

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2263/90
T.A. No.

199

DATE OF DECISION 23.11.1990.

Shri Dineshwar Kumar Shah

Petitioner Applicant

Shri B. S. Mainee

Advocate for the Petitioner(s) Applicant

Versus

Union of India through the
G.M., Northern Rly. & Ors.

Respondent

Shri P. S. Mahendroo

Advocate for the Respondent(s)

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The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(Judgement of the Bench delivered by Hon'ble
Mr. P. K. Kartha, Vice-Chairman)

The grievance of the applicant relates to the termination of his services as Bungalow Peon by the impugned order dated 19.10.1990.

2. The applicant is a matriculate and was appointed on 7.4.1988 by the Additional General Manager, Northern Railway as Bungalow Peon/Khalasi to work at the residence of Deputy Chief Electrical Engineer (Construction), Northern Railway, Tilak Bridge, New Delhi. There was no problem when he worked at the residence of Shri A.K. Jain, Deputy Chief Electrical Engineer (Construction). On the transfer of Shri Jain, he was ordered to work at the residence of the new incumbent, Shri C.R. Rao, from August, 1989. The

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applicant had been utilised as a domestic servant at the residence of Shri Rao. He has alleged that he had been put to work from 6.00 a.m. to 11.00 p.m. every day. He has further stated that Trade Unions had raised the issue in their meetings with the Railway Officers about the inhuman treatment meted out to him. This led to the passing of the impugned order. The applicant claims that he had been on the sick list.

3. The applicant has contended that as a Casual Labourer, he had acquired temporary status and that the termination of his services on the ground of misconduct without holding an inquiry against him, is in violation of the provisions of the Indian Railway Establishment Manual.

4. The application was filed in the Tribunal on 30th October, 1990. On 1.11.1990, the application was admitted when the learned counsel for the applicant stated that the applicant was still continuing in service. In view of this, the Tribunal directed that the impugned order dated 19th October, 1990 be not implemented.

5. The respondents have not filed in their counter-affidavit. Shri P.S. Mahendru, learned counsel for the respondents, appeared on 15.11.1990, when we went through the records of the case and heard the learned counsel for both the parties. Shri Mahendru contended that the applicant has not preferred any representation against the impugned order of termination and that the application is not maintainable on the ground of non-exhaustion of departmental remedies. We are not impressed by this contention as the Northern Railwaymen's Union had sent a representation to the

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respondents on 24.10.1990 against the alleged illegal termination of the applicant (vide Annexure A-4, p.12 of the paper-book).

6. The impugned order dated 19.10.1990, reads as follows:-

"Sub:-Termination of the services of Shri Dineshwar Kumar as Bunglow Peon.

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Shri Dineshwar Kumar was appointed as a Bunglow Peon by Shri A.K. Jain, Dy. CEE/C/HQ/TKJ on 7.4.88 and was transferred automatically under me as I was posted vice Shri A.K. Jain who was transferred on promotion to Dlh/Varanasi.

Since then, Sh. Dineshwar has been found irregular in his duties, disobedient and rude in his behaviour while attending to his duties as Bunglow Peon. He has been verbally warned several times to attend his duties properly, sincerely and change his behaviour. But it is found that instead of assisting me in my duties he has become a cause of nuisance for me. Under these circumstances, I am not in a position to retain him any more as Bunglow Peon under me.

The post of Bunglow Peon of Dy.CEE/C/HQ/TKJ has expired and no further sanction is necessary. Hence the post of bunglow peon is surrendered and the services of Shri Dineshwar Kumar have been terminated w.e.f. 22.10.90 (AN)."

(Vide Annexure A-1, p.8 of the paper-book).

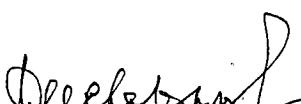
7. It will be noticed from the aforesaid order that the termination was for the alleged misconduct committed by the applicant. Admittedly, the applicant has worked as Bunglow Peon from 7.4.1988 to 19.10.1990 and had acquired temporary status. According to the provisions of the Indian Railway Establishment Manual, a railway employee who has acquired temporary status, is entitled to the protection of the Railway Servants (Discipline & Appeal) Rules. As no inquiry was held against the applicant on the charge of alleged

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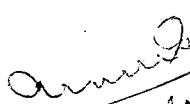
misconduct before terminating his services, we are of the opinion that the impugned order of termination is not legally sustainable.

8. Accordingly, we set aside and quash the impugned order of termination dated 19.10.1990 and direct the respondents to continue the applicant as Bungalow Peon/Khalasi. We make it clear that the respondents will be at liberty to take appropriate proceedings against the applicant for any alleged misconduct in accordance with law, if so advised. The application is disposed of on the above lines.

There will be no order as to costs.


(D.K. CHAKRAVORTY)
ADMINISTRATIVE MEMBER

23/11/90


23/11/90
(P.K. KARTHA)
VICE CHAIRMAN(J)