

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 456 of 2004

Allahabad this the, 14 day of Feb., 2014

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD
Hon'ble Ms. B. Bhamathi, Member (A)**

Puran Chand S/o Late Sh. Keshav Dutt, R/o Village Newar Salani,
P.O. Fatehpur, District Nainital.

Applicant

By Advocate: Sri Ajay Rajendra

Versus

1. Union of India through General Manager, Railway Electrification, Allahabad.
2. Senior Electrical Engineer (D&S), Railway Electrification, Allahabad.
3. Assistant Electrical Engineer (Steel) Core, Railway Electrification, Allahabad.

Respondents

By Advocate: Sri Prashant Mathur

Reserved on 20th January, 2014

O R D E R

By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD

The applicant has prayed for the following relief(s): -

"(i) to quash the impugned order dated 6-12-1995 passed by the respondent No. 4 and the order dated 16-3-2004 passed by the respondent No. 1 (annexure No. 1 and 2 to the O.A.)

(ii) to issue a suitable order or direction to the respondent No. 1 to reinstate the applicant with all consequential benefits.

(iii) to issue any other order or direction to the respondents to which this Hon'ble Court may deem fit under the circumstances of the case.

(iv) Award cost of the application."

2. The facts of the O.A., in brief, are as follows: -

The respondent No. 3 sent a proposal for engagement of the applicant as a Bungalow Khalasi. After completion of necessary formalities, applicant was sent for medical check up on 17.02.1995 before the Chief Medical Officer, Northern Railway, Allahabad and after medical check up, he was appointed as Bungalow Khalasi on 23.02.1995 vide letter No. E/01/38 part-II/ dated 24.02.1995 issued by the Assistant Personnel Officer, CORE Railway Electrification, Allahabad. The applicant was attached with respondent No. 3 as a Bungalow Khalasi. After his appointment, the applicant was sincerely serving the respondent No.3. The applicant was residing in out house in Bungalow No. 17/7-B, allotted to respondent No. 3. The attendance of applicant was marked by respondent No. 3. Salary of the applicant was counted on daily wage basis. All of a sudden, on 07.09.1995 the applicant was served a letter for disciplinary proceedings at the residence of respondent No. 3 issued by respondent No. 4 regarding his alleged unsatisfactory work on concocted grounds. He was given seven days' time to submit his explanation. He was shown absent from the opening day of month i.e. 01.09.1995 to 05.09.1995. On 15.09.1995, applicant submitted his reply to respondent No. 4 denying the allegations made in the show cause notice regarding his absence from duty. It was

stated by the applicant that during the period, in question, applicant went on duty but the respondent No. 3 did not open the door to come in his bungalow and ordered the applicant to live in the out house. The respondent No. 4 vide his letter dated 21.09.1995 replied the letter of applicant dated 15.09.1995 rebutting the same allegation as earlier without considering the explanation of applicant. The applicant had signed the attendance book of Railway Mali attached with respondent No. 3 on 18.09.1995, 26.10.1995 and 02.11.1995. The applicant also requested the respondent No. 4 to attach him with some other officer but his request was not accepted. The applicant also approached the Secretary of Northern Railway Mazdoor Union, Railway Electrification Branch, Allahabad for redressal of his grievances but of no use.

3. The respondent No. 4 ultimately terminated the services of applicant vide order dated 06.12.1995, signed on 07.12.1995. The applicant preferred an Appeal against the aforesaid order on 26.12.1995. In the meantime, applicant filed O.A. No. 322 of 1996 Puran Chand Vs. Union of India and others, which was finally decided on 25.11.2003 with direction to the respondent No. 1 to decide the pending appeal of the applicant by a reasoned order within a period of three months. The appeal of applicant

was ultimately rejected by respondent No. 1 in a most casual and mechanical manner. Hence, this O.A. was filed mainly on the grounds that the appeal of applicant has been decided in a most casual and mechanical manner without application of mind. The applicant has completed more than 180 days of service, thus, he has acquired temporary status given to a casual employee after completion of 120 days of service. No proper opportunity of hearing has been given to the applicant, nor any charge sheet was issued to him. The appointment order was issued by the Assistant Personnel Officer, Railway Electrification, Allahabad but the termination order was issued by respondent No. 4 which is without jurisdiction. The respondent No. 4 has been subordinate to respondent No. 3 and, thus, he was biased and acting under the dictates of respondent No. 3. The applicant cannot be termed as a Project Labourer as he has neither worked in any Project, officially declared, nor his duties were placed in open line of any project. As he had acquired temporary status, he became eligible for all rights and benefits admissible to a temporary railway servant. But without initiating the DA&R proceedings, his services have been terminated. The action of respondent No. 3 regarding non-marking the attendance of applicant despite taking work

from w.e.f. 01.09.1995 to 05.09.1995 and 09.09.1995 to 06.12.1995 is arbitrary and malafide.

