

11

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
ORIGINAL APPLICATION NO.871 OF 2004
ORDER DATED 19TH JULY,2006

CORAM:

HON'BLE JUSTICE R.K.BATTA, VICE-CHAIRMAN
AND
HON'BLE SHRI B.B.MISHRA, MEMBER(ADMINISTRATIVE)

IN THE MATTER OF:

Sabi Ahmad, aged about 28 years S/o Md.Kazim, resident of
D.B.K.-IV/1, Wireless Colony, Vishakhapatnam, Andhra Pradesh.

....Applicant

Advocates for the Applicant:

M/S.R.K.Bose, G.Bhol,
J.Nayak

VERSUS

1. Union of India, represented by the General Manager, East Coast Railway, (previously South Eastern Railway, Garden Reach, Kolkatta-70045) Chandrashekharapur, Bhubaneswar, Dist:Khurda.
2. Divisional Railway Manager, East Coast Railways, At/PO Khurda Road, Dist:Khurda.
3. Senior Divisional Personnel Officer, East Coast Railways, At/PO Khurda Road, Dist:Khurda.
4. Presenting Officer-cum-Dy.Chief Commercial Manager(Claims), East Coast Railways, At/PO Khurda Road, Dist:Khurda.

.....Respondents

Advocates for the Respondents:

Mr.C.R.Mishra
(for Res.No.1,2&3)



ORDER

HON'BLE JUSTICE R.K.BATTA-VICE-CHAIRMAN.

The Applicant claims that he was engaged as substitute Bunglow Peon on 29.06.01 without waiting further for any communication from the authority concerned. On 1.7.2001, the Respondent No.4 who had engaged him wrote a letter to Res.No.1 to make necessary arrangements for payment of his salary. On 13.8.01 another Bunglow Peon namely Sri R.K.Jena who was working with the earlier P.O. came to join but he was not accepted by Res.No.4 and he was returned to Res.No.2 with a letter of non-acceptance. The applicant further contend that without waiting for the order of appointment from the higher authority, the then P.O. had appointed the applicant as the same was permissible. On 17.8.01, Sri Jena was again sent by Res.No.2 for joining as substitute Bunglow Peon but was again returned back by stating that the applicant had already been engaged. The Applicant was later asked to appear for medical test on 10.1.2002 and he was declared successful in the medical test. The Applicant claims that once he had been declared medically fit his appointment with effect from 29.6.01 should have been sanctioned or in the alternative he should have been given immediate appointment order. It was only on 18.01.02 that the Res.No.2 had passed an order for engagement of the applicant as Bunglow Peon. By letter dtd.9.8.02, the applicant was directed to report to the Sr .Divisional Personnel Officer along with a relinquish charge memo and transfer order. The applicant

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claims that he reported to the competent authority on the same day but no order/directions were given to the Applicant. He was not allowed to perform his job though work was very much available in the said office. After waiting for some days the applicant made representations. On 28.05.04 the Res.No.3 intimated the applicant that he has been disengaged from service w.e.f 9.8.02. The applicant again submitted a detailed representation on 27.8.04. The applicant has approached this tribunal for directions to the Respondents to pay wages to him from the date of actual engagement i.e. 29.6.01 to 17.1.02 and from 1.8.03 to 28.5.04 and to quash the order of termination dtd.28.5.04 or alternatively the Respondents to give temporary status to the applicant at least w.e.f. 17.5.02 and to grant him all consequential benefits.

2. The respondents in their reply have stated that the Bunglow Peons are engaged after due approval of the General Manager. The applicant was discharged from his engagement as Bunglow Peon vide letter dtd.9.8.02. The applicant was disengaged since he had not completed one year of service. The pay and salary has been paid to the applicant for the period of his engagement as Bunglow Substitute from 18.1.02 to 19.8.02 as per guidelines vide Annexure-R/1. The Respondents also contend that as per rules the officer can propose engagement of persons of his choice provided the Bunglow peon post is vacant but the final engagement is to be made after obtaining approval of GM concerned. The approval of the GM was communicated vide letter dtd.24.12.01 as such the question of engagement of candidate prior to that does not arise. The engagement of the applicant without approval of the competent authority is contrary to the rules for engagement and he is not entitled to any salary from the department.

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3. In rejoinder the applicant has stated that the Respondents have not denied the claim of the applicant that he worked in the post of Bunglow Peon from 29.06.01 to 9.8.02 and after he reported to the Res.No.3 but no work was assigned to him. Applicant further contends that Annexure-7 itself shows that till 28.5.04 the services of the applicant were not terminated and retrospective termination is bad in law.

4. We have heard the counsel for both the parties who have argued on the lines of the pleadings of the parties referred to above and it is not necessary to repeat the arguments advanced by them.

5. The entire issue has to be examined in the light of instructions relating to engagement, absorption and discharge of Bunglow Peons which are found in letter dtd. 27.8.01(Annexure- R/1) which are as under:

“(A)ENGAGEMENT

(i) Bunglow peons are attended to the post. Officers occupying such posts are entitled to Bunglow Peons. They may propose for engagement of men of their choice provided the Bunglow Peon's post is vacant. Engagement will be made after obtaining GM's personal approval. The person proposed for engagement should be within the prescribed age limits, fulfill literacy standards and pass the requisite medical examination.

