

6
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 7 day of 8 2008.

Original Application No. 1108 of 2006

Hon'ble Mr. A. K. Gaur, Member (J)

Smt. Suneeta Kumari, D/o Sri H.N. Patel,
R/o Village Bhikharipur, Post Office Maruadih,
Distt: Varanasi.

. . . Applicant

By Adv: Sri A.K. Yadav

V E R S U S

1. Union of India through General Manager (P), Diesel Locomotive Works, Varanasi, Distt: Varanasi.
2. General Manager (Karmik), D.L.W. Varanasi.
3. General Manager (Yantrik), D.L.W. Varanasi.
4. Chief Personnel Officer, Office of General Manager (P), D.L.W. Varanasi.

. . . Respondents

By Adv: Sri A.K. Sinha

O R D E R

The applicant is aggrieved by the impugned order dated 01.06.2006 passed by respondent No. 2 and has prayed for setting aside the same and also for a direction that the respondent No. 2 may be restrained from interference in the performance of duty of the applicant as Class IV employee.

2. The applicant has been working as a substitute Telephone Attendant-cum-Dak Khalasi, hereinafter being

u

referred as "TADK", on 01.11.2000. After appointment as Bungalow Peon the applicant performed her duties as TADK. She was attached with one officer Shri B.L. Patil, Deputy CME/M&P. It may also be observed that the appointment of the applicant as substitute was given on her own request. Substitutes are engaged based on the request of the officer concerned and they are supposed to carryout the work of substitute TADK at the residence and office of the officer. The applicant was appointed as substitute for a period of 03 months initially and after completion of 120 days of continuous working she was accorded temporary status as per extent guidelines and office order dated 12.05.2001. According to the applicant after transfer of Shri Patil, she was posted with Deputy CMM Shri R.P. Gupta and after transfer of Shri Gupta, the applicant was temporarily attached with General Manager (P) Office. The applicant was posted with Deputy CPM/Electrical on 20.10.2002. As indicated above the applicant was attached with Deputy CPM/Electrical on 28.02.2002, but she did not carryout the transfer order to join the office of Deputy CPM/Electrical. According to the applicant she became ill and due to unavoidable circumstances she was not in a position to attend her duties. After recovering from illness, she tried to join and perform her duties as substitute, but respondent No. 4 neither permitted her to join nor paid her wages for the illness period. The representation

✓

preferred by the applicant also yielded no relief. She again submitted representation through registered post on 27.08.2003 (Annexure 2 and 3 to the OA). When no action was taken on the representation of the applicant, she filed OA No. 1282/03 which was ultimately disposed of by this Tribunal with a direction to respondent No. 1 to decide the representation of the applicant in accordance with law vide order dated 29.10.2003 (Annexure A-4 to the OA). The representation of the applicant was decided by respondent No. 4 vide order dated 23.03.2004. Vide order dated 05.04.2004 the services of the applicant was terminated on the ground that services of the applicant was no longer required (Annexure A-5 to the OA). Again applicant filed OA No. 766/04. The order passed by the Competent Authority dated 23.03.2004 as well as order dated 05.04.204 have been quashed and set aside by this Tribunal. The General Manager (P), D.L.W. Varanasi, was directed to consider the case of the applicant in accordance with rules after giving opportunity to present her case and also after taking into account the medical certificate furnished by the applicant. In case General Manager decides to reinstate the applicant into service, he shall also decide in accordance with rules and regulations the absence of the applicant.

W

3. By filing reply, the respondents submitted that the TADK was previously designated as Bungalow Peon. According to the respondents the applicant continuously absconded from duty place unauthorizedly she did not even carryout the transfer order since 28.10.2002. Earlier also she was in the habit of absconding from duty place without prior intimation in as much as that she abstained from duty for 22 days in the month of May 2002, for full two months in July 2002 and August 2002. She submitted the sickness certificate from private doctor to cover some of these absences. However, the current spell for unauthorized absence commenced from 28.10.2002. She filed OA No. 1282/03 in this Tribunal with a prayer that she has not been permitted to join at the work place. This Tribunal after due consideration ordered on 29.10.2003 that pending representation of the applicant, be disposed of by the General Manager (P). The representation of the applicant was considered in the light of facts and relevant rules. It was found that in order to take her back on duty it was essential to sanction the intervening period of absence from duty as Extra Ordinary Leave. In terms of rules 530 (2) (b) of Indian Railway Establishment Code, the temporary Railway Servant cannot be granted Extra Ordinary Leave on any one occasion, in excess to laid down limit, without sanction of President. After careful consideration of the rules, the competent authority

h

came to a conclusion that the request of the applicant could not be acceded to as the absence of the applicant from duty was beyond permissible period and she could not be granted leave to cover her unauthorized absence. The case of the applicant also does not warrant any reference to the President. The applicant was accordingly intimated vide letter dated 23.03.2004 by giving her one month's salary in lieu of one month's notice. According to the respondents the judgment and order dated 01.02.2006 passed in OA 766/04 was challenged by Railway Administration by filing Writ Petition No. 21418 of 2006. The Writ Petition was dismissed in limine by the Hon'ble High Court vide order dated 19.04.2006.