4. The respondents have filed the Counter Reply denying the allegations made by the applicant alleging inter-alia that consequent upon the recommendations made by Shri Ashutosh Pant, the then Senior Electrical Engineer (D&S), CORE, Allahabad, the applicant was engaged purely on casual capacity as a Bungalow Khalasi with a specific embargo that continuation of his services depend upon the continuous satisfactory performance to the officer concerned and on failure his services are liable to be dispensed with. The conduct of applicant was not satisfactory as on various occasions he had been warned for his unscrupulous behaviour and his involvement in multifarious activities other than the duties for which he was appointed. He was given several written and verbal warnings to mend his ways but he did not improve. The applicant involved himself in a major theft committed at the Bungalow of respondent No. 3 for which the Criminal Case No. 382 of 2005 under Sections 457 and 380 of I.P.C. was registered on the instance of Shri Ashutosh Pant-respondent No. 3. The applicant was generally found missing from his place of duty on various occasions. His engagement was on daily rated basis. He has been paid his

legitimate dues only for the days he had discharged his duties. The present organization is a work-charged organization and as per rules, after completion of 360 days in a consecutive year, necessary status is granted to an individual. The applicant is unnecessarily mixing CPC pay scale with temporary status. It is wrong to say that the applicant was not permitted to work by respondent No. 3 at his bungalow. There has been no deliberate artificial absenting or presenting by either respondent No. 3 or respondent No. 4. It is further averred that the respondent No. 4 is not a subordinate to respondent No. 3, working totally in different section in the Engineering Department. It is incorrect to allege that the attendance of applicant was fully in hand and pleasure of respondent No. 3. The allegation of applicant that he had signed the attendance diary of Mali is also incorrect as the very authenticity of the document has been denied by Shri Panna Lal-alleged Mali, coupled with the fact that the entire matter has been examined by the competent authority who submitted a detailed reply in this regard on 15.12.1995 to the Chief Personnel Officer, Railway Electrification, Allahabad. From the record, it is apparent that after his appointment on 24.02.1995 applicant was not working properly and remained absent from 09.09.1995 and, thus, his total working days come to 192 days as Bungalow Khalasi which

does not entitle him for conferment of temporary status as per rules. Under rule, a Bungalow Khalasi cannot be shifted to any officer as his appointment depends on satisfaction of the concerned officer with whom he is attached. The matter of applicant raised by the Union was discussed at length on 09.04.1996 and finally the matter was consigned. The present organization is a work charged organization, as such, it is a project. Hence, rules of the project labourers are applicable to the present organization and accordingly an individual employed in this organization has to complete 360 days in consecutive year to claim any requisite status of temporary status or any other status or benefit permissible under the rules. The very engagement of applicant is of a back door entry as there had been a complete ban for fresh intake of any casual labourers/class IV employee and, thus, it is an exception of normal procedure of appointing him on the post of Bungalow Khalasi in order to help out the officer concerned in discharge of his official duties. The required procedure was not followed in his appointment. His engagement has been purely contractual, which depends upon the personal satisfaction of the officer concerned. The applicant has got no case and the O.A. deserves to be dismissed.

5. The applicant has filed the Rejoinder Affidavit mainly reiterating the earlier stands taken in the O.A.

6. On the other hand, the respondents have filed the Civil Misc. Application supported with an Affidavit annexing the appointment letter of one Vijay Kumar and certified copy of the Judgment and Order passed by the Hon'ble High Court in *Writ Petition – A No. 45015 of 2008 Vishwa Nath Vs. Union of India and others.*

7. In addition to the pleadings, the applicant has filed documentary evidence in support of his contention and has placed reliance on the same which is annexure No. 1 to annexure No. 12 on record.

8. On the other hand, the respondents have placed reliance on documentary evidence filed by them which is annexure CA-1 to annexure CA-9 on record.

9. We have heard the learned counsel for the applicant and perused the pleadings on record. Since none was present for the respondents, argument of respondents could not be heard. The record shows that on several dates proceedings were adjourned on the instance of respondents' counsel and after giving last opportunity, the argument was heard on 20th January, 2014 with facility to the respondents' counsel to file Written Arguments, if any. No written argument has been filed on record.

10. The main submission of learned counsel for the applicant is that the service of applicant has wrongly been terminated without giving any opportunity of hearing and without initiating any disciplinary proceedings against him. It has also been submitted that after completing 120 days of service, the applicant has acquired the status of temporary employee and in these circumstances without affording sufficient opportunity of hearing and without initiating disciplinary proceedings his termination is bad in the eye of law. On the other hand, the contention of respondents has been that the applicant since from beginning of his appointment has not been sincere to his duties. He was not appointed by regular procedure rather it was a back door entry. He has been in the habit of absenting himself from his duties. Several verbal warning were given to him, one week notice was given to him to improve himself but he did not improve neither attended his duties. Thereafter, one month notice was given to him and thereafter finding no improvement in him, his services were terminated. It has also been contended by the respondents that the applicant has not acquired temporary status as in his case after working for 360 days in consecutive year, temporary status or any legal benefit accrues to an employee. Since, admittedly, this period has not been completed by the applicant, he has not acquired

any legal status so as to attract the disciplinary proceedings. His service was depending on the satisfaction of respondent No. 3 and the same was not found satisfactory. His services have rightly been terminated.

