

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A. 900 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. S.K. Ghoshal, Administrative Member

Arun Chowdhury, son of Sri Babulal Chowdhury, aged about 35 years, Ex-Bungalow Peon under ADRM/S.E.Rly. Khurda Road, resident at present of St. No. 36 Gr. No.44/B, Chittaranjan, 713 331, Dist. Burdwan.

... Applicant

-Versus-

1. Union of India, through the General Manager, S.E.Rly. 11, Garden Reach, Calcutta - 700 043.
2. The Asstt. Personnel Officer, S.E.Rly., Khurda Road.
3. The Senior Divisional Personnel Officer, S.E.Rly., Khurda Road.

... Respondents

For the applicant(s) : Mr. B. Chatterjee, counsel

For the respondents : Mr. S. Choudhury, counsel

Heard on : 29.11.2000

Order on: 29.11.2000

ORDER

S.K. Ghoshal, A.M.:-

The applicant is aggrieved by the order of retrenchment dated 30.4.1997 issued by the Assistant Personnel Officer, S.E.Rly., Khurda Road (seen at Annexure 'A-4' of the O.A.). The operative part of that order reads as follows : -

" Sri Arun Choudhury, S/o. Sri Babulal Choudhury, who was engaged as Substitute Bungalow Peon of ADRM/KUR in scale of Rs.750/- .. Rs.940/- (RPS) in June '96 is retrenched from Fly. Service w.e.f. 1.5.1997 (F.N.) due to reason that Sri Arun Choudhury was not discharging his duty properly and behaving in a rough and tough manner. Though he was told on several occasions by ADRM to mend in his habit but he finds no improvement in his performance. "

The applicant was declared under the impugned order as entitled to an amount of Rs.2325/- towards wages in lieu of one month's notice and an amount of Rs.1163/- towards retrenchment compensation. The applicant has sought the relief of quashing the said order of retrenchment of his services and for his reinstatement with all back wages and consequential benefits attached to the post.

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2. The main grounds urged on behalf of the applicant in support of the relief claimed by him are that though initially he was appointed by the Asstt. Personnel Officer, Kharagpur dated 1.6.1996 (seen at Annexure 'A' of the O.A.) as a casual Bunglow Peon at Rs.36/- per day against the vacant post of Bunglow Peon attached to Sr. CEE/KGP, he was subsequently posted under the order dated 16.9.1996 (seen at Annexure 'A-1' of the O.A.) as a Substitute Bunglow Peon in the scale of Rs.760/- ... Rs.940/- (RPS) with effect from 29.7.1996. We also observe that by a subsequent order dated 26.2.1997 passed by the Sr. Divl. Personnel Officer, Khurda Road (seen at Annexure 'A-2' of the O.A.) the applicant was posted as a Substitute Bunglow Peon of one Sri P.K. Jain, ADRM/KUR against an existing vacancy. Similarly, the Sr. Personnel Officer (M&EL) in the office of the CPO(EL), Garden Reach, Calcutta under his order dated 20.3.1997 (seen at Annexure 'A-3' of the O.A.) declared the applicant as having been appointed as a Substitute Bunglow Peon in the scale of Rs.750/- ... Rs.940/- (RPS) and transferred and posted him under Sri P.K. Jain, ADRM/KUR in the same scale of pay. It is ~~observed~~ thereafter that the impugned order dated 30.4.1997 mentioned above came to be passed on the ground that the applicant was not discharging his duty properly and was behaving in a rough and tough manner even though he had been told on several occasions by ADRM in whose Bunglow he had been posted to mend in his habit. It is also mentioned in the impugned order that no improvement was found in the performance of the applicant thereafter. The ld. counsel of the applicant has brought to our notice the decision reported in (1991) 16 Administrative Tribunal Cases (page 18) where the question as to whether a Substitute Bunglow Peon could be held as the incumbent of a Civil Post and as to whether such a Substitute Bunglow Peon could enjoy the protection granted to the incumbent of a Civil Post under Article 311 were considered. We find that the 3rd Member to whom the matter was referred had recorded the decision that the order of termination impugned therein without following the procedure prescribed under Article 311 of the Constitution was violative of those provisions and, therefore, was invalid.



