

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO. 56 of 2000

Allahabad, this the 3rd day of ^{June} May, 2008

**Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. N.D. Dayal, Member-A**

Vishwa Nath Son of Munnu Lal,
Bungalow Khalasi Under Deputy
Chief Electrical Engineer,
North Central Railway, Allahabad.

...Applicant.

(By Advocate :Shri A.K. Srivastava)

Versus

1. Union of India, through the Chairman Railway Board Rail Bhawan, New Delhi.
2. The General Manager, North Central Railway, Allahabad.
3. Deputy Chief Electrical Engineer, North Central Railway, Allahabad.
4. Officer on Special Duty (P) North Central Railway, Allahabad.

...Respondents.

(By Advocate :Shri S.K. Chaturvedi)

ORDER

By Hon'ble Mr. N.D. Dayal, A.M. :

The applicant states that he was appointed on 17.10.1997 as per Annexure-I as substitute Bungalow Khalasi with Deputy CEE/NCR/Ald after passing the medical examination on 14.10.1997 and has worked continuously as per prescribed duties for long hours.

2. According to him he was granted temporary status after 120 days by order dated 31.12.1997/1.1.1998 and designated as Bungalow Khalasi. The Provident Fund deduction is also being made from him. After temporary status regular

appointment is to be given on completion of three years of service as per Northern Railway instructions dated 31.12.1997 at Annexure-4.

3. A perusal of order dated 30.12.1999 at Annexure-5 shows that the applicant's services were terminated for unsatisfactory service from 31.12.1999. He, however, mentions that this was done by malafide intention treating him as substitute Bungalow Khalasi. It is claimed that he continued to work and pay sheet was maintained but attendance not recorded.

4. The applicant has explained that as per medical certificate at Annexure-6, he was suffering from viral fever from 6.10.1999 to 13.10.1999. When he went to the doctor on 31.10.1999, the respondent No.3 issued a warning vide letter dated 3.11.1999 (Annexure-7) because of his extended absence from duty keeping in view earlier occasion as well. He further submits that his daughter suffered from burn injuries on 8.11.1999 and was under treatment till 13.11.1999, as per medical certificate Annexure-A-8. His request for Casual Leave during the month of October and November, 1999 were rejected by letter at Annexure-A-9. Due to non-submission of medical certificate and lack of prior permission the request for leave from 4.10.1999 to 12.10.1999 was also turned down because it was submitted at the end of period and no medical was given.

5. It is argued that being temporary status as per Para 2004 and 2005 of I.R.E.M. Vol.II at Annexure-11, the applicant is subject to the Disciplinary and Appeal Rules and cannot be terminated without show cause. Therefore, the order dated 30.12.1999 is contrary to law since neither any notice was given as held by Apex Court in CA No.3619-2471996, Union of India Vs. Moti Lal (No citation or copy

furnished) nor inquiry held as per Article 311(2) of the Constitution. It is submitted that the applicant comes within Industrial Dispute Act and being a casual labour having completed three years, is required to be regularized and continued in service instead of being terminated with stigma and cannot be retrenched against the relevant provision of Industrial Dispute Act.

6. He is therefore seeking an order or direction quashing the order dated 30.12.1999 at Annexure-5 as well as direction to the respondents to regularize the service of the applicant and allow him to continue in service with regular monthly salary and not to disturb his service and working. He further prays for direction to the respondents to treat him in regular service of Group 'D' with all consequential benefit.

7. In their counter affidavit, the respondents have emphasized that substitute Bungalow Khalasi/Peon can be discharged in terms of their contract as they are neither Railway employees nor they have any claim for regularization until three years of satisfactory service. They have referred to full Bench judgment in OA No.896/95- Shyam Sunder Versus Union of India & ors., OA No.1764/92 Prahalad Prasad Versus Union of India & ors and OA No.817/94 Mahfuz Yazdani Vs. Union of India & ors. and stated that as per the judgment dated 12.2.1999, the substitute Bungalow Khalasi/Peon are not Railway Employees and their services can be terminated on the ground of unsatisfactory work, even after they have attained temporary status without any notice and such a termination is not bad in law. The respondents point out that the applicant was given temporary status by letter of 30.10.1998 and not 30.12.1997/1.1.1998 as wrongly alleged. His services were dispensed with as per terms and

conditions in N.R.P.S. No.10960 of 1995 dated 13.1.1995 and N.C. Railway notice dated 21.12.1998.

