

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 1479 OF 97

Present : Hon'ble Mr. B.P.Singh, Administrative Member
Hon'ble Mr. M.L.Chauhan, Judicial Member

Avimanyu Chakravorty,
S/o Sri Dhananjoy Chakravorty,
Bungalow Peon (Ex)
S.E.Rly. Garden Reach,
R/o North Colony, S.E.Rly Qtrs.
Calcutta-43

VS

1. Union of India through the
General Manager, S.E.Rly. GRC,
Calcutta-43
2. General Manager, S.E.Rly. GRC.
Calcutta-43
3. Chief Personnel Officer,
S.E.Rly. GRC, Calcutta-43
4. Sr. Public Relations Officer,
S.E.Rly. GRC, Calcutta-43
..... Respondents

For the applicant : Mr. B.C.Sinha, Counsel

For the respondents : Mr. K.Sarkar, Counsel

Heard on : 22.2.2002 : Order on : 27.2.2002

O R D E R

M.L.Chauhan, J.M.:

The applicant was engaged as substitute Bungalow Peon attached to the Sr. Public Relations Officer, S.E.Railway, Garden Reach, Calcutta in the scale of pay of Rs., 750-940/- vide office order dt. 27.3.97 (annexure-A1). The applicant reported for duty on the same date vide letter at annexure-A4. The applicant submits that in terms of Railway Board's letter dt. 6.3.74 circulated under CPO's Establishment Srl. No. 78/74, he attained temporary status on completion of four months continuous service and had been enjoying all the benefits of temporary railway servants w.e.f. 26.7.97. Thus, the case of the applicant is that on acquiring temporary status, he not was to be treated as casual labour and as such he was governed by the railway rules framed by the railway authorities as applicable to the

Hon'ble Mr. B.P. Singh, Administrative Member
Hon'ble Mr. M.L. Chaudhary, Judicial Member

Present

Avimanyu Chakravorty,
S/o Sri Bhannajoy Chakravorty,
Bungalow Peon (Ex)
S.E.Rly. Garden Reach,
R/o North Colony, S.E.Rly Qtrs.
Calcutta-43

VS

1. Union of India through the
General Manager, S.E.Rly. GRC,
Calcutta-43
 2. General Manager, S.E.Rly. GRC,
Calcutta-43
 3. Chief Personnel Officer,
S.E.Rly. GRC, Calcutta-43
 4. Sr. Public Relations Officer,
S.E.Rly. GRC, Calcutta-43
- Respondents

For the applicant : Mr. B.C. Sinha, Counsel

For the respondents : Mr. K. Sarkar, Counsel

Heard on : 22.2.2002 : Order on : 27.2.2002

ORDER

M.L. Chaudhary, J.M.

The applicant was engaged as substitute Bungalow Peon attached to the Sr. Public Relations Officer, S.E.Railway, Garden Reach, Calcutta in the scale of pay of Rs. 750-940/- vide office order dt. 27.3.97 (Annexure-A1). The applicant reported for duty on the same date vide letter at Annexure-A4. The applicant submits that in terms of Railway Board's letter dt. 6.3.94 circulated under CPO's Establishment S.L. No. 7874, he attained temporary status on completion of four months continuous service and had been enjoying all the benefits of temporary railway servant w.e.f. 26.7.97. Thus, the case of the applicant is that on acquiring temporary status, he was to be treated as casual labour and as such he was governed by the provisions of the Railway Rules as applicable to casual labour.

temporary/permanent employees. The further case of the applicant is that despite the fact that he had put in more than 9 months continuous service, he was shocked and surprised to receive the impugned order dt. 18.12.97 terminating his services w.e.f. 31.12.97 after giving 14 days notice (annexure-A6). According to the applicant, the action of the respondent authorities is against the principles of natural justice as also violative of articles 14,16,21 and 300A of the Constitution of India and further that his services cannot be terminated without following the due course of law. It is this order which is under challenge in this application.

