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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 313 of 2012
Cuttack, this the 6th day of January, 2016

Prakash Kumar Das	Applicant
	Versus	
Union of India & Ors.	Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? X
2. Whether it be referred to PB for circulation? Y


(R.C.MISRA)
Member (Admn.)


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

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 313 OF 2012

Cuttack, this the 6th day of January, 2016

CORAM

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

HON'BLE MR. R.C. MISRA, MEMBER (A)

.....

Prakash Kumar Das,
aged about 31 years,
S/o Fakir Charan Das,
At/PO- Ghoradia, PS- Delang, Dist- Puri,
At present working as Sun-B/Peon,
East Coast Rly., Rail Vihar,
Chandrasekharpur, Bhubaneswar.

...Applicant

(Advocates: M/s. Brajaraj Prusty, S.K.Swain.

VERSUS

Union of India Represented through

1. General Manager,
East Coast Railway,
At/PO-Chandrasekharpur,
Bhubaneswar, Dist- Khurda.
2. Chief Administrative Officer(Con.),
East Coast Railway,
O/o the Personnel Department,
Bhubaneswar-23.
3. Senior Personnel Officer, (con.)
East Coast Railway,
Chandrasekharpur,
Bhubaneswar.
4. P.K.Behera,
Sr. DEE/OP/WAT, Ex. Dy. CEE/C-II/BBS,
O/o Sr. DEE/OP/VKP,
DRM off. Complex Dondaparthi,
Visakhapatnam-530004.

..... Respondents

Advocate(s) : Mr. R.N.Pal.

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ORDER

A.K.PATNAIK, MEMBER (JUDL.):

This O.A. has been filed seeking the following relief:

“(a) The impugned order dated 14.09.11 vide Annexure-8 be declared as null and void and quashed.

(b) Direction be given to the respondent No.2 to allow the petitioner to continue in his post and the salary attached to this post be disbursed regularly.

(c) Any other relief.....”

2. Respondents have filed counter opposing the prayer of the applicant on various grounds, which would be dealt into at the appropriate stage infra.

3. Applicant has filed his rejoinder.

4. Heard Mr. B. Prusty, Ld. Counsel for the applicant, and Mr. R.N.Pal, Ld. Counsel appearing for the Respondent-Railways.

5. It has been stated that the applicant was appointed as a Sub-B/Peon/NHQ vide office order dated 29.05.2007 issued by the Senior Personnel Officer, E.Co.Railways and, accordingly, he joined the post and performed his duty. All on a sudden, he was kept away from duty since, May, 2008. He made representation on 19.07.2008. Alleging non-consideration of his grievance, he filed O.A.No. 368/2008 and in compliance of the order of this Tribunal in the aforesaid O.A. the Respondent-authorities vide letter dated 28.02.2009 intimated the applicant that his service has been terminated with immediate effect. Thereafter, he filed O.A. No. 530/2009 whereupon the Respondents

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rejected the grievance of the applicant vide letter dated 14.09.2011. The order dated 14.09.2011 is quoted hereunder for ready reference:

“ XXX XXX XXX

- a) Your claim that you were appointed as substitute bungalow Peon is not correct since you were engaged only as substitute Bungalow Peon on 30.05.2007 under the then Dy. Chief Electrical Engineer (Con)/II/East Coast Railway, Bhubaneswar, subject to usual terms and conditions governing engagement of Substitute Bungalow Peon.
- b) You have worked as substitute bungalow Peon w.e.f. 30.05.2007 and up to 01.05.08 and you were paid salary for that period. Thereafter, you remained unauthorizedly absent. Your allegation that you were not allowed to perform the duty is not at all correct and misrepresenting the facts. During the period you worked as Substitute Bungalow Peon for about 11 months, your performance was found not satisfactory. You remained unauthorizedly absent w.e.f. 01.05.08. Therefore, the contention that you have worked for more than 1 ½ years is not correct. Since you have absconded from work, your substitute engagement was terminated w.e.f. 02.03.09 vide Office Order No. 97/09 dated 26.08.09. Therefore, your averment that you will suffer irreparable loss if an outsider will be appointed is inappropriate because it all happened due to your own fault for which you are solely responsible.
- c) In terms of stipulated rules and procedure in this regard, Bungalow Peons are attached to the posts. The Officer occupying such posts may propose the engagement of persons of their choice as Substitute bungalow Peons. A person proposed for engagement, shall give his consent in writing that he is willing to work as Bungalow peon under the Officer concerned. The continuance of Bungalow peon so engaged is subject to his satisfactory performance. If it is not considered satisfactory the service of such bungalow peon can be terminated at any time by following the procedure laid down in chapter XV of IREM Volume-I (1989 Edition).
- d) As a substitute Bungalow Peon you were expected to be regular in your duties. Due to you un-



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satisfied performance and abstaining from work, the Officer under whom you were engaged as Substitute bungalow Peon was constrained to terminate you and accordingly your Substitute engagement was terminated.

