

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 15th day of July 1997.

Original Application no. 98 of 1994.

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Swapan Kumar Das, S/o Sri Balai Chandra Das, R/o Village & Post-Nasibpur District Hoogali, (West Bengal).

..... Applicant.

C/A Sri Hement Kumar

Versus

1. Union of India through Ministry of Railway, Government of India, New Delhi.
2. General Manager Diesel Locomotive Works, Maruadeeh, Varanasi.
3. Account Officer, F.A. & C.A.O. Diesel Locomotive Works, Varanasi.

.... Respondents.

C/A Shri Amit Sthelekar.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 19 of the Administrative Tribunals Act, 1985.

2. The application has been filed for seeking the

.... 2/-

11 2. 11

following reliefs:-

- i. a direction to the respondents to quash the impugned order dated 11.08.92 terminating the services of the applicant as bungalow peon w.e.f. 11.08.92.
- ii. a direction to the respondents to reinstate the applicant with full pay and allowances from the date of his dismissal.
- iii. a direction to the respondents to pay cost of the application to the applicant.

3. The facts of the case are that the applicant was appointed ~~was~~ temporary bungalow peon with effect from 01.07.1991 in the pay scale of Rs. 750-940 for a period of three months. The services of the applicant were extended twice for a period of three months a piece and, thereafter, the services of the applicant were terminated w.e.f. 11.08.92.

4. The arguments of Shri Hement Kumar, learned counsel for the applicant and Shri Amit Sthalekar, learned counsel for the respondents have been heard. Pleadings on record have been taken into account. Judgment is contained in the paragraphs which follows.

5. The question of limitation raised by the respondent has to be taken up first. The respondents have mentioned that application has been filed in December, 1994, which the order of termination is dated 11.08.92. The respondents appear to have got their facts wrong. The application was filed by the applicant not in December 1994 but on January 1994. The applicant has mentioned in his rejoinder

// 3. //

reply that he received the termination order dated 11.08.92 on 05.11.92 although the respondents have stated in their counter reply that it was served on the applicant on 11.08.92 itself. The applicant had filed an appeal with the respondent against order of termination on 03.05.93. The appeal was rejected as time barred. However, considering that six months were available to the applicant for filing appeal and the order in appeal was made on 22.06.95, we treat the application not barred by limitation.

6. The applicant has mentioned that he was appointed on a regular vacancy with regular pay scale. The respondents have not denied this averment but have mentioned that he was a substitute bungalow peon who was appointed for a period of three months which was ~~extended~~ twice and, thereafter, specifically upto 11.08.92. The averment of the respondents does not carry any conviction because although they claim that applicant was a substitute bungalow peon but they do not state whether there was any other bungalow peon for whom the applicant was appointed as a substitute. The services of the applicant were ~~extended~~ from time to time and continued for more than an year. This also shows that a long term vacancy of bungalow peon existed on which the applicant was continued. Even after this period, the services of the applicant were not terminated because services of a substitute were no longer necessary but because his services were unsatisfactory. This shows that the vacancy continued even after the termination of the services of the applicant. Thus the nomenclature of substitute is not justified if we take into account the nature and duration of the vacancy. The vacancy is clearly a regular and long term one. The appointment for three month and extension each time for three months show

// 4 //

that it was just a device to fill up a regular vacancy on casual basis. Such a practice is clearly an arbitrary one and can not be upheld.

7. The applicant has raised an issue that since he had obtained temporary status and his services were satisfactory and had completed the period of probation, therefore, his services could not have been terminated without applying rules of natural justice. The respondents have denied and averred that the applicant's services were terminated because of his unsatisfactory performance. In other words they aver that the acts on which order of termination was based were only the motive and not the foundation of the order of termination. The term unsatisfactory performance has the connotation that the overall performance and not a particular action of the employee is assessed and that this has been done over a period of time during which the applicant was informed of the defects or lacunae in his performance and he had a time to correct the defects or lacunae. The respondents have merely denied that the performance of the applicant was satisfactory and have averred that it was unsatisfactory but have given no facts as to whether the applicant was informed of the defects or lacunae or the unsatisfactory part of his performance and given time to correct it. Therefore, the averment of the respondents can not be accepted. The order of termination cannot be taken to be based on unsatisfactory performance and not on misconduct and the right of the applicant to be proceeded against departmentally in accordance of rules of natural justice can not be negated by the respondents.

8. The applicant has claimed the benefit of order no. E 891/4/CL iv/Policy dated 20.08.84 of Railway Board

which is said to provide for the absorption of bungalow peons who have completed one year in continuous service. The respondents have stated that the applicant was not entitled to the benefit because he was appointed for a period of three months and was continued by order of extension for the spell twice. The respondents have stated that the rule quoted by the applicant is applicable in cases where there is no definite and specified period of engagement. The reply of the respondents is an admission of the existence of the order dated 20.08.84 although neither the applicant or the respondents have produced a copy of this rule. The applicant had completed one year of service. It may, in addition, be mentioned here that the fixed-term appointment and extension thereof have been held by us to be artificial device as the post appeared to be a ^{long} term one. Such an action of the respondents has been held to be arbitrary.

9. The respondents have cited the judgment of the apex court in State of Rajasthan & others vs. Rameshvar Lal Gahlot. The ratio of this case is not applicable here because the case relates to applicability of Section 25 F of Industrial Disputes Act to employee who were employed for a specific term. Although the applicant has raised the ground of 25 F of Industrial Disputes Act, we have not taken this ground in deciding this case because our jurisdiction does not extend to cases under Industrial Disputes Act, 1947. Besides the apex court has mentioned in its judgment that the ratio would not apply to cases in which there was a colourable exercise of power. This case, therefore, does not help the respondents in establishing the legality of the order of termination.

// 6 //

10. In effect the application is allowed. The impugned order of termination of the services of the applicant dated 11.08.92 is set aside. The applicant is deemed to have continued in service with all consequential benefits. He shall be considered for absorption as per Railway Board's order dated 20.08.84 cited earlier in his turn. The respondents are directed to settle the claims of the applicant for posting, arrears and seniority within two months from the date of receipt of a copy of this order.

11.9 There shall be no order as to costs.



Member-A



Member-J

/pc/