2. The respondents in their reply have admitted that the services of the applicant were terminated after giving 14 days notice, but they have averred that engagement of the applicant was a local and ad hoc measure and his services have been terminated as per rules/policy of Engagement, Absorption and Discharge of Bungalow Peons as contained in circular letter dt. 31.5.95. The said circular intere alia prescribes as under :-

i) Officers entitled to Bungalow Peon will be allowed to recruit men of their choice, with age limit of 18 to 28 years (now 30 years) for general candidates with 5 years relaxation for reserved community candidates. In general Literacy standard of Class VIII passed is adopted.

ii) Bungalow Peons are to be appointed as Substitutes against permanent and temporary post or on casual basis against work-charged post subject to passing the prescribed medical examination by the authorised Railway Medical Officer.

iii) If a substitute/casual Bungalow Peon has not completed one year service upto the date of transfer to other railway/retirement/long leave of officer who engaged him, then his service is to be terminated with due notice and his name is to be kept in Live Casual Labour Register for re-engagement in future as per requirement.

3. It is further submitted by the respondents that the applicant joined duty w.e.f. 27.3.97 (FN) under Shri P.K.Roy, Sr. PRO, S.E.Rly. Garden Reach. Subsequently, Shri Roy was transferred to Metro Railway, Kolkata w.e.f. 3.7.97 and as such the services of the applicant were liable to be terminated as he had not completed one

year's service, as per aforesaid policy circular. It is further averred that Shri P.K.Roy Ex-Sr. PRO, Garden Reach, vide his letter No. MR/PR/G/15/Pt.I dt. 21.7.97 addressed to the CPO, Garden Reach, requested to issue orders to the effect that the applicant would be retained as substitute Bungalow Peon by the new incumbent Sri R.N.Mahapatra, Sr.PRO/GRC. But Shri Mahapatra expressed his unwillingness to retain the applicant as his Bungalow Peon and as such, the services of the applicant had to be terminated by giving him 14 days notice as per rules vide memo dt. 18.12.97 w.e.f. 31.12.97.

4. We have heard Mr. Sinha, ld. counsel for the applicant and Mr. K.Sarkar, ld. counsel for the respondents.

5. The only argument raised by Mr. Sinha was that the applicant had attained temporary status and that no clear cut notice of 14 days as required under sub-rule (1) of Rule 301 of India Railway Establishment Code (hereinafter referred to as "Rules") was given to the applicant and hence the order impugned could not be sustained.

6. Ld. Counsel for the respondents, on the other hand, contended that notice of termination was given on 18.12.97 to be effective w.e.f. 31.12.97 and as such there was clear notice of 14 days. Thus, according to him, there was no infirmity in the impugned order of termination.

7. According to sub-rule (1) of Rule 301, a person is entitled to one month's notice in case of contract appointment for a definite period and a notice of 14 days if he was not engaged on contract. It is further provided that temporary railway servants with over 3 years' continuous service shall, however, be entitled to a month's notice. There is no dispute between the parties that the applicant was entitled to 14 days notice before terminating his service. The point for consideration is whether there was clear cut notice of 14 days? If not what is the effect of such notice?

8. Now we proceed to examine the first point. Notice of termination of the applicant's services is dated 18.12.97 in which it was stated that the services of the applicant will stand terminated

1. The applicant, as per statement of fact, submitted that he was employed as a clerk in the office of the P.O. Garden Reach, vide his letter No. MR/PT/C/15/Pt.1 dt. 21.12.97 addressed to the P.O. Garden Reach, requested to issue orders to the effect that the applicant would be retained as substitute Bangalore Peon by the new incumbent Sri R.N. Mahapatra, Sr. MO/GRC. But Sri Mahapatra expressed his unwillingness to retain the applicant as his Bangalore Peon and as such, the services of the applicant had to be terminated by giving him 14 days notice as per rules vide memo dt. 18.12.97 w.e.f. 31.12.97.

2. We have heard Mr. Sinha, Id. counsel for the applicant and Mr. K. Sarkar, Id. counsel for the respondents.

3. The only argument raised by Mr. Sinha was that the applicant had attained temporary status and that no clear cut notice of 14 days as required under sub-rule (1) of Rule 301 of India Railway Establishment Code (hereinafter referred to as "Rules") was given to the applicant and hence the order impugned could not be sustained.

4. Id. Counsel for the respondents, on the other hand, contended that notice of termination was given on 18.12.97 to be effective w.e.f. 31.12.97 and as such there was clear notice of 14 days. Thus, according to him, there was no infirmity in the impugned order of termination.

5. According to sub-rule (1) of Rule 301, a person is entitled to one month's notice in case of contract appointment for a definite period and a notice of 14 days if he was not engaged on contract. It is further provided that temporary railway servants with over 3 years' continuous service shall, however, be entitled to a month's notice. There is no dispute between the parties that the applicant was entitled to 14 days notice before terminating his service. The point for consideration is whether there was clear cut notice of 14 days? If not what is the effect of such notice?