In view of aforesaid facts and circumstances, after personal hearing given to you on 06.09.2011 to re-consider your representation dated 12.12.08 it is found that your case has no merit for consideration against the orders issued terminating your substitute engagement.

This disposes of your representation dated 12.12.2008 in obedience to the Hon'ble CAT/CTC's order dated 30.6.11 in O.A. No. 530/09."

6. Ld. Counsel appearing for the Respondents placing reliance on the counter reply submitted that it is not correct that the applicant was "appointed" as a substitute Bungalow Peon rather he was "engaged" as a substitute Bungalow Peon on 30.05.2007 under the Chief Deputy Electrical Engineer (Con)/II/East Coast Railway, Bhubaneswar subject to the usual terms and conditions governing engagement of Substitute Bungalow Peon. The applicant worked as Substitute Bungalow Peon w.e.f. 30.05.2007 upto 01.05.2008 and he was paid his remuneration for the aforesaid period. Thereafter, he remained absent unauthorizedly. His work for the above 11 months was also found not satisfactory as the applicant absconded from work without prior permission or intimation. Accordingly, his engagement as Substitute Bungalow Peon was terminated w.e.f. 02.03.2009 vide office order No. 97/2009 dated 26.08.2009. It has been further submitted that as per the rules, Bungalow Peons are attached to the post. The officers occupying such posts may propose the engagement of persons of their choice as Substitute Bungalow Peons. The persons proposed for engagement shall given his



consent in writing that he is willing to work as Bungalow Peon under the officer concerned. The continuance of the Bungalow Peon so engaged is subject to his satisfactory performance and if the performance of the Bungalow Peon is not found satisfactory his engagement can be terminated at any time by following the procedure laid down in chapter XV of IREM Volume-1 (1989 Edition). By placing reliance on various judge made laws on the subject, the Respondents would pray that there being no miscarriage of justice caused to the applicant in the decision making process of the matter this O.A. should have been dismissed.

7. Ld. Counsel for the applicant has also placed reliance on various decisions of the Hon'ble Apex Court to substantiate his plea that after the disengagement of the applicant, the work has been managed by appointing fresh faces which being contrary to the settled position of law, the applicant is entitled to the relief prayed for in this O.A.

8. The points for consideration are as to whether termination of the engagement of the applicant without affording him any opportunity that too by way of stigma, i.e. non-satisfactory performance, and without holding inquiry is justified.

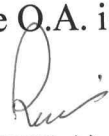
9. There is no need to delve into the matter deeply as the termination of the engagement of Substitute Bungalow Peon came up for consideration before the Principal Bench of Central Administrative Tribunal in O.A. No. 1833/10 filed by another similar situated employee, viz. Ms. Madhuri, and the Principal Bench of the Tribunal after taking into consideration the rules for engagement of such Substitute Bungalow Peon and various decisions of the Hon'ble Apex Court etc. did not find




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any cogent reason to interfere on the dis-engagement of the applicant therein.

10. On examination of the instant case vis-à-vis the case of the Principal Bench of the Tribunal, we do not see any ground to make a departure from the view already taken by the Principal Bench in the case (cited supra). However, it is the positive case of the applicant that after his disengagement work of the applicant has been managed by the department by another hand on casual basis which is contrary to the law laid down by the Hon'ble Apex Court in the case of State of Haryana & Ors vs. Piara Singh & Ors. This fact has not been specifically met by the Respondents in their counter nor any convincing argument was advanced by the other side in course of the hearing. Therefore, we leave this matter to the Respondents' authorities to look into this aspect of the matter sympathetically in the light of the decision of the Hon'ble Apex Court in the case of State of Haryana & Ors vs. Piara Singh & Ors (cited supra) and communicate the detailed speaking order to the applicant within a period of 45 days from the date of receipt of copy of this order. In the result, the O.A. is disposed of. No costs.


(R.C.MISRA)
Member (Admn.)


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

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