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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A. No. 530 of 2009

Prakash Kumar Das .....Applicant

Vs

UOI & Ors. .... Respondents

1. Order dated: 30<sup>th</sup> June, 2011.

C O R A M

THE HON'BLE MR. C.R. MOHAPATRA, MEMBER (ADMN.)

AND

THE HON'BLE MR. A.K. PATNAIK, MEMBER (JUDICIAL)

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The Applicant was a substitute Bungalow Peon. Apprehending his disengagement he has earlier approached this Tribunal in OA No. 368 of 2008. The said OA No. 368 of 2008 was disposed of by this Tribunal on 19<sup>th</sup> November, 2008. Relevant portion of the order is quoted herein below:

"4. Having heard Ld. Counsel for both parties, we are satisfied that the grievances of the applicant may be redressed by the competent authority. If a proper and fresh representation is submitted by the applicant within a period of 10 days of receipt of copy of this order, the same shall be disposed of by the competent authority by a reasoned order within 03 months from the date of receipt of copy of this order."

2. According to the Applicant, in compliance of the aforesaid order, the Applicant submitted representation dated 12-12-2008 to the Senior Personnel Officer (Con.) (Coordination), East Coast Railway, Bhubaneswar [copy not enclosed]. The said representation of the Applicant was considered but the service of the applicant was terminated with immediate effect and intimated to the applicant in letter under Annexure-5, dated 28.2.2009. In the present OA, the applicant challenges the said order under
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Annexure-5 dated 28.2.2009 to be illegal, arbitrary being against the Rule/law and principles of natural justice. His stand is that termination of the service by appointing another substitute amounts to exploitation of labour and against the law laid down by the Hon'ble Apex Court in the case of **State of Harayana and others v Piara Singh and others**, AIR 192 SC 2130.

3. Respondents' contest the case of the Applicant. According to the Respondents the Applicant is not entitled to any of the reliefs claimed in this OA as his working period as substitute Bungalow Peon was not satisfactory and he remained absent from 1.5.2008 without any prior permission of the authority. As he did not work since 1<sup>st</sup> May, 2008 question of payment of his salary from May, 2008 onwards does not arise. On receipt of the representation of the Applicant dated 12.12.2008, the Respondent No.2, in letter dated 15.12.2008 forwarded the same to the Respondent No.3 for consideration. The Respondent No.3 considered the said representation of the Applicant but did not find any merit for his continuance as substitute bungalow peon as his performance during 11 months of his engagement was found unsatisfactory. He was very adamant and remained absent unauthorisedly. This fact was intimated to the applicant in a well reasoned order under Annexure-A/5. No rejoinder has been filed by the Applicant.

4. First limb of argument of the applicant is that the order under Annexure-5 is not sustainable being bereft of any reason. Secondly it was contended by him that when the foundation of the termination was due to unsatisfactory service, this could not have been done without following the rigors of Article 311 of the Constitution, in other words, by giving adequate opportunity to

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8 the Applicant. Third contention of the Learned Counsel for the Applicant is that the applicant has been replaced by another substitute which is against the law laid down by the Hon'ble Apex Court in the case of **State of Harayana and others v Piara Singh and others**, AIR 192 SC 2130.


5. On the other hand, Mr. Ojha, Learned Standing Counsel has submitted that as the applicant was a substitute Bungalow Peon his continuance is subject to the satisfaction of the authority with whom he has to work and as such he was not entitled to claim protection provided in Article 311 especially not being a Civil Servant. In this regard Learned Standing Counsel appearing for the Respondents drew our attention to the letter dated 1.4.2007 in which it has been provided that the continuance of the Bungalow Peon so engaged with GM's approval is subject to his satisfactory performance. If the service is not considered satisfactory, the service can be terminated any time by following procedure laid down in Chapter XV of IREM Volume I (1989 Edition) which was duly followed in the present case. Accordingly, Respondents' counsel reiterated his stand taken in the counter and prayed for dismissal of this OA.


6. After giving due consideration to the rival submission of the parties, we have perused the materials placed on record. According to the Learned Counsel for the Applicant all the points raised in the OA and argued although raised in the representation dated 12.12.2008 without meeting/answering all those points, the authority being aggrieved as to why the applicant had taken shelter of this Tribunal rejected the representation in a bald order and, therefore, he would be satisfied if direction is issued to the Senior Personnel Officer (Con.) (Coordination), East Coast

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Railway, Bhubaneswar to reply the applicant in a well reasoned order meeting all the points raised by him in his representation dated 12.12.2008 and taking into consideration the decision of the Hon'ble Apex Court in the case of Piara Singh (supra) within a stipulated period. We see no reason to disagree with the above submission of the Learned Counsel for the Applicant. Accordingly, the order of rejection in Annexure-5 is hereby quashed. The matter is remitted back to the Senior Personnel Officer (Con.) (Coordination), East Coast Railway, Bhubaneswar for reconsidering the representation of the Applicant, after allowing him a personal hearing if he seeks within a period of 60(sixty) days from the date of receipt of copy of this order. The decision so reached upon reconsideration of the representation be communicated to the Applicant in a well reasoned order within the period stipulated hereinabove.

7. In the result, this OA stands disposed of accordingly. There shall be no order as to costs.

  
(A.K.PATNAIK)  
Member (Judl.)

  
(C.R.MOHAPATRA)  
Member (Admn.)