6. Now we proceed to examine the first point. Notice of termination of the applicant's service is dated 18.12.97 in which it was stated that the services of the applicant will stand terminated

w.e.f. 31.12.97. A perusal of the impugned order of termination makes it clear that this order was issued with the approval of the competent authority. Thus, there is no infirmity in the impugned order and it has been issued in the same manner in which the order appointing the applicant was issued. However, we agree with the submission of the ld. counsel for the applicant that there was no clear cut notice of 14 days as the notice terminating service w.e.f. 31.12.97 was issued on 18.12.97. In computing the period of limitation, the date from which such period is to be reckoned shall have to be excluded. We find support for this contention from Sec. 12 of the Limitation Act, 1963. No doubt it is true that the provision of Limitation Act has not been expressly made applicable to the Administrative Tribunals Act, 1985, but at the same time it has also not been excluded. As such, the fact remains that the day from which such period has to be reckoned i.e. 18.12.97 shall have to be excluded. Therefore, there was no clear notice of 14 days and the notice fell short by one day.

9. The next question which falls for consideration is whether service of 14 days clear notice is a condition precedent for valid termination as contemplated under rule 301(1). Answer to this question lies in sub-rule (4) of Rule 301. Rule 301(4) reads as under :-

"(4) The service of any of the railway servants mentioned in clauses (1), (2) and (3) who is entitled to a notice of stipulated period may be terminated forthwith and on such termination the railway servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the stipulated period of notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of the stipulated period of notice."

10. A reading of the aforesaid rule indicates that the requirement of such notice was not a condition precedent for valid termination, but it had the effect of making a Govt. servant entitled on such termination to claim a sum equivalent to the amount of his pay plus allowances for the period of notice or, as the case may be, for the

11.12.97. A perusal of the impugned order of termination makes it clear that this order was issued with the approval of the competent authority. Thus, there is no infirmity in the impugned order and it has been issued in the same manner in which the order appointing the applicant was issued. However, we agree with the submission of the Id. counsel for the applicant that there was no least cut notice of 14 days as the notice terminating service w.e.f. 31.12.97 was issued on 18.12.97. In computing the period of limitation, the date from which such period is to be reckoned shall have to be excluded. We find support for this contention from Sec. 12 of the Limitation Act, 1963. No doubt it is true that the provision of Limitation Act has not been expressly made applicable to the Administrative Tribunal Act, 1985, but at the same time it has also not been excluded. As such, the fact remains that the day from which such period has to be reckoned i.e. 18.12.97 shall have to be excluded. Therefore, there was no clear notice of 14 days and the notice fell short by one day.


9. The next question which falls for consideration is whether service of 14 days clear notice is a condition precedent for valid termination as contemplated under rule 301(1). Answer to this question lies in sub-rule (4) of Rule 301. Rule 301(4) reads as under :-

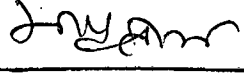
"(4) The service of any of the railway servants mentioned in clauses (1), (2) and (3) who is entitled to a notice of stipulated period may be terminated forthwith and on such termination the railway servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the stipulated period of notice at the same rates at which he was drawing them immediately before the termination of his service, or as the case may be, for the period by which such notice falls short of the stipulated period of notice."

10. A reading of the aforesaid rule indicates that the requirement of such notice was not a condition precedent for valid termination, but it had the effect of making a Govt. servant entitled on such termination to claim a sum equivalent to the amount of his pay plus allowances for the period of notice or, as the case may be, for the

period by which such notice falls short of the stipulated period and nothing more. We are supported in our view by the observation of their lordships of the Supreme Court as reported in State of U.P. & Ors -vs- Adya Prasad Pandey, 1995 (7) SLR 55 (SC) and Bachi Ram -vs- UOI, 1986 (2) SLR 102 (SC).

11. In view of what has been stated above, the application is partly allowed to the extent that the applicant shall be entitled to the salary of one day by which the notice period fell short of the stipulated period, at the same rate at which he was drawing them immediately before termination of his service. The amount be paid to him within one month from the date of communication of this order. The respondents are directed to keep the name of the applicant in the Live Casual Labour Register for re-engagement in future as per requirement in terms of the policy circular dt. 31.5.95. No order as to costs is passed.


(M.L. CHAUHAN)
MEMBER(J)


(B.P. SINGH) 27022002
MEMBER(A)