

In The Central Administrative Tribunal  
Calcutta Bench

OA 93 of 1997

Present : Hon'ble Mr. D. Purkayastha, Judicial Member  
Hon'ble Mr. V.K. Majotra, Administrative Member

Srinivasa Rao, son of late Appa Rao aged about 26 years, Ex-Bunglo Peon in S.E. Railway under Kharagpur Workshop, Kharagpur, resident of Old Settlement near Balaji Temple, Kharagpur.

..... Applicant

- Versus -

- 1) Union of India, through the Secretary, M/o Railways, Rail Bhavan, New Delhi.
- 2) General Manager, S.E. Railway, Garden Reach, Calcutta.
- 3) Chief Personnel Officer (Sh. V. Prasad), S.E. Railway, Garden Reach, Calcutta.
- 4) Chief Project Manager, S.E. Railway, Kharagpur Workshop, Kharagpur.
- 5) Deputy Chief Mechanical Engineer, S.E. Railway, Kharagpur Workshop, Kharagpur.
- 6) Workshop Personnel Officer, S.E. Railway, Kharagpur.
- 7) Janaki Rao, son of Late K. Govinda Rao, Kharagpur.

..... Respondents

For the Applicant : Mr. R.K. De, Counsel  
Ms. B. Banerjee, Counsel

For the Respondents: Mr. P. Chatterjee, Counsel

Heard on : 13-08-2001

Date of Order : 13-08-2001

O R D E R

V.K. MAJOTRA, AM

The applicant has assailed the order dated 14-1-1997  
(Annexure-A/14) passed by the respondents in pursuance of the

Contd....

Tribunal's order dated 10-10-1996 in O.A. 1264 of 1996 stating that it is not feasible to consider the applicant's case for his engagement as Substitute Bungalow Peon of Deputy CME(WW)/KGP Workshop since he has not made his choice for his engagement which is the main criterion for engagement of Bungalow Peon.

2. The applicant has stated that he is a Matriculate and he applied for engagement as Bungalow Peon of Dy. CME(WW), Kharagpur (respondent No.5). According to the applicant, this respondent had already engaged him as substitute Bungalow Peon from 8-5-95 to 5-6-95 and his application was forwarded for obtaining approval of the General Manager on 18-6-95. Approval of the General Manager was conveyed to the Workshop Personnel Officer, S.E. Railway, Kharagpur vide Annexure-A/2 dated 7-7-1995 indicating that "the case was approved by General Manager on 29-6-95". Whereas the applicant was only to be sent for medical examination before engagement, respondent No.5 conveyed his dissatisfaction with the performance of the applicant and also changed of his mind and withdrew his own proposal for engagement of the applicant and made a fresh proposal recommending another person, namely, Shri Amarendra Nath Das vide his letter dated 31-8-95. Later on respondent No.5 again changed his mind in favour of another person, namely, Shri K. Janaki Rao. There was ~~confidence~~ <sup>correspondence b</sup> between respondent No.5 and the ~~office~~ and the Headquarters regarding withdrawal of proposal in favour of the applicant. Ultimately Shri Janaki Rao was appointed. The applicant filed O.A.1264 of 1996 which was decided vide order dated 10-10-96 (Annexure-A/10) and as such on 11-1-1997 a speaking order was passed in pursuance of the order of the Tribunal as stated above. The applicant has claimed that applicant's name, having been sanctioned by the competent authority and approved by the General Manager, respondents must engage him as substitute Bungalow Peon claiming that he acquired a right to be considered for engagement as substitute Bungalow Peon in terms of the General Manager's sanction dated 29-6-95. So respondents should be directed to engage the applicant as Bungalow Peon.

3. In their counter reply the respondents have stated that the post of Bungalow Peon was lying vacant w.e.f. 7-6-1995. Proposal for appointment of the applicant was made by the applicant No.5 and necessary sanction of General Manager was communicated vide letter dated 7-7-95. Respondent No.5 was advised to direct the applicant for medical examination before engagement. However, respondent No.5 changed his mind to withdraw the proposal of engagement of the applicant and a fresh proposal recommending Shri Amarendra Nath Das was sent by him vide letter dated 31-8-95. The respondents have maintained that engagement of Bungalow Peon was not done in accordance with the prescribed rule for appointment in Group 'D' as envisaged in para 179 of IREM, Vol.I (1989). The person is initially engaged as a substitute according to the choice of the officer concerned. According to the respondents, the respondent No.5 having changed his mind engaged some other person but not the applicant, the mere approval of the competent authority does not confer any right to the applicant for his engagement. The respondents have also denied that respondent No.5 ever took ~~service~~ <sup>begar</sup> from the applicant.

