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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

Registration O.A. No. 1152 of 1992

Arjun Kumar Chaudhari Applicant.

Versus

Union of India
and others Respondents.

And

Registration O.A. No. 1153 of 1992

Dinesh Kumar Rajak Applicant.

Versus

Union of India
and others Respondents.

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Hon'ble Mr. K. Obayya, Member(A)
Hon. Mr. Maharaj-din, Member (J)

(By Hon'ble Mr. K. Obayya, Member(A))

These two cases raise a common issue and the facts being similar, the cases were heard together and are being disposed of by a common judgment.

2. The applicant in O.A. No. 1152 of 1992 was appointed as 'Substitute Banglow Khalasi' under A.R.D.M vide letter dated 13.7.1990. The applicant in O.A. No. 1153 of 1992 was also appointed as 'Substitute Banglow Khalasi' under the Senior D.C.S. vide order dated 3.1.1991. Both these appointments were in Northern Railway at Allahabad. By the impunged orders dated 31.7.1992 and 9.3.1992, the service of the applicants were terminated. These impunged orders are under challenge in these applications.

3. On the facts of the case there is no dispute. Both the applicants were appointed as Substitute Khalasis. They were also found medically fit and

they were also paid regular scale of Rs. 750-940.

4. The learned counsel for the applicant Sri M.A. Siddiqui pointed out that the applicants had acquired temporary status having worked for more than 120 days and that their services have been found to be satisfactory, there has been no complaint whatsoever, against them and because of the condition of the appointment by which their continuation as substitute Khalasies was subject to the approval of the successors ~~to~~ the officers under whom they were working, they are being discharged. The impunged orders clearly indicate that the applicants will only work with the officers under whom they are being posted and they can continue to work under successor officers only if the latter are agreeable. Evidently, in both the cases, the successor officers wanted their own men and consequently discharge orders were issued to the applicants. The learned counsel assailed that the conditions of appointment are contrary to rules and as such, the conditions are violative of principles of natural justice.

5. The learned counsel for the respondents countered this by saying that the appointment of the applicants was subject to the condition that they will work under the present officers and that they will continue only if their appointment is approved by the successor officers. They are attached to the bungalow, as such, there is an element of loyalty, integrity and other factors to the satisfaction of the officers under whom they are serving. It is not denied by the respondents that

the applicants were appointed after medical examination and observation of other formalities. The Indian Railway Establishment Manual contains ~~one~~ provisions relating to the appointment of substitutes. This category of substitutes is different from that of casual labour. Substitutes are appointed normally in leave and other long term vacancies. On appointment, the substitutes are put on regular scales. ~~While~~ in the case of Casual Labour they start with ^{on} daily wages. The substitutes as also casual labour acquire temporary status after completion of working of 4 months. It is only after such status is granted casual labours are put on ^{one} regular scales thereafter they ~~are~~ screening for regularisation. In respect of substitutes, however, they are treated as Railway Servants for all purposes. It is also laid down that there should be a register showing the names of substitutes employee unit-wise and regular appointment should be offered to them on availability of vacancies. Service rendered as substitutes will also count for ~~one~~ pension and also regular absorption. These factors put substitutes on different plane and in the matter of absorption. They have preferential claim and right over the casual labours and others. The denial of appointment or continuation could only be due to non-availability of vacancies. In these cases, the discharge is not due to non-availability of vacancies but because of the ~~condition~~ of the appointment that they will

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remain in service as substitute bunglow Khalasis only subject to the approval of their masters.

We do not wish to make any observation regarding the aspects like reliability, serviceability and integrity etc. of the persons appointed as substitute Bunglow Khalasis. May be such persons of confidence are put in Bunglow as normally the officers go on tour for number of days and we fail to understand as to why, the bunglow Khalasis should be discharged even if there is a condition that they will continue as bunglow Khalasis subject to the approval of their master. They may not be posted or continued to serve as Bunglow Khalasis but evidently having acquired temporary status, they are entitled for certain claims, privileges and rights of substitutes as laid down in India Railway Establishment Manual. They are certainly entitled for appointment as a substitute in a suitable posts.

6. For these reasons, the impugned orders cannot be sustained. We quash the orders dated 31.7.1992 and 9.3.1992 discharging the applicants from service. We direct the respondents to reinstate the applicants as 'Substitutes' ^{on} posts similar to the one's held by them previously or on other similar posts. We also direct the respondents to enter the names of the applicants in the register of 'Substitutes' thereafter regularise them in ~~their~~ turn in accordance with law.

7. These applications are allowed as above.
There will be no order as to costs.

Member (S)

Member (A)

Dated: 17th May, 1993.
(n.u.)