

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Original Application No. 1249 of 1992

Allahabad this the 01st day of December, 2000

Hon'ble Mr.V.K. Majotra, Member (A)  
Hon'ble Mr.S.K.I. Naqvi, Member (J)

Sanjay Kumar S/o Duryodhan Saw R/o Laxmipur, P.O.  
Mughal Sarai, Distt. Varanasi.

By Advocates Shri S.K. Dey  
Shri S.K. Mishra

Versus

1. Union of India through the General Manager,  
N.Rly. 17, Netajee Subhas Road, Calcutta-1.
2. The Senior Divisional Personnel Officer, E.Rly.  
Mughal Sarai, Distt. Varanasi.

By Advocate Shri A.K. Gaur

O R D E R ( Oral )

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

The applicant was appointed as Substitute Banglow Peon on a pay of Rs.750/- per month in the pay scale of Rs.700-940 vide order dated 10.12.1991(annexure A-1). According to the applicant, having worked for more than 120 days continuously, he is entitled to all rights and privileges of the railway servant, such as temporary

status, privileges of pass, medical benefits leave etc, under paragraphs 1506, 1507, 1509, and 1515 of I.R.E.M., instead he was discharged from service vide order dated 04.8.1992(ann.A-6). According to the applicant, he had fallen ill on 19.7.1992, was admitted in the Hospital and was not given sick memo by the Office, despite his application made on 22.7.1992. The applicant has sought quashing of discharge order annexure A-6 dated 04.8.1992 and continuation in service with all benefits. He has also sought refund of medical charges, amounting to Rs.321.60.

2. In their counter-reply, the respondents have stated that the applicant never informed about his illness, nor did he ask for sick certificate. He tendered his resignation vide letter dated 03.8.92 and his services were terminated w.e.f. 4.8.92 on acceptance of his resignation to the competent authority.

3. We have heard the learned counsel for the both sides and perused the material available on record.

4. Learned counsel of the applicant relied upon annexure A dated 25.3.1991 of the Railways regarding appointment and discharge of Banglow Peons. He contended that since the applicant had put in more than 4 months service, he should have been deemed to have <sup>acquired</sup> ~~assumed~~ temporary status and re-engaged

as a substitute against a Group 'D' vacancy in a Unit and consider for absorption thereafter against regular Group 'D' post. He placed reliance on Order dated 17.5.1993 in O.A.No. 1152 of 1992

Arjun Kumar Chaudhari Vs. Union of India and Others in which in ~~a~~ similar circumstances the respondents were directed to re-instate the applicant as substitute on the post similar to the ~~one~~ held by the petitioner previously or on other similar post.

5. A 'substitute' has been defined as followed in para-1512 of I.R.E.M., Volume I;

"Definition—"Substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

Para-1515 relating to the rights and privileges of the Substitute reads as follow;

"Rights and privileges admissible to the Substitutes:- Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection

NOTE :- The conferment of temporary status on the Substitutes on completion of four months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts.

Substitutes who are appearing in Railway Recruitment Board Examination will be entitled to relaxation of age by the period of service as substitute subject to the age of 35 years not being exceeded, provided he has put in 3 years(at one stretch or broken) service as substitute/casual labour."

6. The applicant had been appointed as a Substitute Banglow Peon. He will certainly have the benefits described in para-1515 of the I.R.E.M. and also the memorandum dated 25.3.1991(annexure-A). The applicant had joined as Substitute Banglow Peon on 10.12.1991 and was in continuation till 18.7.1992, when according to him, he fell ill. He had certainly put in more than 4 months service as required under annexure-A and para-1515 of the I.R.E.M. Volume I. He has to be deemed to have acquired temporary status.

7. Although, the respondents have contented that the applicant had tendered his resignation on 03.8.1992, but on being specifically asked for the proof thereof, it was not made available by the respondents. This has also been denied by the

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applicant in his rejoinder-affidavit. We have to infer that the applicant had not tendered his resignation on 03.8.1992. The case of 'Arjun Kumar Chaudhari(supra) is a similar case, where discharge was not due to non-availability of the vacancy or inefficiency, and wherein discharge of the petitioner was quashed.

8. Having regard to the reasons given above and in the facts and circumstances of the case, the impugned discharge order dated 04.8.1992 (annexure A-6) is quashed and set aside. The respondents are directed to re-instate the applicant as Substitute Peon, as and when the vacancy is available, and consider him for regularisation in his turn and in accordance with law. The O.A. is allowed in the above terms. No costs.

*Sac*  
Member (J)

*Umapathi*  
Member (A)

/M.M./