

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1667 OF 2004

ALLAHABAD THIS THE 20th DAY OF November, 2006

HON'BLE DR. K.B.S. RAJAN, J.M.
HON'BLE MR. A. K. SINGH, A.M.

Ashish Kumar Son of Raj Kishor,
Resident of Village Mund Raura,
Post Jamalpur, Munger Vihar.

..... .Applicant

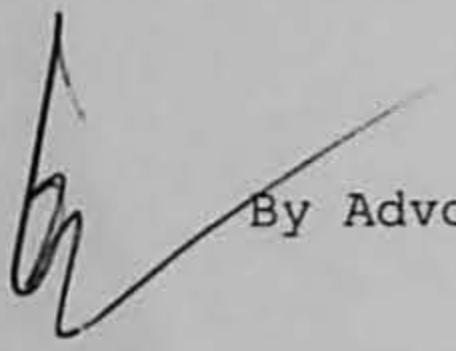
By Advocates : Shri Shekar Kumar & L. M. Singh)

Versus

1. Union of India
through its Secretary,
Railway Ministry, New Delhi.
2. General Manager (Diesel Locomotive Works)
Varanasi.
3. Divisional Rail Manager (Diesel Locomotive Works)
Varanasi.
4. Deputy Chief Mechanical Engineer,
(Diesel Locomotive Works)
Varanasi.
5. Varist Sahayak Vitta Salahakar,
(Senior Assistant Financial Advisor)
(Diesel Locomotive Works) Varanasi.

..... .Respondents

By Advocate : Shri Zafar Moonis.



ORDERHON'BLE DR. K.B.S. RAJAN, J.M.

Facts of the case being not in dispute obviate debate and the one given in para 3 of the counter is therefore, extracted below:-

"i) The post of Telephone Attendant-cum-Dak Khalasi was previously designated as Bungalow Peon in Scale Rs.2550-3200/-. However, the General Manager, Diesel Locomotive Works redesignated the post of Bungalow Peon as Telephone Attendant-cum-Dak Khalasi (in short TADK). It is relevant to mention here that the nature of the duties of Telephone Attendant-cum-Dak Khalasi (erstwhile Bungalow Peon) is of trust and confidence therefore, the incumbent of the Telephone Attendant-cum-Dak Khalasi post has to be a man of trust and confidence. The applicant was recommended by Sri Swapnil Garg Dy. Chief Project Manager (ERP), to be recruited as TADK (erstwhile Bungalow Peon).

ii) That on receipt of recommendation of Sri Swapnil Garg Dy Chief Project Manager (ERP), the proposal was approved by the General Manager as per extant rules. Thereafter an offer of appointment for the post of Substitute Telephone Attendant-cum-Dak Khalasi for a period of 3 months was given to the applicant vide Annexure-3 to the OA letter dated 15.1.2002.

iii) That the applicant accepted the terms and conditions of offer of appointment dated 15.1.2002. On receipt of his acceptance, the applicant was engaged as substitute Telephone Attendant-cum-Dak Khalasi vide Annexure CA-1 office order No.134 dated 29.1.2002.

iv) That after completion of four months continuous service, the applicant was given temporary status vide Annexure CA-2 officer order NO.648 dated 18.6.2002 as per rules w.e.f. 24.5.2002.

v) That the applicant was subsequently attached with Dy. Chief Accounts Officer/G Telephone Attendant-cum-Dak Khalasi vide Office Order No.226 dt. 29.1.2004.

vi) That thereafter the service of the applicant from the post of Substitute Telephone Attendant-

2

cum-Dak Khalasi was disengaged with immediate effect vide office Order No.242 dt.23.2.2004 as Dy. Chief Accounts Officer was not in need of TADK.

vii) That the applicant filed OA No.599/2004 against the order of dis-engegement dt.23.2.2004. The Tribunal disposed of the aforesaid OA with a direction to consider and decide the representation dt.12.4.2004 (Annexure 7 to the OA) vide order dt.2.6.2004 t the admission stage.

viii) That on receipt of the order dt.2.6.2004 of this tribunal the competent authority carefully gone through the representation dt. 12.4.2004 and competent authority rejected the representation by a reasoned and speaking order dt. 11.10.2004 (Annexure A-2 to the OA) which is self explanatory."

