

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No. 588 of 2005

Date of order : 31.1.2012

C O R A M

Hon'ble Mr. A.K. Jain, Member [Administrative]
Hon'ble Mrs. Bidisha Banerjee, Member [Judicial]

Ashish Kumar Jha, S/o A.R. Jha, Ex Bungalow Peon, under Sr. DEN [Co-Ordination], South East Central [S.E.C]], Railway, Nagpur at Bilaspur, r/o village / post Gosaigaon, via Naugachia, District – Bhagalpur.

.....Applicant.

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India through G.M. South East Central Railway [S.E.C] Bilaspur [Chhatisgarh.
2. The Divisional Railway Manager, S.E.C., Railway, Nagpur.
3. The Chief Engineer [Bridge], S.E.C., Railway, Bilaspur.
4. The Sr. D.E.N.[Co-ordination], S.E.C., Railway, Nagpur.
5. The Sr. Divisional Personnel Officer, S.E.C., Railway, Nagpur.
6. The Asstt. Personnel Officer, S.E.C., Railway, Nagpur.
7. Shri A.K. Jha, Sr. D.E.N [Co-ordination], S.E.C., Railway, Nagpur.

.....Respondents

By Advocate : Shri Mukund Jee.

ORDER

Bidisha Banerjee, M [J] :- The applicant, a Substitute Bungalow Peon challenges the order of termination from service dated 11.10.2004 [Annexure A/6] and prays, inter alia, for the following reliefs :

“ 8.[i] That your Lordships may graciously be pleased to quash and set aside the impugned orders dated 09.10.04 / 11.10.04 and 15.07.2005 as contained in Annexure A/6 and A/9 respectively.

[ii] That the respondents further be directed to reinstate the applicant with effect from the date of his termination from service with all consequential benefits together with arrears of salary and interest thereon.

[iii] that the respondents be further directed to post the applicant any where except under respondent No. 7.”

2. The case of the applicant, in short, is that the applicant was appointed on 20.11.2002 as a Substitute Bungalow Peon in the pay scale of Rs. 2550-3200/- by Shri A.K. Jha, Dy. C.E [BRHQ] now Sr. D.E.N., Co-ordination,

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S.E.C. Railway on being approved by the General Manager, S.E. Railway, Garden Reach. After completion of 120 days of continuous service, the applicant attained temporary status, and the applicant claims that his services from 20.11.2002 to 28.05.2004 was very much satisfactory, perfect and without any adverse remarks reported against him by respondent No. 7. On 29.05.2004, while he was posted in the residence of respondent No. 7, the applicant was assaulted by the wife of respondent No. 7 without any rhyme or reason, due to which he got his finger injured and thereafter rushed to a local doctor at Railway Traffic colony, Bilaspur who provided medical aid, and in such a hapless and helpless situation, he came to his native village where he underwent proper medical treatment under Dr. S.K. Jha. The medical certificate has been annexed as Annexure A/1 to the OA. After reaching his native village, the applicant prayed for leave up to 30.06.2004 and made further application for extension of the leave up to 31.08.2004 vide his application dated 01.07.2004 addressed to the proper authority. The applicant, during the sick period, was surprised to receive show cause notice dated 29.07.2004 / 04.08.2004 [Annexure A/3] from respondent No. 6 intimating the proposal of respondent No. 7 for terminating his services on the ground of [a] unauthorized absence from duty with effect from 29.05.2004 ; [b] misbehaving with the family of Senior D.E.N. [Co-ordination] ; [c] performances being non-satisfactory. The applicant was advised to explain within 15 days as to why his services shall not be terminated. The applicant sent his reply on 25.08.2004 [Annexure A/4] to the respondent No. 6 denying the allegations levelled in the aforesaid notice and stating reasons for his leave. The applicant also sent reminder dated 30.09.2004 [Annexure A/5] through registered post. He was shocked to receive a letter dated 09.10.2004 / 11.10.2004 [Annexure A/6] passed by respondent No. 6 terminating his service.