4. Rejoinder Reply has been filed by the applicant denying the pleas taken in the counter reply.

5. I have heard Sri A.K. Yadav learned counsel for the applicant and Sri A.K. Sinha learned counsel for the respondents. Learned counsel for the applicant contended that the applicant could not perform her duty due to illness and after recovery from illness she went to join, the respondent No. 4 who did not permit her to join the duty. It has also been argued that the respondents have not paid her salary since February 2003 arbitrarily. The order of termination passed against the applicant is wholly illegal, arbitrary and

✓

(14)

without jurisdiction. Learned counsel for the applicant also vehemently argued that after passing of the order in OA 766/04 the applicant ought to have been permitted to join; but the respondents did not permit her to join. On the other hand learned counsel for the respondents submitted that the applicant absented herself from duty unauthorizedly on several occasions which is 22 days in the month of May 2002, 31 days in the month of July 2002 and 30 days in the month of August 2002 and, thereafter, remained absent from duty unauthorizedly since 28.10.2002 continuously. According to the respondents the applicant was appointed in terms of contract for a specified period of time as substitute Bungalow Peon. The Bungalow Peon is appointed on the basis of trust and confidence. By the conduct of the applicant, it is crystal clear, that the service of the applicant was rightly terminated by the competent authority.

6. I have carefully seen the record of the case and perused the pleadings of the parties and from record it is amply clear that the applicant has been absconding from duty from November 2002 onwards continuously. She has been paid wages only upto October 2002 only. Allegation made by the applicant that she worked and drew wages during January 2003 is wholly misconceived and misleading. The applicant being Railway servant never reported to Railway Hospital despite her claim of

W

15

being ill. The DLW, Railway Hospital is hardly one kilometer away from the permanent residence of the applicant. There is nothing on record to show that the applicant ever moved any request for leave.

7. From the careful analysis of the case I come to the conclusion that the applicant was engaged as substitute Bungalow Peon, who was later^y accorded temporary status. Being a temporary Railway servant, she is governed by Rule 530 of Indian Railway Establishment Code.

8. In view of the proviso to Rule 530 of Indian Railway Establishment Code I the temporary Railway Servant cannot be permitted to be sanctioned more than maximum amount of Extra Ordinary Leave admissible, in order to take back the applicant on duty, it would be necessary for the competent authority to sanction intervening period as Extra Ordinary Leave under the provision of Rule 530 (2) (b) of Indian Railway Establishment Code I which lays down the upper limit of Extra Ordinary Leave for temporary Railway Servants. It lays down that temporary Railway Servant cannot be granted Extra Ordinary Leave on any one occasion in excess of the laid down limit without sanction of the President of India. With a view to appreciate the controversy, paragraph 530 of Indian Railway Establishment Code is being reproduced below:

h✓

"530. Extraordinary Leave."

(1) Extraordinary leave may be granted to a railway servant in special circumstances-

- (a) when no other leave is admissible, and
- (b) when other leave is admissible, but the railway servant applied in writing for the grant of extraordinary leave.

(2) Unless the President in view of the exceptional circumstances of the case otherwise determines, **no temporary railway servant shall be granted extraordinary leave on any one occasion in excess of the following limits:-**

- (a) Three months, without a medical certificate
- (b) Six months where the railway servant has completed 1 year's continuous service on the date of expiry of leave of the kind due and admissible under these rules including three months extraordinary leave under clause (a) and his request for such leave is supported by a medical certificate as required by these rules.
- (c) Eighteen months where the railway servant has completed one year's continuous service and is undergoing treatment for-

.....
.....

9. I have also seen that the request of the applicant to take back on duty has been examined in the light of the aforesaid statutory rules as well as in the light of the pleas taken in the representation dated 27.08.2003. As the applicant has abstained from duty for more than the permissible limit as laid down under Rule 530 of Indian Railway Establishment Code, she cannot be granted extraordinary leave to cover her unauthorized absence. The case of the applicant also did not warrant any reference to President.

10. Learned counsel for the applicant has cited following cases in support of his arguments: -

- a. 2007 (4) ESC 2274 : Ex. H.C. Rajendra Singh Vs. Union of India and others
- b. 2004 (2) UPLBEC 1294 : Bhagwan Lal Arya Vs. Commissioner of Police, Delhi and others

✓

(12)

c. 2005 (2) UPLEEC 1289 : Kendriya Vidyalaya
Sangathan and another Vs. S.C. Sharma

11. The aforesaid cases have been cited with a view to buttress the contention that the penalty of termination is too harsh and a regular departmental inquiry has not been initiated against the applicant. I have carefully seen the aforesaid decisions and find no force, because of the reason that in the present case the applicant was working as a substitute under specified terms and conditions of his appointment, and his services were terminated vide office order dated 05.04.2004, in terms of offer of appointment dated 29.09.2000 by giving one month's salary in lieu of one month's notice. The conduct of the applicant has always been most reprehensible and unsatisfactory, from the very beginning. She remained absent, unauthorizedly on several occasions. The applicant remained unauthorized absent since 28.10.2002, without any notice or information to the respondents. The medical certificate issued by Private medical officer dated 25.06.2003 does not cover the entire period of absence of the applicant. It only covers a part of the period of absence. It is also seen from the record that in the past also, she remained absent for about 16 days in June 2002, 31 days in July 2002, 31 days in August in 2002 and about 3 days in October 2002. She has not at all cared to follow the Departmental Medical rules.

✓

By not giving any information to either Railway Hospital or the Railway department, the applicant has violated the settled Medical Rules.

12. In my considered view the services of the applicant has been terminated strictly in accordance with letter dated 29.09.2000 (Annexure CA-1) and there is no illegality in the same. The case of the applicant was thoroughly considered in the light of the directions given by the Hon'ble High Court in its judgment and order dated 19.04.2006 in Writ Petition 21418 of 2006. After a careful analysis of the entire case the competent authority has rightly passed order dated 23.03.2004 giving her one month's salary in lieu of one month's notice.

13. In view of the aforesaid observation I find no merit in the case, which is accordingly dismissed. No cost.

/pc/

Anjan
Member (J)