

O.A.NO.1125 of 1987

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Vs.

Senior Engineer Survey, .. . Respondents.
Railway Electrification,
Allahabad.

Hon'ble G.S. Sharma - J.M.
Hon'ble K.J. Raman - A.M.

(By Hon. K.J.Raman)

In this application preferred under section 19 of the Administrative Tribunals Act, 1985, the applicant's grievance is that his services as a Bunglow peon in the Railway Electrification Organization, dating from 9.5.86, were terminated orally from 20.8.87, without issue of any charge-sheet or assigning any reason for such termination. The applicant claims that since his appointment on 9.5.86 as a regular Bunglow peon, he has been performing his duty sincerely and honestly, and on 20.8.87 respondent No. 1 prevented him orally from doing his duty and told him that no reason would be communicated in writing. The applicant made written representations on 22.8.87 and later, to various authorities, but received no reply. The applicant alleges that the termination of his services is arbitrary and illegal as it has been done without issuing any charge-sheet or conducting any inquiry. He claims that being a

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"regular Bunglow peon", his services cannot be so terminated. He has sought relief by way of a direction to the respondents to allow the applicant to perform duty and to arrange payments of salary etc. from 20.8.87 up to date.

2. In the reply filed on behalf of the respondents, it is alleged that the applicant was a casual labourer and not a regular Bunglow peon. (It may be noted here that the applicant has not produced any documentary evidence as to the nature of his initial appointment in 1986). The respondents allege that while applying for the post of Bunglow peon, the applicant stated that he had kept his service record at home which he would produce later. (Without past service, he was not eligible to be considered for the appointment). Pending verification of his past services, he was engaged provisionally. The respondents aver that the applicant then submitted a service card which, on investigation, was found to be forged, false and bogus (vide Annexures RI, RII, RIII, RIV and RV to the reply). According to the respondents, previous service was a sine qua non for the applicant's appointment in 1986 as a casual labourer and he was ^{only} ~~any~~ provisionally appointed then, pending verification of his past service record. Since the past service record produced by the applicant was false and forged he "was legally discharged from 20.8.87." It is further submitted that the reason for his discharge was communicated to the applicant who recorded a statement in writing in Hindi as follows" : "Is karya~~laya~~aya ke

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mutalik bataya jata hai ke hamara card jali hai.
Card paye."

Radhey Lal."

It is stated that the Disciplinary and Appeal Rules are not applicable in this case and the question of conducting any enquiry does not arise. The respondents state that there was no alternative but to discharge the applicant after his fraudulent action came to light and that if his service record was genuine, he could disclose in detail in his rejoinder so that the same might be investigated.

3. In the rejoinder filed, the applicant has reiterated the points contained in his application. No further details of his past service have been disclosed therein.

4. During the arguments learned counsel for the opposing sides reiterated their contentions referred above. Learned counsel for the applicant cited in support of his arguments, the case of Rajendra Kumar Vs. Union of India, 1988 UPLBEC(Tri) 22, of this Bench of the Tribunal.

5. We have carefully considered the contentions of both the sides. The applicant has not established by satisfactory evidence that he was a regular or temporary employee of the respondents. The Disciplinary and Appeal Rules of the respondents may not apply to the applicant as a casual labourer. Even so, the question in this case is whether the services of the

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applicant could be terminated without observing the principles of natural justice and without affording reasonable opportunity to the applicant to defend himself from the proposed termination of his ^{source} ~~service~~ ¹⁹⁸² of livelihood, particularly for such serious mis-conduct, as alleged. The case cited by the learned counsel for the applicant vide para ^{4 above} ~~para~~ ¹⁹⁸² dealing with a similar termination of services, is relevant here. It is admitted by the respondents that the applicant was discharged from service from 20.8.87, obviously by an oral order as stated by the applicant. This was done without disclosing to the applicant the basis of such discharge which is now sought to be established by copies of documents in the annexures to the reply of the respondents; or otherwise affording an opportunity to the applicant to state his case, if any, against the proposed action. There has thus been a failure to observe the principle of audi alteram partem, which renders invalid the action of the respondents by way of termination of the applicant's services. The basis or the foundation of the discharge is admittedly the alleged submission of a forged or false service record, which is a very serious mis-conduct.

6. In the above circumstances, the impugned discharge or ~~or~~ termination of services of the applicant is hereby set aside. The respondents will have the ^{liberty} ~~libility~~ ¹⁹⁸² to issue a proper written show cause notice to the applicant, if they are so advised, and to adjudicate the case in accordance with law and the principles of natural justice in the light of the

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observations above in this order, and after giving a personal hearing, if so requested by the applicant; they shall also pass a speaking order, after such adjudication. The application is disposed of in these terms, without any order as to costs.

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MEMBER (A)

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MEMBER (J).

July 13
Dt. ~~April~~ *July*, 1989.
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