

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 22nd DAY OF Oct, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Original Application No.823 of 2007
(U/S 19, Administrative Tribunal Act, 1985)

Sunil Kumar Misra aged about 32 years Son of Sri Rajeshwar Misra resident of 191-K-9D, Moll Chand Ki Gali, 60 Feet Road, Kalindipuram, Allahabad.

..... Applicant

Present for Applicant : **Shri Pankaj Srivastava, Adv.**
Shri R.P. Singh, Advocate

Versus

1. *Union of India, through the Secretary, Ministry of Railway, Rail Bhawan, New Delhi.*
2. *Divisional Railway Manager, North Central Railway, Allahabad.*
3. *Chief engineer (works) Head Quarters, Engineering Branch, North Central Railway, Allahabad.*
4. *Sri Ashok Kumar, Chief Engineer (Works) Head Quarters Office, Engineering Branch, N.C.R. Allahabad.*

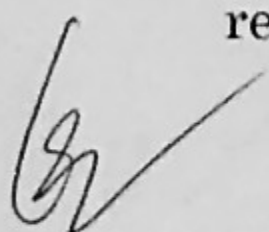
..... Respondents

Present for Respondents : **Shri D.P. Singh, Advocate**

ORDER

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

On behalf of the respondents, a comprehensive written argument has been filed by their counsel in this O.A. As this O.A. is of 2007 vintage, and as this is a case of termination, at the request of the applicant's counsel, this case is decided on the basis



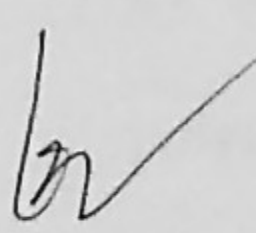
of the arguments advanced by the counsel for the applicant and on the basis of the written arguments this OA is disposed of.

2. The applicant was appointed as substitute Khalasi and was attached to the Chief Engineer, Headquarters, Office of the North Central Railway, Allahabad, sometimes in February, 2005. According to the applicant, on being found medically fit, the applicant was attached to the second respondent, i.e. the D.R.M., Allahabad Division of the North Central Railway. In August, 2005 he was also afforded the temporary status. In May 2007, as the applicant was not feeling well, he could not accompany respondent No. 2 on deputation and he had submitted leave application for a period of five days due to illness. The applicant's services were terminated w.e.f. 01-06-2007 vide Annexure A-1. Reason given was "stands automatically terminated with immediate effect due to unsatisfactory services."

3. The following are the grounds adduced in support of the case of the applicant:-

(a) Because the appointment of the applicant after the approval of the General Manager the respondent no.2 but the Respondent No.2 passed the impugned order without any approval by the respondent no.2. Thus the impugned order is illegal and liable to be quashed.

(b) Because no show cause notice was given to the petitioner before passing the impugned order hence is liable to be quashed as illegal.



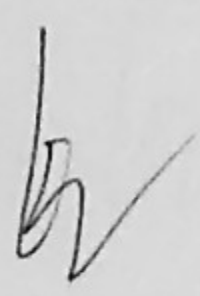
(c) Because since the petitioner refused to go with the Respondent No.4 on becoming annoyed he with mala fide intention arbitrarily passed the impugned order.

(d) Because there had been no complaint against the petitioner regarding his work and conduct and he performed his duty with full satisfaction of Sri Yogesh Kumar the then Chief Engineer and also with the Respondent No.4 but on refusal by the Petitioner to go with him the work of the petitioner had second.

(e) Because the Hon'ble Courts have in various cases have held that the termination without show cause notice is illegal.

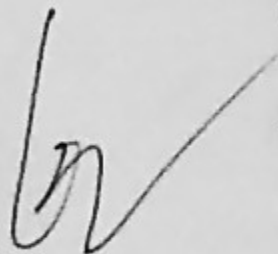
4. Respondents have contested the O.A. According to them, when the DRM was sent on deputation, the applicant himself volunteered. All the other allegations of pressurization etc., have been denied. As regards the rule position, vide NCR P.S. No. 1447/03, the contract of banglow Khalasi could be terminated without any show cause notice due to unsatisfactory working. The representation given by the applicant had been decided. None of the grounds contained in para 5 of the O.A. is tenable.

