

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE ²⁰¹³3rd DAY OF Jan. , 2012)

PRESENT:

HON'BLE MR. D.C.LAKHA, MEMBER-A
HON'BLE MR. SANJEEV KAUSHIK, MEMBER-J

ORIGINAL APPLICATION No. 146 OF 2007
(U/s, 19 Administrative Tribunal Act.1985)

Prashanto Kumar son of Late Kali Das, aged about 28 years Resident of
171-A, D.L.W. Varanasi.

.....Applicant

By Advocate: Shri S. Kumar.

Versus

1. Union of India through the General Manager (Personnel) D.L.W. Varanasi.
 2. Divisional Railway Manager, D.L.W. Varanasi.
 3. Deputy Chief Mechanical Engineer (Dy. CME) D.L.W. Varanasi.
- Respondents

By Advocate: Shri P. Mathur.

ORDER

(DELIVERED BY:- HON'BLE MR. D.C.LAKHA, MEMBER-A

This application has been instituted for the following relief(s) :-

"1. Issue a writ, order or direction in the nature of certiorari quashing the impugned termination order dated 8.8.2006 Annexure No. 1 to this Original application passed by the respondent No. 3.

2. Issue a writ order or direction in the nature of the mandamus commanding the respondent to reinstate the applicant in service on the post of T.A.D.K. with full back and all other consequential benefits.

3. Issue a further writ order or direction commanding the respondents to regularly absorb to the applicant against Group 'D' post as per his turn"

2. The facts of the case in brief, as stated in the O.A. are that the applicant was appointed as Telephone Attendant cum Dak Khalasi on

9.3.2005 against a group D regular post in the capacity of substitute, for a period of three months initially, but continued beyond that period and after completion of 4 months, he was also granted temporary status, as per rules. It is alleged that the respondent No.3, dismissed the service of the applicant on 8.8.2006 without any charge and opportunity of hearing being given, as he wanted to appoint his kith and kin in place of applicant. It is also stated that an employee who has got temporary status is liable to be absorbed on regular basis in the Railways and he, having completed more than 240 days in a year is to be provided the benefits of retrenched employee. The applicant, inspite of regularly attending his duties was served a charge sheet dated 20.9.2005 showing the applicant as unauthorizedly absent w.e.f. 4.9.2005, while the applicant was on sanctioned leave w.e.f. 4.9.2005 to 10.12.2005. The applicant requested to provide the document relied upon in the disciplinary proceedings. However, the disciplinary proceedings were dropped. It is further stated that as per paras 1515, 2005 and 2511 of Indian Railway Establishment Code 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. Thus, it is submitted that since the termination order is passed with ulterior motive and with malafide intention, the same may be quashed.

3. On notice, Counter reply has been filed by the respondents denying the allegations made in the O.A. It is submitted that the applicant was appointed vide letter dated 18.2.2005 on the post of substitute Telephone Attendant cum Dak Khalasi for a period of 3 months, but on completion of 4 months continuous service, he was given temporary status vide order dated 9.8.2005. The officer with whom the applicant was attached, was transferred to East Coast Railways and the applicant did not give his willingness to carry



his TADK and also due to lack of vacancy of TADK, his services were terminated vide order dated 8.8.2006. Referring to the Full Bench of the C.A.T. New Delhi in O.A. No. 896/1995 Shyam Sunder vs. UOI and ors. and O.A. No. 1764/1992 Prahlad Prasad vs. UOI and others and O.A. NO. 817/1994 Mahfus Yazdani vs. UOI and ors., it is stated that no preferential treatment can be given to Bungalow Khalasis in the matter of appointment as their services are purely on contractual basis and they have no legally enforceable right for claiming any benefit of their appointment on contractual basis. Therefore, the applicant has no right and the O.A. is liable to be dismissed as lacking merit.

4. Rejoinder Affidavit has also been filed on behalf of the applicant, in which, the points in his favour are reiterated and the allegations made in the Counter reply have been denied.

5. We have gone through the pleadings of the parties including the written statement and have heard the learned counsels for both sides.