3. The applicant claims that during his service, he was never communicated about any adverse remarks regarding his unsatisfactory service or poor performance and so-called misbehaviour with the family of respondent No. 7. Since he had already given reason for remaining absent from duty, the applicant alleges that all the allegations are false, fabricated, ill-motivated and



baseless. Under the settled principle of law, if a person has attained temporary status, his services cannot be terminated without holding a regular departmental inquiry. The applicant further submits that so-called report of the appointing authority mentioned in the termination order has not yet been served to him which is also against the principle of natural justice. The applicant has also contended that the termination order is passed by incompetent person.

4. The applicant preferred an appeal to the respondent No. 5 on 29.11.2004 [Annexure A/7] followed by reminder on 18.05.2005 [Annexure A/8]. His appeal, according to the applicant, was rejected on 15.07.2005 [Annexure A/9] on totally arbitrary, illegal and unconstitutional grounds. Hence, the prayer for quashing the orders dated 11.10.2004 and 15.07.2005 [Annexure A/6 and A/9 respectively].

5. During the course of hearing, the learned counsel for the applicant has pointed out that since the appointment was made by CPO with the approval of the General Manager, the APO is incompetent to terminate the services of the applicant.


6. The respondents have contested the OA by filing written statement and contended that a substitute Bungalow Peon, in terms of CPO/G.R office order [Estt HQ] Clause IV No. 51 of 2002 dated 05.12.2002, should be treated as on probation for three years during which period his services may be terminated without assigning cause. He can continue as Substitute Bungalow Peon till his performance is certified as satisfactory by the officer to whom he is attached as Substitute Bungalow Peon. The nature of job of Substitute Bungalow Peon is such that he should be loyal, reliable, safe, trustworthy and the respondent have have complete faith on his conduct. Further, the applicant's services as Substitute Bungalow Peon have been terminated as the applicant absconded himself after misbehaving and assaulting the family of the respondent No. 4 /7 and unauthorizedly absenting himself from duty with effect from 29.05.2004 without proper leave or information about his whereabouts. The respondents further denied that the order of termination has been issued by the incompetent authority, i.e., A.P.O or that the appeal has been rejected on

baseless and illegal grounds. The respondents have contended that the termination order is in accordance with law, and there is no need to apply D&A rules, 1968 to terminate the services of a Substitute Bungalow Peon as per service condition. The applicant has been given an opportunity by issuing a show cause notice and after due consideration, the speaking order was given by respondent No. 4 /7. The respondents have, however, not denied attainment of temporary status by the applicant on completion of 120 days as per I.R.E.M.

7. The issues are (i) whether the applicant, a substitute Bungalow peon was a holder of civil post; [ii] whether he had automatically acquired temporary status on completion of 120 days as per IREM; (iii) If so, whether termination on the basis of complaints of unauthorized absence, misbehaviour and non-satisfactory performances, without enquiry was just and proper. It is not in dispute that the termination on the complaints of unauthorized absence, after misbehaviour [and non-satisfactory performance] even in the case of probationer attracts the provisions of Article 311. The respondents have emphatically stated that "*as the applicant absconded himself after misbehaving and assaulting the family of the respondent No. 4 / 7 and unauthorized absented himself from duty with effect from 29.05.2004 without proper leave or information about his whereabouts. He is not considered reliable, trustworthy, safe and fit person to continue in service as a Substitute Bungalow Peon in the Bungalow of the said respondent*"

8. Heard the learned counsel for both the sides and considered the rival contentions and perused the documents and judgments cited.

9. The learned counsel for the applicant has relied upon an unreported judgment passed by this Tribunal in OA 395 of 2006 wherein reliance has been placed on ^{the} ~~the case of~~ Ram Bilas Paswan vs. Union of India reported in [1991] 16 ATC 18. In the said unreported judgment, a similar matter was dealt with by this Court and on the same issues in the following manner: The learned counsel for the applicant has relied upon a decision of the Kolkata Bench of the Tribunal in the case of Ram Bilas Paswan vs. Union of India ; (1991) 16 ATC 18. A perusal of this order of a co-ordinate Bench would show that that facts in



