

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1519 of 1992

Allahabad this the 23rd day of Dec 1994

Hon'ble Mr. S. Das Gupta, Member 'A'
Hon'ble Mr. Jasbir S. Dhaliwal, Member 'J'

Amrit Lal Maurya S/o Sri Sunder Lal Maurya,
a/a 21 years r/o Village and Post Bigahra Usmanpur
Tehsil Chail, Distt. Allahabad.

Applicant

By Advocate Shri Satish Dwivedi

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The General Manager, Railway Electrification Headquarters Office, Allahabad.
3. The Divisional Rail Manager, Northern Railways, Allahabad.
4. The Assistant Engineer, Railway Electrification, Allahabad.
5. Sri K.C. Srivastava, Assistant Engineer, Railway Electrification, Allahabad.

Respondents

By Advocate Shri Amit Sthalekar.

O R D E R

By Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

This petition has been filed by the petitioner pleading that he was appointed and posted as a Bungalow Peon under the Inspector of Works, Railway Electrification, at Allahabad w.e.f. 09.12.1991 after being declared medically fit. He claims that his appointment was on permanent post in a substantive vacancy and he had continuously worked for more than 120 days and had acquired status of a temporary railway servant, thus,

he had become entitled to all the benefits available to a temporary railway servant under the law. His work and conduct was always excellent but Assistant Engineer was interested in employing his own man in his place and hatched a plan to oust the applicant from service. The respondent no.4 in a planned manner issued a warning letter dated 01.10.1992 with allegation that his work was not satisfactory and that he had been several time orally warned. It contained a threat that if, his work was not improved, he would be removed from service (letter is Annexure-3). The petitioner through representation (Annexure A-4) denied all the allegations. However, the Assistant Engineer, respondent no.4 passed an order dated 19.10.1992 (Annexure A-1), removing the applicant from service. He pleads that he could not be removed from service without following the procedure like a show-cause notice, a charge-sheet and holding of an inquiry in accordance with the procedure prescribed in Railway Servants (Disciplinary and Appeal) Rules, 1968. He has prayed for quashing the order dated 19-10-1992 (Annexure A-1) and to direct the respondents to provide him all the benefits attached to his post from the date of his removal to the date of his re-instatement.

2. The respondents in their reply have pleaded that the petitioner was engaged only as a casual labour and he, thus, could not be said

to be holding a civil post in terms of Rule 103(43) of the I.R.E.C. Vol.I. They plead that he was engaged as Bunglow Peon on daily ~~date~~ wages and there was no selection done. They deny that he was appointed on a permanent post in a substantive capacity. They further pleaded that railway electrification is a project and a casual labour engaged on project are required to complete 360 days of continuous service for acquiring 'temporary status'. They, thus, deny that he had acquired such status. They claim that he was given a notice dated 01.10.92 as his work was found to be far from satisfactory as he was found sleeping while on duty, was in the habit of quarreling with domestic servants at the residence of Chief Engineer and was found disobedient, ~~arrogant~~ and indisciplined. They have denied that there has been any conspiracy or preplanning against the petitioner and have claimed that his representation was rejected finding his explanation to be not satisfactory. They have claimed that no notice was required to terminate his services as he was a casual labour and since he was not engaged on a contract, notice of 14 days, was also not required. They have, thus, prayed for dismissal of this petition.

3. During the arguments, learned counsel for the applicant conceded that the petitioner was in fact a casual labour employed as a Bunglow Peon. His stand, however, is that since he has completed period of more than 120 days of

of continuous service, he had acquired temporary status. Since, the impugned order mentioned charges of mis-conduct which ^{cast} stigma, his dismissal is illegal and should be quashed. We have considered the contention in light of the rules in Indian Railway Establishment Manual and the law applicable to casual labour and find that the contentions raised, gave no merits.