6. The learned counsel for applicant, in support of the averments in the O.A., has made assiduous efforts to plead in favour of claim of the applicant, His main argument is that the applicant has not been afforded opportunity of being heard, thus the impugned order is violative of Article 311(2) of the Constitution of India and is passed in colourable exercise of power, passed with ulterior motives. In support of the claim of the applicant he has cited the following Judgments/ orders:

- i) O.A. 1667 OF 2004 Ashish Kumar vs. U.O.I. (CAT Allahabad)
- ii) O.A. 1080 of 2003 Sunil Kumar vs U.O.I. (CAT Allahabad)



III) Writ Petition –A No. 15716 of 2006 UOI VS. The V.C. CAT, Allahabad and another, (Allahabad High Court)

7. The learned counsel for the applicant has also filed the written arguments stating that the order of termination is passed in colourable exercise of power without any opportunity of hearing. It is also argued that the case O.A. 1080 of 2003 Sunil Kumar vs U.O.I. (CAT Allahabad) (supra) which was a similarly circumstanced case, the O.A. was allowed by the CAT, Allahabad and the appeal filed by the Railways against the above case was dismissed in Writ Petition –A No. 15716 of 2006 UOI VS. the V.C. CAT, Allahabad and another, (Allahabad High Court)

8. The learned counsel for respondents, on the other hand, has argued that the applicant has no enforceable right to claim appointment on the post and he was given opportunity of hearing before his services having been terminated. It is also argued that the applicant did not give acceptance to go with the officer with whom he was attached, when the officer was transferred and also that there was no vacancy at the place where he was working. In support of his argument he has placed reliance on the following judgments/orders:

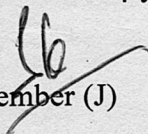
- i) Writ Petition No. 45015 of 2008 Vishwa Nath vs. U.O.I. (Allahabad High Court)
- ii) O.A. No. 56 of 2007 Vishwa Nath vs. U.O.I. (C.A.T Allahabad Bench)
- iii) Writ Petition A No. 45015 of 2008 Vishwa Nath vs. U.O.I.(Allahabad High Court)
- iv) O.A. No. 8961 with O.A. No. 1764/92 and O.A. 817/94 Shyam Sunder vs. U.O.I. and connected matters (Full Bench, Principal Bench, New Delhi.)

9. We have given thoughtful consideration to the pleadings and submissions of both the learned counsels. The only ground for termination of services of the applicant, as contained in para E of the Counter reply is that "the officer with whom the applicant was attached, transferred to East Coast Railways and he did not give his willingness to carry his TADK and also for

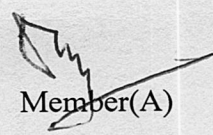


want of vacancy of TADK, his service was terminated" The applicant had acquired temporary status. The post has not been abolished. As such the attempt should have been made to accommodate him elsewhere, in case the post is held up by another regularly appointed person as held in the case of State of Haryana vs. Piara Singh (1992) 4 SCC 118. As held in the case of Sunil Kumar (supra) "the appointment is against a post, though the individual does not crystallize any rights against the post or other rights.....The post in question i.e. TADK may be attached to a particular higher post i.e. the Dy. CME.....Of course, if the post is abolished then termination is justified. If the individual appointed as substitute is less efficient or has indulged in some misconduct, as held in the case of Champaklal (supra) services could be terminated." The writ petition filed against the said judgment of CAT Allahabad has been dismissed by the Hon. Allahabad High Court, as stated above. On the other hand, the Full Bench decision in Shyam Sunder cited by the respondents relates to a particular situation for termination i.e. unsatisfactory work of Bungalow peon, therefore, the order of full Bench is of no assistance to the respondents in the instant case where the unsatisfactory performance is not the reason for termination. The respondents cannot adopt the policy of hire and fire by terminating the services of the applicant for appointing another substitute as held in the case of Piara Singh (supra). The other cases cited by the respondents are also not of much help to them.

9. In view of the above discussion the O.A. succeeds. The impugned order dated 8.8.2006 (A-1) is quashed. The respondents are directed to reinstate the applicant, but without any back wages on the principle of "no work no pay", within a period of 3 months from the date of receipt of a certified copy of this order. No order as to costs.


Member (J)

s.a.


Member (A)