2. The counsel for the applicant submitted that the case is covered by order dated 6.1.2006 in OA no.1080/03. The counsel for the respondents submitted that since the services of the applicant were no longer required the termination of applicant's services couldn't be faulted with.

3. Arguments were heard and documents perused. Admittedly the applicant was afforded temporary status in accordance with rules w.e.f. 24.5.02. The full Bench judgment in the case of Shyam Sunder Vs. U.O.I. and Ors. (896/95) extracted in the CA has held as under:-

" As a general principle it cannot be laid down that after putting 120 days continuous service, a Bungalow Peon/Khalasi acquires a temporary status. On completion of such a period of continuous service as may be prescribed by the General Manager of the Railways under which he works and which is

6

current on the date of his employment as a Bungalow Peon/Khalasi. In the absence of any such rule or instructions from the General Manager, the general instructions or rule in that regard like one given under paragraph 1515 of the Manual, issued or framed by the Railway Board and current on the date of employment may determine the period of his continuous service for conferment of temporary status, as discussed in paragraph 10 & 11 of this order."

4. By virtue of temporary status the applicant has gained a status, which is above the status of a mere casual labourer, and the benefits of absorption etc. are available to him subject to fulfillment of other requisite conditions if any. A perusal of order dated 6.1.06 and comparison of the facts therein with that of the present OA reflects that the two cases are identical (incidentally the contesting respondents in both the cases are the same). The said order discusses provisions of para 1512, 1515, 2005, 2302, and Apex courts decision in Champak Lal Chiman Lal Shah Vs Union of India (1964 (5) SCR 190) and DTC Vs. Mazdoor Congress (1991 (Supp. 1) SCC 600) and also Full Bench judgment in the case of Sameshwar Ram and ultimately held as under:-

The above decision applies in all the four squares with the instant case and as such the applicant is entitled to the same relief as given therein. The case of the applicant has to be tested on the touch stone of the law laid down by the Apex Court in the above mentioned two Constitution Bench cases and the rule on the subject. As per the Code, substitute is appointed against a post carrying regular pay scale and is meant to

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fill up the vacancy caused by either the incumbent going on leave or the post could not be filled up by regular incumbent but the same cannot also not be kept vacant. When this is the fundamental purpose of appointing a substitute, it goes to show that the appointment is against a post, though the individual does not crystallize any rights against the post or other rights save those prescribed in the Code on attaining temporary status. The post in question i.e. TADK may be attached to a particular higher post i.e. the Dy. CME (Spares). Needless to mention that attachment to the said post of a TADK is for the efficient performance of official duties by any incumbent holding the said post. Now the question is whether an incumbent to the said higher post i.e. the Dy. CME (Spares) could say that he does not require the post? Obviously, the answer to the question is No. Of course, if the post is abolished then termination is justified. If the individual appointed as substitute TADK is less efficient or has indulged in some misconduct, as held in the case of Champaklal (supra) services could be terminated. But, on the ground that the services are no longer required by the Dy. CME (Spares) falls within the mischief aimed at by the observation contained in paragraph 186 of the DTC case supra. There is no complaint against the applicant. The applicant has acquired temporary status. The post has not been abolished. As such, termination of the applicant on the said ground cannot be upheld. Of course, if a regular incumbent has been inducted then the applicant may have to yield. Here again, when he has acquired the temporary status, he has crystallized his rights to the extent of regularization subject to screening and as such, attempt should be to accommodate him elsewhere, in case the post is filled up by a regularly appointed person. The post cannot be filled up by another substitute as in that event, such an appointment would be hit by the law laid down by the Apex Court in the case of **State of Haryana v. Piara Singh, (1992) 4 SCC 118**, wherein the Apex Court has held,

"46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee;

he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority."

5. In view of the above, the OA succeeds. The impugned order dated 23.2.2004 and 11.10.2004 are quashed and set aside. The applicant is entitled to continue in the appointment as temporary status substitute TADK. He is also entitled to the increments as per the pay scale all through. The respondents are directed to reinstate the applicant fix his pay taking into account his services from October, 2001 by grant of annual increments as per law and also pay him the arrears of pay and allowances (as reduced by the pay disbursed in lieu of notice period) from the date of termination till the date of reinstatement. While the reinstatement shall be within two months from the date of receipt of a copy of this order, payment of arrears of pay and allowances shall be within a period of four months from the date of such reinstatement.

No cost.

Member-A

Member-J

/ns/