CENTRAL ADMINSTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

NO. 65 of 96

PRESENT : HON'BLE MR. S.K.MALHOTRA, ADMINISTRATIVE MEMBER
HON'BLE MR. G. SHANTAPPA, JUDICIAL MEMBER

Ratneswar Jadav : Applicant

VS.

Union of India, rep. by

1. The Genl. Manager, Eastern Railway
17, Netaji Subhas Raod, Calcutta 700001

2. The Sr. Dinvl. Personnel Officer,
Eastern Railway, Howrah

2. The General Manager(P), East Central Rly.
Hajipur, PO Hajipur, Dist.: Hajipur

3. The Chief Personnel Officer
Easter Railway, 17, Netaji Subhas Road
Calcutta 700001

3. The Sr. Divnl.Electrical Engineer (TRD),
Eastern Railway, Howrah

4. The Divnl. Rly. Manager,
Eastern Railway, Howrah

5. Asstt. Personnel Officer,
Eastern Railway, Howrah

6. Chief personnel Officer,
Eastern Railway, 17 Netaji Subhas road
Calcutta 700001 : Respondents

For the Applicant : Mr, B. Bhattacharjee, Counsel
Mr. S.K. Mitra
For the Respondents : Mr. P.K. Arora

Dated of hearing : 19 -4-2005 Date of pronouncement: 19 -4-2005

ORDER

Hon'ble Shri G. Shanthappa, M(J) :

The above OA is filed u/s 19 of the AT Act, 1985 seeking the following reliefs:

a) The impugned notice of termination / memo No.E/1/TD/HWH dated 24.8.1988 being annexure A/3 should be quashed and /or set aside;

b) The respondents should be directed to treat the applicant to have continued in service without any break with all consequential benefits;

c) Costs;

d) Such other relief or reliefs as to this Hon. Tribunal may deem fit and proper for ends of justice.

2. The brief facts of the case are that the applicant was appointed as substituteBungalow peon against a regular vacancy on 24.9.87. His services were found satisfactory. Without issuing notice and without hearing the applicant he was asked to vacate accommodation w.e.f.11.8.98 and his services were terminated. Subsequently, he worked from 11-8-88 to 24-8-88 in the office of Chopra. For that he has signed the attendance. He was terminated before he attained temporary status. The action of the respondents is illegal, against law, without due process of law. The services of the applicant should have been terminated under Article 311(2) of the Constitution, which attracts the services of the applicant, hence the order of termination is illegal. There shall be a direction to the respondents to consider the applicant who had continued in the services without any break with all consequential benefits.

3. The respondents have filed a detailed reply denying averments made in the OA. They have admitted the services of the applicant w.e.f.24-9-1987 on the instructions of Mr. Chopra, the services of the applicant were terminated with effect

from 11-8-1988. The respondents denied the attendance of the applicant in the office from 11-8-88 to 24-8-88. Services of the applicant cannot be protected under Article 311 of the Constitution since he was appointed under the policy dated 20-8-84 he is protected under the said policy. The action of the respondents is perfect. There is no illegality or irregularity.

4. The applicant has filed a rejoinder to the reply clarifying that in view of the judgement of the Hon. Apex Court in the case of Motiram Deka Vs. UOI, the termination being illegal and adherence to the master-servant relationship does not arise. Deprivation of services were continuous wrong. The respondents have marked in the attendance 'P' which was virtually mutilated and over written as 'A'. The applicant was removed from service and not because of terminator simplicitor without following provisions of Article 311(2) of the Constitution. The applicant has also referred to many orders passed by this Tribunal. The remaining averments are only on the basis of original application.

5. Heard the ld. Counsel for the applicant and the respondents and perused the pleadings and documents on records.

6. The admitted facts from either side are that the applicant was appointed as Bungalow Peon as per the policy dated 20-8-1984. The applicant joined the services as Substitute Bungalow Peon on 24.9.87 and was terminated on 11.8.88. He has not completed one year of service. As per the said policy, "subject to availability of vacancies in Class-IV categories, no Bungalow Peon who has completed more than one year continuous satisfactory service is liable to be discharged from service without observance of prescribed DA Rules.