11. A perusal of annexure-3 shows that the applicant after prior approval of G.M. Personnel was provisionally engaged as a new face Daily Wager B/Khalasi w.e.f. 23.02.1995 attached with SEE (W&S)/CORE/Allahabad. The terms and conditions of his appointment have been mentioned in this annexure, which are as follows: -

1. *His engagement is purely on casual capacity and his continuance in service depends upon satisfactory performance of the duties of the Bungalow Khalasi.*
2. *His service is liable to be terminated if performance is considered un-satisfactory as well as reduction of the work or failure of the conditions of the engagement.*
3. *He will be governed under the existing norms laid down governing such engagement and as applicable to project casual labourers.*
4. *His services may be terminated at any time before attaining temporary status in case officer with whom he is attached is transferred out of RE."*

The above terms and conditions of his appointment specifically show that his engagement was purely on contractual basis and it was dependent on the satisfaction of the officer with whom he was attached as a Bungalow

Khalasi. It is also mentioned in the terms and conditions that the rules relating to Project Casual Labourer will be applicable to him. Similarly, a perusal of annexure-4, filed by the applicant, shows that a show cause notice was given to him to explain within seven days as to why and under what circumstances, he has not performed his duties satisfactorily and, why he has been absent from 01.09.1995 to 05.09.1995 without any prior information or permission. The applicant has submitted his explanation but it was not found satisfactory as is apparent from perusal of annexure A-6 on record in which it is mentioned that his reply regarding his absence from 01.09.1995 to 05.09.1995 was not satisfactory and he is still absent from his duties i.e. till 21.09.1995.

12. As regards the factum of satisfactory service of the applicant, the main satisfaction is that of officer with whom the applicant was attached. The facts mentioned in the Counter Reply reveal that an F.I.R. was also lodged against the applicant regarding a Criminal Case of theft in the bungalow of respondent No. 3 under Section 457 and 380 of the I.P.C. It has also been mentioned in the Counter Reply that the applicant was habitual in absenting himself for a long period without any information. The factum of being involved in a theft case has not been denied by the

applicant. The respondents have filed a copy of the Order passed by the Hon'ble High Court in Writ Petition -A No. 45015 of 2008 Vishwa Nath Vs. Union of India and others in which though the applicant in that case was sought to have acquired the temporary status, his services were terminated. He filed O.A. before this Tribunal, which was dismissed. He preferred the aforesaid Writ Petition before the Hon'ble High Court, which was also dismissed with the following observations: -

"We do not find any substance in the contention of learned counsel for the petitioner, that the services were terminated on the ground of absence of two hours. In fact the long absence from duties in the month of October, November and December, 1999 were taken into consideration to treat his services as unsatisfactory. The order was not founded upon the incident of absence for two hours. It was not passed by way of punishment. The petitioner was habitual absentee without consideration and thus his services could be terminated within one month's notice, or pay in lieu thereof under rule 5 (1) of CCS Temporary Service Rules. The order is not stigmatic in nature and will not cause any impediment for searching any other employment."

13. In the case of 'Union of India Vs. Shri Vijay Kumar in Writ Petition (Civil) No. 15407 of 2006, decided on 07.08.2007, the Hon'ble Delhi High Court has held as follows: -

"(i) The Discipline and Appeal Rules are required to be followed in the matter of temporary employee and that an order simplicitor on unsatisfactory work could not have been passed against such employee. The Delhi High Court relied upon the Railway Board's letter issued in January 1995 in which it was held as follows: -

(ii) Person who has attained temporary status cannot be discharged from service without applying full procedure as described in the D & A Rules. The grant of ty. Status to Bungalow peons before 2 years service will create problems for the officer in case Bungalow Peon indulge in unwarranted activities. No officer will allow his family members to be dragged, in official D & A enquiring etc. thus, condition of two years service for grant of ty. Status to Bungalow Khalasi is a must.

(iii) The above conditions are not included in the IREC or IREM as Bungalow peons is a special category as they are neither casual labour nor substitute. Their service conditions, until they attain Ty. Status after completion of two years continuous service, are governed by the administrative orders issued from time to time with the approval of competent authority on Zonal Railways."

A perusal of the aforesaid Rule shows that before completion of two years satisfactory service, temporary status is not acquired by a Bungalow Peon and consequently following the D&A Rules in the case of Bungalow Peon before completion of two years is not required.

14. In view of the above discussions, we are of the view that the O.A. has got no substance and it deserves to be dismissed. O.A. is accordingly dismissed. No order as to costs.

B. Bhamathi

(Ms. B. Bhamathi)
Member - A

~~Justice S.S. Tiwari~~
Member - J

/M.M/