

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A.No. 795 of 1997

Dated: This the 24th day of May, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER

Mohan Kumar, son of late Ram Surat,
resident of Village Taranpur, Post Chandauli,
District Varanasi.

.....Applicant

Counsel for the applicant: Shri N.D.Shukla

VERSUS

1. Senior Divisional Personnel Officer,
Eastern Railway, Dhanbad, (State of Bihar).
2. Assistant Personnel Officer, Eastern Railway,
Dhanbad, State of Bihar,
3. Union of India, through the Chairman,
Railway Board, New Delhi.
4. General Manager, Eastern Railway, Calcutta.
5. Divisional Safety Officer, Eastern Railway Dhanbad
State of Bihar.
6. Chief Personnel Officer, Eastern Railway, Calcutta.

.....Respondents.

Counsel for the respondents: Shri Lalji Sinha

O R D E R

By Hon'ble Mrs. Meera Chhibber, JM

By this O.A. applicant has sought quashing
of the order dated 17.3.1994 and 12.9.94 and he further
sought direction to treat him as continuing on the post
of substitute bungalow peon with further direction to
regularise the services under DSO/DHN, Eastern Railway and
not to interfere in his working as substitute bungalow
peon under DSO/DHN, Eastern Railway and to pay him the
salary of the said post regularly alongwith other



...PG 2/-

service benefits.

2. It is submitted by the applicant that he was appointed as substitute bungalow peon under DSU/DHN on 04.8.1993 by Shri U.K.Bal. He was given an appointment letter dated 03.1.1994 ^{but} ~~and~~ he was working as bungalow peon w.e.f. 04.8.1993. He appeared before the Medical Board on 11.1.1994 and was declared fit for appointment as Class IV employee. Opposite party no.2 gave his approval also vide letter dated 27.1.1994, therefore, he was duly appointed as bungalow peon. He was surprised when his services were discontinued on 17.3.1994 in an illegal and arbitrary manner without assigning any reason.

3. It is submitted by the applicant that his services could not have been terminated without giving any show cause notice or affording him an opportunity of hearing as it becomes violative ~~of~~ principles of natural justice as well as violative ~~of~~ the provision of Article 311(2) of constitution of India, therefore, the said order is liable to be quashed and set aside on this ground alone. Being aggrieved he gave a representation on 08.9.1995 to the respondent no.3 but the same has not been decided till date, therefore, he had no other option but to file the present O.A..

4. Respondents, on the other hand, have opposed this O.A. and have submitted that the O.A. is barred by limitation as his services were terminated in March, 1994 whereas present O.A. has been filed in the year 1997. Moreover, this petition is not maintainable at Allahabad Bench because no part of the cause of action had accrued in favour of applicant at Allahabad. On the

contrary he was working in Dhanbad and was never served impugned order at Varanasi. He has even sent a representation dated 08.9.1995 from Dhanbad. They have, thus, submitted that this U.A. is not maintainable and is liable to be dismissed on their preliminary objections.

5. They have submitted that applicant was engaged as Substitute bungalow peon as DSO/DHN from 27.1.1994 and not from 04.8.1993 as stated by him. In his engagement letter it is made clear that he has no claim for regular absorption in any group 'D' category unless he is selected by the nominated screening committee members after completion of one year continuous service which he could not complete due to transfer of his engaging authority ~~in~~ between to other division as DCM. They have explained that applicant was engaged as Substitute Bungalow Peon of Shri U.K.Bal, DSO/DHN and consequent to the transfer of Shri Bal, DSO/DHN to DCM/HWH, applicant's services as bungalow peon were terminated, as DCM is not entitled for any bungalow peon. They have, thus, submitted that applicant could not be retained. In these circumstances because incoming Officers~~s~~ posted as DSO/DHN ^{his} had already engaged ~~their~~ own bungalow peon according to their own choice in terms of CPO/COG's ~~as~~ confidential circular dated 20.8.1984. They have, thus, submitted that the impugned order is neither illegal nor arbitrary passed by the respondents. The U.A. may, therefore, be dismissed.

6. I have heard counsel for the respondents and perused the pleadings as well. Perusal of letter dated 27.1.1994(Annexure4) shows that applicant was engaged as Substitute Bungalow Peon under the DSO/Dhanbad and in the said appointment letter itself, it ^{was} ~~is~~ made clear that he has no claim to be absorbed in a regular cadre in any

PS

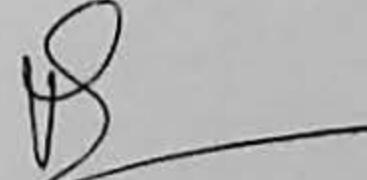
Group 'D' category unless he is selected by a duly constituted screening committee as per his turn.

Admittedly this appointment letter was issued on 27.1.1994 and as per reply filed by the respondents who had the officer/got him engaged as Substitute bungalow peon, was transferred to Howrah soon thereafter.

The officer, who came in place of Shri U.K.Bal had already engaged a ~~servant~~ ^{Substitute bungalow peon} of his own choice, as his bungalow peon. In these circumstances, naturally, there was no justification to retain the applicant as he had not even completed one year as substitute bungalow peon.

Perusal of Annexure-1 with the C.A. shows that as per the policy decision of Eastern Railway, Calcutta, the Officers were entitled to engage bungalow peon of their own choice for a period of one year. and the bungalow peon would become eligible for absorption against other Class-IV vacancies only on completion of 3 years continuous satisfactory service subject to availability of vacancies, in the order of their seniority. In the instant case applicant had not even completed one year, therefore, the question of his absorption does not even arise. It is settled law by now that if the officer, who engages a substitute bungalow peon, proceeds on transfer and does not take the bungalow peon with him he cannot insist to be retained on the same position as other Officer has a right to engage a bungalow peon of his own choice.

7. In these circumstance there is no merit in the D.A.. The D.A. is accordingly dismissed with no order as to costs.



Member-J

Brijesh/-