5. Counsel for the applicant submitted that this is a covered case, inasmuch as, the Hon'ble High Court of Delhi has considered an identical case and has held that the in case of temporary status employees, notice prior to termination is a must. Judgment dated 8th March, 2006 in W.P© No. 3263/2006 refers. The same judgment could well be adopted in this case as well.



6. In the written argument, the respondents have contended as under:-

The applicant had applied for appointment as Substitute bungalow Peon attached to Chief Motive Power Engineer in CME's office of North Central Railway. He had undertaken to work for three months which could be extended beyond three months subject to satisfactory performance of his work and that his services may be automatically terminated without notice, in case the department is not satisfied with his work and that he has no preservative right or claim to an alternative Class IV appointment in the Railways. Instructions on the subject of appointment of Bungalow Khalasi are specific that such persons should be dependable, reliable and faithful in whom the officer should have full trust and it is the choice of the officer to engage a Bungalow Peon. Para 18 of the policy also reinforces the above position. The applicant had been continuously absent unauthorizedly from 30-09-2006 after the officer to whom he was attached left North Central Railway to join IRCTC on deputation Reliance has been placed upon the full Bench judgment in Oa Noi. 896 of 1995 and other O.As. After considering various judgments of the Apex court such as champakhlal vs Union of India AIR 1964 SC 1854 etc., the conclusion arrived at was that a Bungalow Peon



could be terminated on the ground of unsatisfactory services, without holding departmental inquiry.

7. Argument has been heard and the pleadings as well as written argument perused. The basic question that is spinal for decision of this case is whether the respondents are legally correct in terminating the services of the applicant without any notice on the ground of unsatisfactory service.

8. One important legal issue calls for consideration at this juncture. True, the Full Bench would have stated that there need not be a full fledged inquiry and the Respondents have heavily relied upon the same in their written submission. And on the basis of the same a division Bench of this Tribunal in OA No. 401 of 2007 had held that in such a case of termination of Bungalow Peons on temporary status, there is no need to even put them to notice. The Full Bench order is dated 13th February, 1999. In the said order, there is a reference of instructions for appointment of substitute Bungalow Peons/Khalasis vide 803-E/I/Pt. X/IV dated 13-01-1995. The same reference has been made in the decision of the Hon'ble High Court in W.P. No. 3263/2006 (though indicating issued in January, 1995) and the following extract has been made from out of that reference:-

"ii. Person who has attained temporary status cannot be discharged from service without applying full procedure as described in the D&A Rules. The grant of ty. Status to Bungalow peons before 2 years service will create problems for the office in case Bungalow. Peon indulge in unwarranted activities. No officer will allow his family members to be dragged, in Official D&A enquiring etc.

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Thus condition of two years service for grant of ty. status to Bungalow Khalasi is a must.

iii. The above conditions are not included in the IREC of IREM as Bungalow peons is a special category as they are neither casual labour nor substitute. Their service condition, until they attain Ty. status after completion of two years continuous service, are governed by the administrative orders issued from time to time with the approval of competent authority on Zonal Railways. "

9. After quoting the above portion of the Railway Board's letter, the High Court had held as under:-

"4. It is not in dispute that the respondent no.1 had attained the temporary status and the procedure under the D&A Rules was admittedly not followed while discharging him from service for unsatisfactory conduct. In any case the certificate given to the respondent no.1 by Shri Sanjeev Garg and the grant of temporary status to him ruled out the pleas that the respondent no.1's conduct was not satisfactory. Thus in light of the above fact the findings of the CAT are wholly sustainable and not liable to be interfered with.