7. The services of the applicant are liable to be discharged without observation of prescribed DA Rules.

8. As contended by the applicant, the services of the applicant cover under Article 311(2) of the Constitution. In support of his case he has cited judgements of this Tribunal in OA.325 of 88 and the observation made by the Hon. Vice Chairman, Pratiba Bonnerjea on 11-8-1990. The said observation was made to be relying on the

judgement of the Hon. Supreme Court reported in AIR 1966 SC 1313, State of Punjab Vs. Amar Singh Harika.

9. Here we have to see the way of termination of services of the applicant, "As your services as Bungalow Peon to Sr. DEE/TRD/HWH is not satisfacotyr, your services are terminated from 11-8-88 afternoon."

10. Since the services of the applicant is not completed one year as per the policy on which the applicant was appointed the respondents have issued the order of termination without conducting enquiry. We carefully examined the impugned order. There is no stigma attached to the order of termination. There is no scheme where the applicant can get the benefit of Article 311 (2) of the Constitution of India. Admittedly, the applicant is a substitute as defined under para 1512 and 1513 of IREM, which read as follows:

> "1512 Definition – "Substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.
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> 1513 Circumstances under which substitutes can be recruited:-
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> i) Ordinarily there should be no occasion to engage "substitutes" having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. However, when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective as in the case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a way side station, and it any become absolutely necessary to engage substitutes even in vacancies of short duration.
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> ii) As far as possible substitutes should be drawn from a panel of suitable candidates selected from Group 'C' and 'D' posts and should be engaged subject to the observations made in (i) above, only in the following circumstances:-

a) Against regular vacancies of unskilled and other categories of Group-D staff requiring replacement for which arrangements cannot be made within the existing leave reserve.

b) Against a chain vacancy in the lower category of Group 'D' staff arising out of the incumbent in a higher Group 'D' category being leave, where it is not possible to fill the post from within the existing leave reserve.

c) Against posts in categories for which no leave reserve has been provided.

d) Against vacancies in other circumstances notified by the Railway Board from time to time."

11. Further contention of the applicant that the CPO has no authority to frame the scheme as per Rule 123 and 124 and the power is vested with the General Manger, -

"123. The Railway Board have full powers to make rules of general application to Group C & Group D railway servants under their Control.

124. The General Mangers of Indian Railways have full powers to make rules with regard to Railway servants in Group C & D under their control provided they are not inconsistent with any made by the President or the Ministry of Railways."

12. If we consider the arguments of the applicant that the CPO has no powers to frame ruels, the order of appointment issued to the applicant itself is illegal. Here we have to see whether the service particulars of the applicant are covered under Article 311(2) of the Constitution of India. No doubt the applicant has completed service of 120 days. He was paid wages upto 11-8-98 and terminated before he attained temporary status.

13. On the admitted facts the applicant was not a regular employee of the respondents. He was a substitute. His claim that the substitute employees are also come under Article 311(2) of the Constitution of India. The applicant has submitted number of judgements. In one of the judgments, OA.325 of 88 the issue relating to

the protection under Article 311(2) of the Constitution of India has been dealt with. As per the said judgment of this tribunal his services has been protected under Article 311(2) of the Constitution and the relief was granted to that applicant.

14. The ld. Counsel for the respondents strongly opposed the contention of the applicant that since the applicant was not a permanent employee, even permanent employee can be terminated before the completion of probation under CCS(Temporary Service) Rules without assigning reasons. When there is stigma attached to the order of termination the employee, has no legal right to challenge the order of termination. The mode of termination of services of a temporary employee is as referred under CCS (TS) Rules. Comparison with the service of the permanent civil servants, that he was appointed on probation before completion of the probation period if his services were not satisfactory he can be terminated without assigning reasons. If there is any stigma attached to the order of termination then he is protected under Article 311(2) of the Constitution of India. Here the services of the applicant is substitute. On this issue this Tribunal has decided in the case of Hamid Vs. UOI (OA.1211/96 dated 12.8.2002 and OA.427 of 2002 dated 9-4-2003) and facts in a similar circumstances of the case the OA was dismissed.