4. Rule 2001 mentions as to what is casual labour. It refers to labour whose employment is intermittent or extends over short periods of continued work and the one to which conditions applicable to permanent and temporary staff do not apply. The casual labour has been further divided into two categories, of open line nature and on project. The casual labour are primarily engaged to work supplement the regular staff in the which arises seasonally or in day to day working of Railway system. Rules for conferment of temporary status on these categories are also different, those engaged on open lines works acquire temporary status under Rule 2001 after remaining engaged on that work for a period of more than 120 days without a break. For labourers engaged on projects further two categories have been recognised for conferment of some benefits. Casual labours on projects who have put in 180 days of continuous employment on work of the same type have been given entitlement for 1/30th of the minimum of the appropriate scale of pay plus Dearness Allowance. But for conferment of temporary status

which may make them entitled to the privileges of a temporary employee completion of 180 days has not been recognised as a condition. It is clarified under R.2001(ii) that grant of temporary status to project casual labour is regulated by instructions separately issued by the Railway Board. That ~~is~~ ^{has} obvious reference to the scheme presented by the Railway Board before the Supreme Court in the famous Indra Pal Yadava's case as reported in 1985 S.C.C. (L&S) page 526 titled Indra Pal Yadava & Others Vs. Union of India. The scheme was approved by the Hon'ble Supreme Court in the said case. The Court referring to circular no E(NG) II/84/CL/41 dt. June 1, 1984 has ^{w. of approval on} put its stamp ~~to~~ the instructions given by the Railway Board laying down that casual labour employed on projects may be treated as temporary on completion of 360 days of continuous employment. The Railway Board had further given the categories with particular dates on which the temporary status was to be conferred. In instructions 5.2 of the said scheme/circular, it was clarified that the casual labour on projects who have completed 180 days of continuous employment would continue to be entitled to the benefits at that time admissible to them till they become due for the benefits after acquiring the status of temporary employees. It is, thus, very clear that distinction was drawn not only with casual labour on open line after completion of 120 days continuous employment but also with casual labour on projects after completion of 180 days. Thus, casual labour on project acquires temporary status on completion of 360 days continuous service only. This opinion

is, further, fortified by Rule 2005 of the I.R.E.M. Volume II wherein the entitlement and privileges admissible to casual labour who are treated as temporary, have been mentioned.

5. The next question which comes to mind as to what category a Bunglow Peon belongs as apparently he is - neither on a project nor on open line. The Court has not been shown any instructions or circular on this aspect by either of the parties. In absence of any material one has to fall back on the definition of casual labour which mentions it as labour primarily engaged to supplement the regular staff ~~in~~ work in day to day working of the Railway system. Admittedly, the petitioner was attached with an officer of the Railways as a Bunglow Peon, who was himself posted on a project of Railway Electrification. Extending the meaning of such labour that a Bunglow Peon is engaged to supplement the regular staff in work of the project, in the present case, the petitioner is to be treated as casual labour (Project). It is clarified that this ~~@@@~~ meaning has been given in the present case on the basis of material available on this file and in absence of any material placed on record to show the facts to be otherwise. The Court has no option but to treat the petitioner as casual labour (Project).

6. Rule 2002 of the aforesaid manual makes it clear that casual labour who have not attained temporary status, are not eligible for any entitlement and privileges other than those statutorily admissible under the Acts like Minimum Wages Act, Workmen's Compensation Act etc. or those specifically sanctioned by the Railway Board from time to time. The Rule 2004 lays down that no notice is required for termination of service of casual labour unless - they have acquired the privileges of temporary status. Their services are deemed to have been terminated on the close of the day or when they absent themselves.

7. In the present case, the petitioner, admittedly, had not completed 360 days of continuous service. He being casual labour on project had not acquired the temporary status as recognised under the rules. He was, thus, not required to be given served with any notice or the protection of disciplinary inquiry before termination of his service. Considering these lines, we find no infirmity in termination of his service notwithstanding the fact that it was terminated through orders in writing dated 19.10.1992 which are impugned.

8. We, thus, find no merit in the application and the same is dismissed for the reasons afore mentioned. There shall, however be no order as to costs considering the facts of the case.

/M.M./

Jaswinder Singh
MEMBER (J)

WL
MEMBER (A)