8. The respondents have denied that the applicant is still continuing on work. He has acknowledged the receipt of letter dated 30.12.1999 on 31.12.1999 by which his services were not extended. The rules have been made by General Manager, who has powers under Rule 124 of I.R.E.M. Vol.I. He is no more in service and no pay sheet in January 2000 has been passed for payment. His attendance was marked only up to 31.12.1999. The applicant was seeking leave often without giving details of his sickness in advance and had produced medical certificate from Private Doctor, even though medical facilities were available locally at Kanpur Railway Hospital. If his fitness certificate was issued by Private Doctor on 13.10.1999 at Kanpur as attached at Annexure-6 of the OA, how could he be present at Allahabad on 12.10.1999 as evident from Annexure-10. He had gone to Kanpur and availed rest on 7.11.1999 by taking oral permission but remained absent till 13.11.1999. Therefore, the applicant was absenting himself from time to time without following rules and misrepresented facts. This is not a case of retrenchment under Industrial Dispute Act and therefore the judgment quoted by him is not applicable.

9. In his rejoinder, the applicant has contested the stand taken by the respondents and quoted various judgments of the Tribunal as well as Hon'ble Supreme Court to contend that even the service of a person absenting himself from duty cannot be terminated without proper disciplinary proceedings. It is admitted that temporary status was given to him by letter dated 30.10.1998 and he had completed continuous service of two years two months and 13 days, when he was terminated. He, therefore, assails

his termination as illegal and against the principles of natural justice. The respondents have also filed a reply to rejoinder.

10. We have heard the learned counsel for both sides and perused the pleadings. It is noticed that the applicant's engagement alongwith others was extended from 1.10.1999 to 31.12.1999 by order at Annexure-CA-4. This shows they were substitute Bungalow Peon/Khalasi. There is no material to which our attention is drawn which clarifies that the term Bungalow Khalasi implies any other status and if so what that is. Substitute Bungalow Khalasis are stated to be engaged on contractual basis ~~and~~ [✓] subject to discontinuance of service accordingly. The respondents have placed at Annexure-CA-9 appointment letter of applicant dated 2.10.1997 which reads as under :-

"You are hereby appointed as a Substitute Bungalow Khalasi in Grade Rs.750-940 (RPS) against post on Group 'D' of Engineering Branch in North Central Railway, Allahabad initially for a period of 03 months after passing medical examination in C-1 vide Medical Fit Certificate No. Further spells may be extended on your satisfactory working.

In case, your working report is not satisfactory, your services would be terminated without giving prior show cause notice to you which may please be noted.

This has approval of the Competent Authority."

11. The letter produced by the applicant and placed at Annexure-I to the OA has been claimed by him to be his appointment order. It is in fact an order posting him as Substitute Bungalow Khalasi with Dy. C.E.E. In the letter dated 12.10.1999 written by the applicant to the authorities and produced by respondents at Annexure-CA-5, he seeks to be forgiven for absence from duty from 4.10.1999 to 12.10.1999. No medical ^{certificate} appears to have been

submitted at that time. The medical was dated 13.10.1999 at Kanpur.

12. The applicant states that the Full Bench order of the Tribunal has not considered the judgments cited by him in the rejoinder that an absentee cannot be terminated without charge sheet and proper disciplinary proceedings. The subject matter and applicability of the judgments to a substitute Bungalow Khalasi or one with temporary status has neither been discussed nor any such claim made. Merely to quote citations without explaining their relevance cannot be of assistance to the applicant.

13. The Full Bench of this Tribunal in OAs No.896/95 1764/92 and 817/94 was dealing with a similar matter relating to Bungalow Peon in the Railways, the nature of their service etc. Learned counsel for the applicants as well as the railways conceded that Bungalow Peon/Khalasi in railway were not railway employees and that their services were purely contractual in nature and can be terminated any time, so long as they did not acquire temporary status. As such the question before the Bench was :-

"(iii)(a) Whether after putting in 120 days continuous service, a Bungalow Peon/Khalasi acquires the temporary status ?

(b) Whether after acquisition of temporary status by a Bungalow Peon/Khalasi, his services can be terminated on the ground of unsatisfactory work without holding a departmental inquiry ?

A fourth question of law, arising out of the arguments advanced before us, may also be framed as follows :

(iv) Whether for want of notice or retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947, termination of service of a Bungalow Peon/Khalasi after acquisition of temporary status is bad or illegal ?"