4. We have heard Ld. Counsel of the applicant and of the official respondents and considered the material available on record. As regards respondent No.7 Shri Janaki Rao, the Ld. Counsel of the applicant showed us the postal receipt for issuing a registered letter to respondent No.3. <sup>On 7th July</sup> Service of notice on respondent No.7 is thus deemed to have been effected. However, since respondent No.7 has chosen not to appear in the Court, we are proceeding against him ex-parte.

5. The Ld. Counsel of the applicant stated that the respondent No.5 had engaged the applicant from 8-5-95 to 5-6-95 before issuing the letter of appointment in his favour. However, before appointment order, after receipt of the approval of the General Manager, could be issued or the applicant could be sent for medical examination, the applicant was dis-engaged and a recommendation was made

in favour of another person and again the recommendation was made in favour of 3rd person. The Ld. Counsel contended that the respondents blatantly abused the discretionary power against the well-settled law that discretionary power must be exercised with great restraint. Referring to (1891) AC 173: 64 LT 180. (Sharp - VS-- Wakefield) he brought to our attention Lord Halsbury's observation which is as follows :-

"Discretion means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice, not according to private opinion... according to law and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself...".

The Ld. Counsel stressed that there is nothing like unfettered discretion immune from judicial reviewability. The law always frowns on uncanalised and unfettered discretion conferred on any instrumentality of the State and is the glory of administrative law and such discretion has been through judicial decisions structured and regulated. Abuse of power is not to be assumed lightly but, experience belies the expectation that discretionary powers are always exercised fairly and objectively. The Ld. Counsel forcefully contended that in the present case the respondents have abused the discretionary power in denying the engagement of the applicant in spite of sanction having been accorded by the competent authority i.e. the General Manager.

6. On the other hand the Ld. Counsel of the respondents relying on a case reported in 1996 LAB I.C. 1812 (Supreme Court) (Tagin Litin - Versus - State of Arunachal Pradesh and others) stated that unless the order of the State as functionary has been communicated to the person concerned, he would be affected by that order as the said order is only provisional in character. So it would be wise on the part of the respondents to re-consider the matter and alter or rescind the order.

7. He also referred to the Annexure-A/15 dated 31-5-1995 of the respondents stating that the instructions on engagement/absorption and discharge of Bungalow Peon are as follows :

- "a) Officers entitled to Bungalow Peon will be allowed to recruitment of their choice, with age limit of 18 to 28 years (now 30 years) for general candidates, with five years relaxation for reserved community candidates. In general, literacy standard of Class-VIII passed is adopted.
- b) Bungalow Peons are to be appointed as Substitutes against permanent and temporary post or on casual basis against Workcharged Post subject to passing the prescribed medical examination by the authorised Railway Medical Officer.
- c) In case of engagement of fresh faces as Bungalow Peons, prior approval of the General Manager is to be obtained".

8. The Ld. Counsel of the applicant also stated that the correspondence referred to by the respondents relating to sanction of the proposal of respondent No.5 regarding engagement of the applicant is internal correspondence within the Department which cannot be relied upon.

9. Whereas the applicant's claim to have worked with the respondent No.5, ~~the respondents~~ <sup>has been</sup> ~~the respondents~~ <sup>by respondents</sup> have denied the averment, however, we do not go along with the Ld. Counsel of the respondents as respondent No. 5 had expressed his dissatisfaction with the performance of the applicant on the basis of which he changed his mind in favour of another person. Unless the applicant had been engaged by the respondent No.5 and worked with him as Bungalow Peon, he would not be in a position to express his satisfaction or dissatisfaction. Certainly, the contention of the respondents that the applicant did not work with the respondent No.5 is contrary to the facts. Respondent No.5 changed his mind ~~in~~ three times. First he recommended engagement in favour of the applicant. Then he recommended one Sri A.Nath Das and thirdly he recommended in

favour of one Shri Janaki Rao. We have no hesitation in finding that respondent No.5 has been ~~abusing~~ his discretionary power time ~~for~~ <sup>Reason and Rehant</sup> and again without any order ~~and~~ dispensed with the service of the applicant. It is a different matter that sanction granted by the General Manager was not translated into actual order of engagement of the applicant after holding the medical examination of the person. Although in view of the observation in the matter of ~~Tagin~~ Litin we are not in a position to quash and set aside the order (Annexure-A/14) ~~dated~~ 14-1-1997 of the respondents, it would be advisable for the respondents in the interest of justice to re-consider the applicant's case for engagement as substitute Bungalow Peon after holding medical examination. No costs.

V.K. Majotra  
13.8.2001

( V.K. Majotra )  
Member(A)

D. Purkayastha

( D. Purkayastha )  
Member(J)

DKN