5. In view of the findings recorded above, it is not a fit case for interference under Article 226 of the Constitution and the writ is consequently dismissed and stands disposed of. Miscellaneous applications for exemption and interim stay also stand disposed of as having become infructuous."

10. Now, between the decision of Full Bench of the Tribunal (coupled with the division Bench judgment cited above) and the judgment of the Hon'ble High Court of Delhi, obviously, the latter has to be followed. This is the settled law See *Sub-Inspector Rooplal v. Lt. Governor*, (2000) 1 SCC 644, wherein the Apex Court has held as under:-

"A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench".

11. Thus, we respectfully follow the decision of the High Court of Delhi in this case.

12. The above decision of the Delhi High Court has two portions, viz., holding of inquiry and the fact that the performance of the individual therein cannot be held unsatisfactory taking into account the certificates rendered to him. In the instant case, may be the performance of the applicant was not satisfactory. But the more vital aspect is non observation of the rule i.e. conducting of the inquiry. It is for the individual to prove in the inquiry that his performance was satisfactory. As such, in the instant case, the impugned order is liable to be quashed as the same was not issued after due inquiry as mandated in the Railway Board circular referred to above and also discussed by the Hon'ble High Court of Delhi in an identical case,

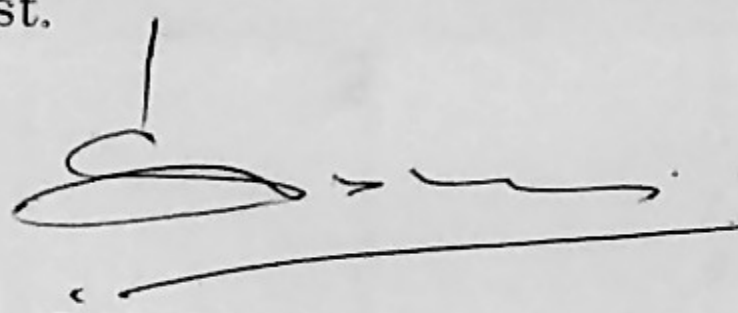
13. Hence, the **O.A. is allowed.** The impugned order dated 01-06-2007 of the Chief Engineer,/Works, Head quarters Office, Engineering Branch, Allahabad vide Annexure A-1 of the OA is quashed and set aside. It is declared that the applicant is entitled to be reinstated from service in the same capacity as he was placed in prior to the issue of the quashed order. He would be entitled to count the period of service for his regularization; and fixation of pay by grant of notional increments, but he shall not be entitled to any arrears of pay for the period he was out of service. It is,

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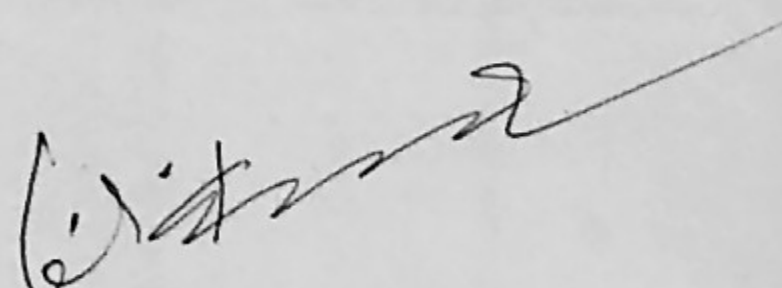
however, open to the respondents to proceed with the applicant in respect of performance of service in accordance with law.

14. This order shall be complied with, within two months from the date of communication of this order. In case of avoidable delay in reinstatement exceeding two months, the applicant shall be deemed to be on duty for the period beyond two months from the date of communication of this order. It is, however, open to the respondents to seek extension of time for compliance of this order, for which purpose, they should approach the Tribunal within the time allowed and should explain the extent of action taken, to be taken and the reason for delay in the matter.

15. Under the above circumstances, there shall be no orders as to cost.



(S.N. Shukla)
Member-A



(Dr. K.B.S. Rajan)
Member-J

Sushil