

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 262/2008

This the ^{20/1} day of January, 2009

**Hon'ble Mr. M. Kantkumar, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

Shri Chandra Sen Verma son of Sri Shiv Poojan Verma aged about years resident of Village Dashratpur, Post Ainwa, District-Ambedkarnagar, Uttar Pradesh, was employed as Bungalow Khalasi for Deputy Chief Engineer, Bridge Workshop, Lucknow.

Applicant

By Advocate: Sri S.Singh

Versus

1. Union of India, through Secretary, Railway Board, Ministry of Railways, Govt. of India, Rail Bhawan, New Delhi.
2. General Manager (Personnel), Northern Railway, Baroda House, New Delhi.
3. Divisional Railway Manager (Personnel), Northern Railway, Lucknow.
4. Deputy Chief Engineer, Bridge Workshop, Northern Railways, Charbagh, Lucknow.
5. Assistant Executive Engineer (Bridge) Bridge Workshop, Northern Railways, Charbagh, Lucknow.
6. Chief Workshop Manager, Bridge workshop, Northern Railway, Charbagh, Lucknow.

Respondents

By Advocate: Sri B.B. Tripathi for Sri N.K. Agarwal

ORDER

HON'BLE DR. A.K. MISHRA, MEMBER (A)

This application is directed against the order dated 6.6.2008 terminating the services of the applicant as Bungalow Khalasi on the ground of unauthorized absence from 25.1.2008 onwards.

[Signature]

42

2. The brief facts of the case are as follows:

The applicant was appointed as Bungalow Khalasi for Respondent No. 4 on 31.10.2007. He joined in the post and continued to work with respondent No. 4 who was, however, transferred on 25.1.2008 to the post of Senior Divisional Engineer IV in Lucknow Division. Since, the applicant was appointed to work for this officer, he continued to work with the Senior Divisional Engineer who forwarded his application on 12.3.2008 for his transfer to the new Division where the engineer was posted.

3. Meanwhile, the Chief Works Manager of Bridge Work Shop moved a proposal on 9.4.2008 for appointment of another person Sri Vinai Kumar Gautam as Bungalow Khalasi for the next incumbent Munni Lal and followed it up with another letter on 9.5.2008. However, the respondent No. 2 informed about the pending transfer proceedings of the applicant and clarified that there was no vacancy as on that date for appointment of one more person (Annexure A-8 dated 23.5.2008)

4. The previous incumbent Sri Indra Jeet Verma wrote on 26.3.2008 intimating that the applicant was working with him and requested that his salary should be charged to the office of Respondent No. 4 until the proposal for his transfer was finalized. The respondent No. 4 again moved a letter on 3.6.2008 for termination of the services of the applicant on the ground that he was working neither with him nor in his office. He was advised by the office of Respondent No. 2 that the competent authority in his office may take appropriate action in the matter. The Respondent No. 2 further clarified that there was no post in which the applicant could be adjusted with the Senior Divisional Engineer IV, Lucknow. The applicant made a representation to Respondent No. 2 stating that he continued to work with Sri Indra

43

- 3 -

Jeet Verma, Senior Divisional Engineer after his transfer and that the allegation of unauthorized absence was incorrect since the fact of his working with Sri Indra Jeet Verma has been intimated by the Senior Divisional Engineer and a regular proposal for his transfer was under consideration. Further he alleged that though he reported for duty at the Work Shop, he was advised to seek a transfer on the ground that the post of Deputy Chief Engineer (Bridge) was no longer available and on the basis of such advice, he continued to work with Sri Indra Jeet Verma, a fact which has been endorsed by Sri Verma himself in his letter. This representation was sent to Respondent No. 4 by Respondent No. 2. Thereafter, the impugned order was passed stating that his services were terminated on the ground of continuous unauthorized absence on his part from 25.1.2008 onwards.

5. On a further representation in the matter, he was informed by Annexure 18 that the original appointment of the applicant as Banglow Khalasi was conditional one and that it was subject to the acceptance on the part of the next incumbent (on the post of Respondent No. 4) of his services as Banglow Khalasi. Further, there was no authority for his working with the previous incumbent even after his relief and such action on the part of the applicant was unauthorized. Therefore, he had not been paid any salary from 25.1.2008, the date from which he had absented himself from his work.

6. The counsel for the applicant has taken the ground that termination simpleciter is not valid as it is hit by the provisions of Article 311 of the Constitution of India being violative of the principles of natural justice; no inquiry has been held and no finding has been made that he violated the provisions of Section 3-(i),(ii),(iii) of Railway Service Conduct Rules; that there was no unauthorized absence on his part; that the termination has been initiated only with a view to



-4-

appointing someone else on the post of Bungalow Khalasi and to dislodge him from the post. The impugned order has been passed by respondent No. 5 who did not appoint him, the appointing authority being respondent No. 4

7. From Annexure 3, it is seen that the applicant was, in fact, appointed by the Assistant Engineer (Bridge) Work Shop, Northern Railway, Respondent No. 5. Therefore, there is no irregularity in issuance of the termination order by Respondent No. 5 who was the appointing authority. The effect has been given from the date of issue of the impugned order i.e. 6.6.2008. Before issuing of the order, the matter was referred to Respondent No. 2 whose approval originally was taken before the appointment of the applicant and the Respondent No. 2 permitted the appointing authority to take action as per law. It is a fact that the applicant was an ad hoc temporary employee who had been given conditional appointment to serve in the Bungalow of Respondent No. 4 with a stipulation that the services will be continued if acceptable to the next incumbent. The proposal for his transfer to the office of the Senior Divisional Engineer (Respondent No. 4) Lucknow Division, could not materialize in the absence of any post where he could be adjusted. But, according to his own admission, he was not working in the office/residence of Respondent No. 4 and continued to work with Sri Indra Jeet Verma. A show cause notice was issued to him to explain his unauthorized absence. It cannot be held that no opportunity was given to him. On the other hand, he continued to represent that he should be transferred to the office of Sri Indra Jeet Verma. His request for transfer could not materialize in the absence of a post. If he would have exercised his right to continue with the next incumbent, the matter would have been different.

8. In view of his own admission that he was working with the previous incumbent, the charge of unauthorized absence was established against him. There was no need for holding a detailed inquiry in the matter.

9. Under the circumstances, we hold that there has not been any violation of natural justice. Therefore, the impugned order does not suffer from any infirmity on that ground. Hence, this application is dismissed as without any merit. No costs.

Mishra
(Dr. A. K. Mishra)
Member (A)

Kanthaiah
(M. Kanthaiah)
Member (J)
20.01.2009