was not drawn and disbursed to him. He made representation to respondent No.2 on 17.11.2014 which is pending till date. He approached this Tribunal in OA 388/2015 which was disposed of on 23.6.2015 with a direction to respondent No.2 to consider and dispose of the representation dated 17.11.2014 by affording the applicant an opportunity of being heard and if found entitled to receive any such dues on account of salary for the period which he claims to have worked, the same be disbursed in his favour. Respondent No.2 vide his order dated 19.8.2015 rejected the claim of the applicant on the plea that the applicant has remained unauthorized absence from 11.7.2011 till date without any intimation to the office of Dy.CE/C/Plg/BBS and that no office order was issued in his favour transferring him from E.Co. Railway along with Sri A.K.Sinha to South Central Railway and that his claim for drawal of wages against the period of absence from 11.7.2011 in E.Co. Railway is not admission as the same does not pertain to E.Co. Railway and that he has not completed prescribed period of 240 days

continuous service from the date of his engagement. Hence the applicant has filed the present OA.

3. Respondents No. 1 to 4 have filed their Counter stating that the applicant was engaged as Bungalow Peon and was attached to Sri A.K.Sinha vide order dated 17.12.2010 and he joined w.e.f. 18.12.2010. Consequently on transfer of Sri A.K.Sinha, respondent No.5 in the present OA as Dy. CE(Con)/Plg/BBS in terms of order dated 6.4.2011 and on his request the process was done for issue of necessary transfer and posting of the applicant from Dy.CE/C/KUR at BBS to Dy.CE/Con/Plg/BBS to work under Sri Sinha. After due process the applicant was transferred to Dy.CE/C/Plg.BBS along with the post with existing vacancy to work under Sri Sinha. Sri Sinha was transferred from East Cost Railway to South Central Railway and accordingly relieved on 21.6.2011. The applicant who was working as a Substitute Bungalow Peon under Sri Sinha, remained absent from 11.7.2011 without any intimation to the authority. The applicant has averred that he has moved to Hyderabad along with Sri Sinha without any intimation to the authority and without any transfer order, transferring the applicant to Hyderabad. The period of his absence from 11.7.2011 till today has not been regularized by any authority and for this reason the question of releasing his salary from 11.7.2011 is not permissible under law. The respondents have therefore prayed for dismissal of the OA being devoid of any merit.

4. Respondent No.5 has also filed a Counter stating that the averments made by the applicant that Sri A.K.Sinha, respondent No.5 had taken the applicant to Hyderabad to work as Bungalow Peon is denied as the same is false. Sri Sinha was transferred from E.Co. Railway to S.C. Railway in terms of office order dated 21.6.2011 and relieved on 23.6.2011 from Bhubaneswar and joined in South Central Railway on 27.6.2011. He never asked the applicant to work with him on transfer to South Central Railway because the Bungalow Peon attached to an officer does not move along with the officer automatically without any transfer order. The applicant was transferred from the office of the Dy.CE/Con/KUR at BBS to the office of the Dy.CE/Con/Plg/BBS and he was

relieved by the successor of the present respondent No.5 after issuance of the transfer order. But he was not issued any transfer order to join South Central Railway for being attached to the present respondent No.5. In view of the above the applicant cannot move with the respondent No.5 to South Central Railway without any transfer order. Moreover the allegation that the applicant had communicated the respondent No.5 about his illness vide letter dated 18.10.2012 is also false and baseless and might have been manufactured for the purpose of the case. The respondent No.5 has stated that the OA is devoid of any merit and is liable to be rejected and that he has been unnecessarily impleaded as party to this OA.

5. We have heard both the learned counsels through video conferencing and gone through the pleadings on record.

6. The applicant was initially engaged as Substitute Bungalow Peon as per Annexure-5 on 17.12.2010 and was attached to Sri Sinha, respondent No.5 in the present OA. Subsequently respondents No.5 was transferred from Bhubaneswar to Hyderabad. It is the claim of the applicant that respondent No.5 took him with him to Hyderabad as per the practice since he was attached to respondent No.5. On 1.8.2012 the applicant went to his village to see his ailing father, where he fell ill. He informed the fact of his illness to Sri A.K.Sinha on 18.10.2012 and prayed for release of salary from July 2011 which was not paid due to want of LPC. Subsequently he was not paid wages w.e.f. 11.7.2011. Since inspite of his approach to higher authorities he could not get any relief, he approached this Tribunal.

7. Learned counsel for the official respondents No. 1 to 4 has submitted that there is no order to show that the applicant was directed to accompany respondent No.5 to Hyderabad. There is also no document to show that the applicant had given any representation/option to accompany the concerned officer, i.e. respondent No.5 to Hyderabad which is beyond the jurisdiction of this Division, as one option is required to be exercised to that effect. The Bungalow Peon attached to an officer does not move along with the officer automatically without any transfer order. The applicant was transferred from

the office of the Dy.CE/Con/KUR at BBS to the office of the Dy.CE/Con/Plg/BBS and he was relieved by the successor of the present respondent No.5 after issuance of the transfer order. But he was not issued any transfer order to join South Central Railway for being attached to the present respondent No.5. In view of the above the applicant cannot move with the respondent No.5 to South Central Railway without any transfer order. Moreover, the applicant had not completed prescribed period of 240 days continuous service from the date of his engagement. There is no attendance register or any other document to show that the applicant had served respondent No.5 at Hyderabad for any particular period or on any particular date. Respondent No.5 had joined in the new station at Hyderabad on 27.6.2011. The attendance register/Muster Roll maintained at Bhubaneswar in respect of the applicant (R/2) which has been relied upon by the learned counsel for the official respondents in support of their stand shows that the applicant was shown present in the office of Dy.CE/C/Plg/BBS till 10.7.2011 including the rest day on 10.7.2011. Therefore the said document also goes contrary to the stand taken by the applicant that he had accompanied respondent No.5 to Hyderabad as his attendant on 3.7.2011 because it is already seen that the respondent No.5 had joined at Hyderabad on 27.6.2011. In absence of any scrap of paper in favour of the applicant to show that he has accompanied respondent No.5 at Hyderabad and served for a particular period, this Tribunal is not inclined to accept the claim of the applicant. The absence of the applicant from duty since 11.7.2011 cannot be ignored. Therefore as per rules governing the field the applicant, who was working as Substitute Bungalow Peon has been disengaged and there is no illegality committed on the part of the respondents.

8. The OA is accordingly dismissed. There will be no order as to costs.

(C.V.SANKAR)
MEMBER (A)

(SWARUP KUMAR MSIHRA)
MEMBER (J)