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3. The 1d. counsel for the respondents vigorously argued that the applicant, admittedly having been appointed initially only as a casual Bunglow Peon on a daily wage, must be deemed to have continued with the same status till the impugned order terminating his services was issued (seen at Annexure 'A-4') and that, therefore, he was not entitled to the protection guaranteed under Article 311 of the Constitution. On behalf of the respondents it has been specifically argued that the question of treating the applicant as a Substitute Bunglow Peon would not arise in the facts and circumstances of this case because the respondents could appoint a Substitute only after going through the process of empanelment as laid down under the relevant rules. We have carefully considered this basic position taken on behalf of the respondents in support of the impugned action. The relevant provisions of the Indian Railway Establishment Manual dealing with the definition of a Substitute and the procedure to be followed for making an appointment of a Substitute are contained in paragraph 2315 and 2316. They are reproduced in verbatim below :-

* 2315. Definition - 'Substitutes' are persons engaged in Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts may 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.

2316. Circumstances under which substitutes can be recruited -

(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 absentee 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 wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration.

(ii) As far as possible substitutes should be drawn from a panel of suitable candidates selected for Class III and IV 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 Class IV staff requiring replacement for which arrangements cannot be made within the existing leave reserve.

(b) Against a chain vacancy in the lower category of Class IV staff arising out of the incumbent in a higher Class IV category being on leave, where it is not possible to fill the post from within the

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existing leave reserve.

- (c) Against posts in categories for which no leave reserve has been provided.
- (d) Against vacancies in other circumstances specified by the Railway Board from time to time."

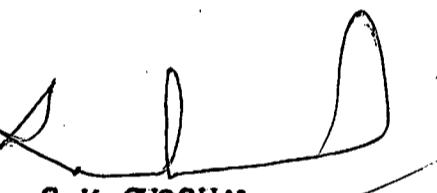
It is very evident from the provisions cited above that a Substitute may be employed due to non-availability of a permanent or temporary Railway Servant against a post which is vacant and on a regular scale of pay. We find that under the order dated 16.9.1996 (seen at Annexure 'A-1') the applicant was specifically appointed and posted as a Substitute Bunglow Peon in the scale of Rs.760/- ... Rs.940/- (RPS) with effect from 29.7.1996. We, therefore, hold that the applicant was indeed appointed specifically as a Substitute Bunglow Peon against a vacant post and on a regular scale of pay. We have already referred earlier to the subsequent orders dated 14.2.1997 and 20.3.1997 at Annexures 'A-2' & 'A-3' respectively mentioned above.

4. The next issue that falls for consideration by us in this context is whether the procedure adopted by the respondents in appointing the applicant as a Substitute Bunglow Peon was illegal and, therefore, ^{not} valid. Paragraph 2316 of the Indian Railway Establishment Manual specifically deals with the procedure for appointment of a Substitute. We have already quoted ^{Above} the provisions of that paragraph. It is evident from that extract that ordinarily and as far as possible substitute should be drawn from a panel of suitable candidates. However, the provisions do not prescribe that where the Railway Administration consciously adopted a slightly different procedure for appointment and posting of a person as a Substitute Bunglow Peon, only on account of any such procedure being followed by the respondents, ~~such~~ appointment and posting of a person as a Substitute is to be treated as illegal ~~or~~ invalid.

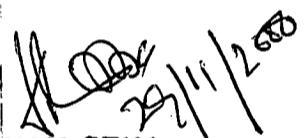
5. For the above reasons we are unable to appreciate the contentions urged on behalf of the respondents that the applicant was not entitled to the benefits, conferred on the incumbent on a civil post, even if it ^{was} held on temporary basis, under Article 311

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of the Constitution. In the light of that finding we have no hesitation in quashing the impugned order dated 30.4.1997 (seen at Annexure 'A-4' of the O.A.) passed by the Asstt. Personnel Officer i.e. the second respondent and we do so accordingly. Having quashed the impugned order we direct the respondents further to reinstate the applicant to the post of Substitute Bungalow Peon completely ignoring the effect of the impugned order mentioned above. The respondents are further directed to grant the applicant all consequential benefits flowing from the reinstatement with effect from the date his services were terminated under the impugned order at Annexure 'A-4' of the O.A. However, payment of salary to the applicant arising from the implementation of our direction will be contingent on production of a non-employment certificate during the interim period by the applicant. These directions shall be carried out by the respondents within a period of one month from today. No costs.



S.K.GHOSHAL
MEMBER(A)



D.PURKAYASTHA
MEMBER(J)

a.m.