(ii) Fresh faces engaged as Bunglow Peons after personal approval of G.M will be appointed as Substitute against permanent/temporary posts and on casual basis against work-charged posts.

(B) REGULARISATION

(i) On completion of 3 years of continuous/aggregate and satisfactory service, the Bunglow Peon will be screened and regularized against permanent cadre of Peons/Bunglow Peons or any other Group 'D' vacancies for which they fulfill the requisite criteria.

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13
(ii) Even after regularization a Bungalow peon will continue to work with the officer who engages him till he/she completes 5 years of service. After completion of 5 years service, a Bungalow Peon will be adjusted against Gr. D post other than office peon.

(iii) An officer, whose bungalow peon has completed 5 years of continuous/aggregate and satisfactory service and who has been regularized as above, can propose for engagement, another fresh faces as bungalow peon for GM's consideration.

(iv) Officers on transfer from one place to another on S.E.Railway should normally get their bungalow peons also transferred to the new place of posting. In case an Officer is transferred to a different place in S.E.Railway, after his/her B/peon has completed 3 years of continuous/aggregate satisfactory service, request of such B/peon to continue in the same place could be considered. Such persons will be then would have fulfilled criteria (I) and such officer's request for fresh bungalow peon could also be considered.

(v) If an officer retires and at that time if his/her B.peon has not completed 3 years of continuous/aggregate service but have completed 2 years of continuous/aggregate satisfactory service; such B.peon could be continued as a substitute in any other department. On completion of 3 years of continuous/aggregate and satisfactory service, such B.peon will be screened and regularized as per (I).

(C) DISCHARGE

(i) If a Substitute Bungalow peon who has completed one year of service but not three years of service up to the date of transfer of the officer who engaged him, the services of such Bungalow peon should be offered to

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other officers who are willing to take him. If no officer is willing to take him, the services of such Bunglow peon should be terminated and his name kept in the Live Casual Labour register for re-engagement in future provided the services of such Bunglow Peon are satisfactory as certified by the officer with whom he has worked.

(ii) The services of substitute Bunglow Peons who have not completed even one year of continuous/aggregate service should be terminated in the event transfer/long leave of the officer who engaged him.

(iii) the Bunglow peon will be treated as on probation for 3 years during which period their services may be terminated without assigning cause.

(D) Any exceptions to the above will require personal approval of G.M."

6. From the above instructions on the subject it is clear that an officer entitled to Bunglow Peon can propose for engagement of person of his choice provided the Bunglow Peons post is vacant. The engagement has to be made after obtaining GM's approval. In addition a person proposed for engagement should be within the prescribed age limit, fulfill the literary standards and pass the requisite medical examination. The applicants case is that he was appointed as substitute Bunglow Peon on 29.6.01 without waiting for any communication from the authorities and the same was permissible . The contention of the applicant is totally contrary to the instructions which we have already referred to above. The engagement has to be made after obtaining the GM's personal approval. In this case no personal approval of the GM was obtained for appointment of the applicant as Bunglow peon. Besides this post of the Bunglow Peon was already filled up by one Mr. Jena who was in fact sent to the officer concerned on 13.8.01 and also on 17.8.01 but the officer concerned did not accept him and



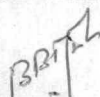
returned him. The post for which the applicant was appointed by the officer concerned was in fact not vacant. The appointment of the applicant by the said officer concerned on 29.6.01 was thus contrary to the instructions and if any appointment is made contrary to the said instructions, department is not liable or bound by such illegal appointment. In such circumstances, the applicant may have a claim for payment of wages as against ~~an~~ officer concerned but he cannot have any claim against the department as such.

7. The applicant was in fact given relinquish charge memo on 9.8.02 and he was asked to report to Res.No.3. The case of the applicant is that he reported to Res.No.3 who did not allow him to perform his job and after waiting for some days he made representations. This means that no further job was assigned to the applicant and obviously the applicant cannot be paid for the period when he was not assigned any job. The applicant did not approach the Tribunal at that stage and continued making representations which ultimately resulted in order dtd.25.8.04 terminating his services w.e.f. 9.8.02. In fact, strictly speaking there was no necessity for passing such orders since the applicant had already been given relinquish charge memo on 9.8.02 and was asked to report to Res.No.3 who did not give him any further assignment. The applicant has thus officially and effectively worked with the officer concerned from 18.01.02 till 9.8.02. Since the appointment of the applicant had been cleared by the competent authority vide order dtd.18.1.02, the said order did not give any retrospective appointment to the applicant and the applicant never challenged the said order before the competent authority. The earlier appointment of the applicant from 29.6.01 to 17.01.02 was thus dehors the instructions on the subject. The applicant had thus effectively worked only for about six months and as such he would not entitled for any relief on the strength of the said service of six months

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only. The rules provided for regularization only after completion of three years service and if such substitute peon has completed one year of service and no officer is willing to take him in service, the services of such Bunglow Peon are required to be kept in the Live Casual Labour register for re-engagement in future.

8. In view of the above, we are of the opinion that the applicant is not entitled to any relief as claimed in this O.A. Accordingly this O.A. is hereby rejected with no order as to costs.


MEMBER(ADMN.)


VICE-CHAIRMAN