both the cases are similar. The matter was first considered by a Division Bench consisting of the Hon'ble Vice-Chairman and the Hon'ble Judicial Member. The Hon'ble Judicial Member had dismissed the application upholding the contentions of the respondents, whereas the Hon'ble vice Chairman had delivered a dissenting orders, the matter was referred to the subsequent Vice Chairman of Kolkata bench as third Member who concurred with the view taken by the predecessor-in-office holding that the termination order was bad in law. In that case, the applicant Ram Bilas Paswan had sought relief of his reinstatement as a Substitute Bungalow Peon with effect from 1.6.1987 [which should have been 27.4.1987] with arrears of salary and allowances. The applicant was appointed as substitute Bungalow Peon in a regular pay scale with effect from 20.1.1987 and had worked up to 26.4.1987 whereafter he was alleged to have been absenting himself unauthorizedly [with effect from 27.4.1987]. He could not draw his salary for May, 1987, and was marked absent whereafter he was not allowed to join his duties. He was discharged from service without giving any notice to him. The then Hon'ble vice Chairman of Kolkata Bench had raised following questions to be decided by a larger Bench:-

- "[a] Whether the impugned order of retrospective removal is legal;
- [b] Whether the impugned order can be given only prospective effect;
- [c] If so, the applicant even as a substitute with more than 120 days of service had acquired temporary status, or
- [d] whether in the running scale of pay was holding a civil post;
- [e] whether in case either [c] or [d] is answered in the affirmative, the impugned order even with prospective effect is violative of Article 311 of the Constitution and / or Section 25 -F of the Industrial Disputes Act;
- [f] If [c] and [d] are both answered in the negative and the applicant is held to be a casual worker without temporary status, whether the impugned order with all explicit stigma of misconduct and punitive consequences is violative of the rules of natural justice and is thus void."

With slight variation, the conclusions, reproduced hereinafter, as arrived at by the then Hon'ble Vice Chairman, with reasons, were accepted by the Third Member, to whom the case was referred. Those portions of the order may be

reproduced below. Verbatim:-

"9. Mr. S.P. Mukherji, vice Chairman [A.M.] , on the other hand, disagreed with Mr. A.P. Bhattacharyya [J.M] as he found that the order of termination dated 30.6.1987 was passed with retrospective effect from 27.4.1987. He held that the order of termination or dismissal could not be passed retrospectively as held in *r. Jeevaratnam v. State of Madras*; AIR 1966 SC 951 where it has been held that the order would be effective only prospectively. Two other cases on this point relied on by Mr. Mukherji are *Jeet Singh vs. Chief Administrative Officer, Ministry of Defence*, ATR (1986) 2 CAT 269 and *Raghunath Mohanty v. Registrar General* ; (1987) 3 SLJ 102. He further held that the order dated 30.6.1987 became effective only w.e.f. 30.6.1987 , when the same was issued. Even if he was a substitute and / or only a casual worker, he had completed 120 days service by 30.6.1987 and had acquired a temporary status and as such the applicant would be protected by Article 311 of the Constitution.

10. Mr. Mukherji further held that as a substitute Bungalow Peon appointed in the running scale of Rs. 750-940/- the applicant was appointed to a civil post. According to him, the difference between a casual worker and a holder of a civil post is that a casual labour was given a fixed rate of pay either on a daily basis or on monthly basis whereas the salary of a holder of a civil Post was on the basis of running scale of pay in respect of a sanctioned post. He relied on the provisions of para 2315 of the Indian Railway Establishment Manual in support of his contention. According to him, the applicant, being a holder of a civil post is entitled to protection under Article 311 of the Constitution. He held that even if the applicant was appointed temporarily in a civil post, he will be entitled to protection under Article 311 of the Constitution. In support of his contention, Mr. Mukherji strongly relied on *Parshotam Lal Dhingra case* : AIR 1958 SC 36. In that case, it was held just as a post may be permanent or temporary so that the appointment to such post may be substantive or on probation or on an officiating basis. But in all cases, the person appointed will be one who holds a civil post and will be entitled to the protection of Article 311 just as he will be governed by the provision of Article 310 of the Constitution of India.

