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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 534 of 1993

Brij Mohan Applicants.

Versus

Union of India & ors. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-B

(By Hon'ble Mr. T.L.Verma, J.M.)

The petitioner herein has filed this application under Section 19 of the Administrative Tribunal Act to issue a direction in the nature of mandamus commanding the respondents to regularise the services of the applicant after quashing the order dated 29.3.1993, whereby, his services were terminated.

2. The applicant was appointed as a substitute Bungalow Khalasi against a permanent post by order dated 21.9.1992 (Annexure A-5) in the scale of pay of Rs 750-950/- for a period of 3 months. Before joining his duty, the applicant was subjected to medical examination on 19.9.1992. On being found medically fit, he was allowed to join his duty. He continued to work in the said post even after the expiry of 3 months for which the appointment was made. It was only on 23.3.1993, he was informed that the period of 3 months as approved by the General Manager, have expired as per the other terms of his appointment, his services were not required and that he was discharged from the railway service w.e.f. 29.3.1993.

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3. The case of the applicant is that, after working for more than 120 days, the applicant has acquired status of temporary railway employee in terms of para 1515 of the Indian Railway Establishment Manual Vol.I and as such, his services cannot be dispensed with arbitrarily against rules.

4. The respondents have contested the claim of the applicant and have stated that the services of the applicant, who was appointed purely on contractual basis for a fixed term, were liable to be terminated after the expiry of the term for which the appointment was made.

5. We have heard the rival contentions and perused the record. The post of substitute Bungalow sanctioned Khalasi for DE/TRD/ALD was accorded by General Manager for engagement of the applicant for 3 months, His continuity after 3 months, was to be approved by the ADRM ~~upon~~ the condition that he will work with the present Senior DEE and will continue to work with the next senior DEE if he chooses him to continue he would be discharged otherwise vide Annexure A-4. Accordingly, letter, appointing him, incorporating the above terms and conditions, was issued on 21.8.1992. It is not in dispute that the applicant continued to work as Substitute Bungalow Khalasi from 21.9.1992 to the date of his discharge on 29.3.1993 continuously against a permanent vacancy. It is not in dispute that the period during which the applicant worked as Substitute Bungalow Khalasi, exceeds 120 days. A Casual Labour working

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in open line acquires temporary status according to the Rule 2001 of the India Railway Establishment Manual Vol. II, but the case of the substitute ~~is~~ will be governed by the provisions of para 2318 of the manual which read as follows;

"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 six months continuous service.

Conferment of the temporary status on the substitutes on completion of 6 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 on select lists and/or appointment to regular posts."

Dear Sirs

The applicant cannot be discharged from service in view of the protection given by para 2318 quoted above. Admittedly, the applicant was in service continuously from the date of his appointment on 21.9.1992 to the date of his discharge on 29.3.1993. He had thus, on the date of his discharge, completed more than 6 months continuous service as Substitute Bungalow Khalasi. The obvious conclusion that therefore follows, is that the applicant was entitled to ~~be~~ regularisation as and when his turn comes in view of the above provisions of I.R.E.M. The respondents, it seems, have instead of doing so, discharged him from service.

6. The substitutes are treated as railway servants for all purposes. It has also been laid down that there should be a register showing the names of substitute employees unitwise and regular appointment should be offered to them on availability of

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vacancies. Services rendered by the substitutes also count for pension and other benefits such as regular absorption. The denial of ^{appointment or} continuation ~~appointment~~ could only be on the ground of non-availability of vacancy. The applicant was appointed, as is apparent from Annexure A-4, against a permanent post. So the question of his discharge on account of non-availability of post therefore, does not arise.

7. It is apparent from the pleadings of the parties that the discharge of the applicant from the post was not because of the nonavailability of the post but because he was not acceptable to the present Senior DEE. We are unable to appreciate the stand taken by the respondents. The applicant cannot be deprived of the legitimate right that has accrued to him by operation of rules on the ground that he is not acceptable to the present Senior DEE. Non-acceptability ^{of} ~~of~~ the applicant by the present DEE, in our opinion, cannot be ^{said to be a valid} ground for passing the impugned order of discharge of the applicant. Since the post is available, the applicant is entitled to continue as substitute Khalasi, the respondents may shift him to some other department if he is not acceptable to the present Senior DEE.



8. For the reasons stated, the impugned order dated 29.3.1993 discharging the applicant from service is hereby quashed. We direct the respondents to reinstate the applicant as Substitute on post similar to the one held by him previously or any other equivalent post. We also direct the respondents to enter the name of the

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applicant in the register of substitutes and thereafter regularise him in his term in accordance with law.

J. M. W.

Member-3

Mr

Member-A

Allahabad Dated: 26.4.94

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