14. The Tribunal took note of Indian Railway Establishment Code and held that the provisions therein may have statutory force as it contains rules framed and issued by the President under proviso to Article 309 of the Constitution. But those in the Establishment Manual do not have such force as it contains all administrative orders issued by Railway Board from time to time. The Tribunal also noted Rules 123 to 124 of the Establishment Code relating to rule making powers of the Railway Board and of the General Manager as well as letter dated 31.12.1997 of General Manager, Northern Railway which has also been relied upon by the applicant in the present case. Similarly, letter dated 31.1.1995 of General Manager, Northern Railway issued under P.S.10960/95 as well as Para 1512 of the Establishment Manual were examined alongwith Para 1515 and 2004 and 2005 of the Establishment Manual Vol.II. Further, certain paras of the old Manual relating to termination of service and period of notice were also kept in view to arrive at the conclusion that a Bungalow Peon/Khalasi acquires temporary status on completion of such period of continuous service as may be prescribed by the General Manager of Railways and which is current on the date of employment of a person and only in its absence the general instructions which are current would be applicable. The Tribunal noted Supreme Court decisions and other judgments with regard to termination simplicitor that it is not a penalty and carries no stigma as well as that Government have power under a contract of employment to termination simplicitor of the services of a temporary Government servant without conducting enquiry.

15. The questions before the Tribunal were finally answered as under :-

"(iii) (a) No. As a regular principle, it cannot be laid down that after putting in 120 days continuous service, a Bungalow Peon/Khalasi acquires temporary status. He acquires temporary status on completion of such a period of continuous service as may be prescribed by the General Manager of the Railway under which he worked and which is current on the date of his employment as a Bungalow Peon/Khalasi. In the absence of any such rule or instructions from the General Manager, the general instructions or rule in that regard, like one given under paragraph 1515 of the Manual, issued or framed by the Railway Board and current on the date of employment may determine the period of his continuous service for conferment of temporary status, as discussed in paragraphs 10 and 11 of this order.

(b) Yes. After acquisition of temporary status by a Bungalow Peon/Khalasi his services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry, as discussed in paragraphs 14, 15 and 16 of this order.

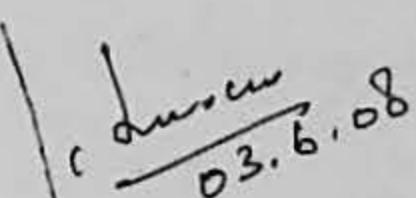
(iv) No. The termination of the service of a substitute Bungalow Peon/Khalasi, who has acquired temporary status, is not bad or illegal for want of notice before termination. In such a case, he may be entitled to pay for the period of notice in lieu of notice, as discussed in paragraph 17 of this order. The question whether for want of retrenchment compensation under section 25-F of the Industrial Disputes Act, 1947, the termination of the service of a substitute Bungalow Peon/Khalasi, who has acquired temporary status, is bad or illegal, is beyond the scope and jurisdiction of this Tribunal, as discussed in paragraphs 19 and 20 of this order."

16. Therefore, as per the above view of Full Bench dated 12.2.1999 after acquiring of temporary status a Bungalow Peon/Khalasi's service can be terminated on the ground of unsatisfactory work without departmental enquiry. Further, the termination of service of a substitute Bungalow Peon/Khalasi who acquired temporary status is not illegal for want of notice and in such a case he may be entitled to pay for the period of notice, in lieu of notice. It has been held that the question of retrenchment compensation under Industrial Dispute Act of 1947 was beyond the scope and jurisdiction of this Tribunal.

17. We find that the applicant had been awarded temporary status and termination of service of the applicant for unsatisfactory work, even without

notice, would not be illegal. The conclusion as to unsatisfactory work of the applicant has been arrived at by the Competent Authority in terms of the facts brought on record and we do not find any sufficient grounds to interfere with the same or the impugned order which reflects termination simplicitor and no stigma. Malafide alleged is not established and no respondent is impleaded by name. As such the OA does not succeed and is dismissed. No costs.

18. It would, however, be open to the applicant to prefer a representation within a period of 30 days from today to the respondents seeking pay for the period of notice in lieu of notice, in terms of observation in para 17 of the order of the Full Bench as also spelt out in para 21 thereof. If such representation is received, the respondents shall inform the applicant of the decision taken within a period of two months thereafter.


Member (A)
Vice-Chairman.
03.6.88

RKM/-