15. When a permanent employee who was on probation he can be terminated by invoking Rule of 5, CCS(TS) Rules. In the instant case the applicant is a substitute. Even if he is considered as permanent employee he has not completed one year of service. The respondents after seeing the services of the applicant have terminated the services under simple order that his service is not satisfactory and his services are terminated. But there is no stigma attached to the impugned order. On this issue the Hon.Supreme Court has held that the services of the applicant can be terminated if there is no stigma attached to the impugned order.

16. The said observation made by the Hon. Supreme Court in the case of Bhagwan Lal Arya Vs. Commissioner of Police, New Delhi, reported in 2004 (2) CPC 301 and 2003 SCC (L&S) 760, Shailaja Shivaji Rao Patil's case. In the said

judgements Hon. Apex court reported in 2002 SC 562 in the Pavanendra Narayan Verma case is referred. The relevant portions are extracted below:-

> " Mr. Shroff appearing for the appellant vehemently contended that the order, on the face of it must be held to be stigmatic in nature, and as such the order could not have been passed without holding an enquiry and finding the appellant guilty of any charges. He further contended that in accordance with the rules the appellant was at least entitled to notice before termination, and no notice having been given, the order of termination is bad in law. We do not find any force in either of the contentions raised. The order of appointment itself unequivocally indicated the tenure of appointment, and that the appointment could be terminated at any time without notice. The question whether an order of termination of a probationer or temporary employ could be held stigmatic came up for consideration before a Bench of this Court, where one of us (Pattanaik, J.) was a party, since reported that Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Scinces. In that case also an enquiry had been held prior to the order of termination. On examining the entire gamut of case-law right from Dhingra case the Court came to the conclusion that a mere holding of an enquiry does not ipso facto make the order of termination penal in nature, once the employer wishes not to continue the enquiry in exercise of his right in accordance with the terms of appointment. The court held that the enquiry held prior to the order of termination cannot turn an otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee concerned. Bearing in mind the decision of this Court in the aforesaid case, and on examining the facts and circumstances together with the impugned order of termination, we see no justification for our interference with the impugned order, as in our view the impugned order cannot be held to be stigmatic in any way. This appeal accordingly fails and is dismissed."

C. Termination – Stigma – Probationer – Order terminating the service of probationer for unsuitability for the job, held, not by itself stigmatic.

The appellant was appointed to the post of Joint Director (Materials Management) of the respondent. In terms of the appointment letter, his appointment was temporary and terminable at one month's notice or on payment of notice pay. Moreover, he was to remain on probation for the specified period which was variable at the discretion of the competent authority. The original probation period was extended twice and within a week of the expiry of the extended period his services were terminated in terms of the appointment letter as even during the extended probation period his work and conduct had not been found to be satisfactory. The said order was passed after a summary inquiry. The appellant alleged that the said order was stigmatic and punitive. In support of the allegation he referred to certain statements made in the respondent's counter affidavit. He added that such an order could not be passed without a full fledged departmental enquiry. Dismissing the appeal the Supreme Court held –

The decision in Parshotham Lal Dhingra case, AIR 1955 Sc 36, courts have to perform a balancing act between denying a probationer any right to continue in service where at the same time granting him the right to challenge the termination of his service when the termination is by way of punishment. The law has developed along apparently logical lines in determining when the

termination of a temporary appointee of probationer's services amounts to punishment.

Parshotham lal Dhingra Vs. UOI, AIR 1958 SC 36, referred to

8. Since the decision in Parshotam Lal Dhingra Vs. Union of India courts have had to perform a balancing act between denying a probationer any right to continue in service while at the same time granting him the right to challenge the termination of his service when the termination is by way of punishment. The law has developed along apparently illogical lines in determining when the termination of a temporary appointee or probationer's services amounts to punishment."

17. In view of the judgements referred above and the facts of the case, the judgments referred by the applicant are not relevant. The latest judgement of the Hon. Supreme Court which are cited above by the respondents are relevant and considered. There is no stigma attached to the order of termination. Since the applicant is a substitute Banglow Peon, his service does not attract Article 311 of the Constitution of India. Hence the action taken by the respondents is perfect. There is no illegality or irregularity.

18. For the foregoing reasons we are of the considered view that the applicant has not made out a case for grant of relief. Accordingly the OA is dismissed.

(G. Shanthappa)
Member (Judl.)

(S.K. Malhotra)
Member (Admn.)

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