11. Moreover, Mr. Mukherji also held that the order of termination dated 30.6.1987 was passed by way of punishment as it was clear from the said order that the reason for termination was applicant's unauthorized absence or stoppage of work without any intimation to the respondents. He relied on *L. Robert D'Souza v. Executive Engineer, Southern Railway* ; (1982) SCC 645 where it was held that unauthorized absence from work by a casual worker would amount to misconduct and the authorities are not competent to terminate the service of the casual worker on this ground without giving him a notice or complying with the minimum principle of natural justice. Similar view was taken by the Tribunal in several cases viz., *Mangi vs. Director, Social Welfare, Pondicherry*; (1988) 6 ATC 356, *Birendra C. Behera v. Union of India* ; (1988) 7 ATC 796 and *Raj Singh vs. Union of India* ; (1987) 4 ATC 718. In *State of Punjab v. Sukh Raj Bahadur*; AIR 1968 SC 1089 and *Nepal Singh vs. State of U.P.*; (1980) 3 SCC 288, it was held that even if the order of termination is *ex facie* innocuous, if it visits the temporary government servant with penal consequence and is a punitive order, then it must be passed only after complying with the

provisions of Article 311 (2) of the Constitution. Similarly, in *Annop Jaiswal v. govt. of India*; AIR 1984 SC 636 it was held that when a probationer or temporary employee is discharged by an order of termination simplicitor and there are reasons to believe that termination was by way of punishment due to some specific misconduct, the court can lift the veil and see the real object and set aside the order if it is satisfied that the order was passed by way of punishment. On the last point, Mr. Mukherji referred to the decisions reported in *Rajinder Kaur [Smt] vs. Punjab State*; (1986) 4 SCC 141 and *Jarnail Singh v. State of Punjab*; (1986) 1 ATC 208. he held that even casual employees and ad hoc appointees have been held to be protected by the principle of natural justice if they are visited with penal consequences on account of any order. Mr. Mukherji also relied on *K. Joshi v. Union of India*; (1985) 3 SCC 153 holding that even if casual employee is not protected by Article 311 of the Constitution, he is protected under Articles 14 and 16 of the Constitution, the protection of the rule of natural just. On the basis of the reasonings and case laws mentioned above, Mr. Mukherji held that the order dated 30.06.1987 is basically illegal and must be struck down."

The questions which were set out for answer from the third Member, were answered as follows:-

1 Sr.No.	2 Question	3 Answer
[a]	Whether the impugned order of retrospective No. removal is legal?	No.
[b]	Whether the impugned order can be given only No., as the order was not prospective effect?	communicated.
[c]	If so, whether the applicant even as a substitute with more than 120 days of service had acquired temporary status, or	Yes.
[d]]	Whether the applicant in the running scale of pay was holding a civil post ?	Yes.
[e]	Whether in case either [c] or [d] is answered in the affirmative, the impugned order even with prospective effect is violative of Article 311 of the Constitution and / or Section 25 F of the Industrial Disputes Act, 1947?	Yes.
[f]	If [c] and [d] are both answered in the negative and the applicant is held to be a casual worker without temporary status, whether the impugned order with an explicit stigma of misconduct and punitive consequences is violative of the rules of natural justice and is thus void?	In view of my findings on the questions set out above, it is not necessary to answer this question.

The aforesaid order is a well-reasoned order based on various decisions of Courts, including that of the Apex Court. In the facts of the instant case, "that decision of a co-Ordinate Bench fits on all fours". It was held that "the applicant being on a civil post and his services having been terminated on the basis of alleged misconduct, i.e., unauthorized absence as also complaints about his

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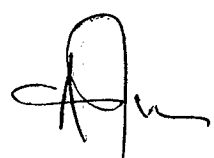
work as claimed in the written statement, and the applicant having acquired temporary status after more than 120 days continuous work, his services could not have been terminated without issuing memo of charges against him and without conducting a departmental enquiry against him”.

10. The issue is thus set right that a substitute Bungalow Peon, who has completed 120 days, and is in a regular scale of pay, is a holder of civil post whose termination on the basis of alleged misconduct of unauthorized absence and complaints about his work, [as claimed in the written statement] cannot be made without issuing memo of charges and without conducting inquiry against him. As such, issuance of a mere show cause notice before inflicting the punishment of “termination from service” will not suffice.

11. In our opinion, the aforesaid judgment squarely applies to the present case, and hence the instant application deserves to be allowed in the light of the said judgments. It is also a fact that the applicant who was appointed by CPO could not be validly terminated from service by APO who is lower in authority than the CPO.

12. In the result, this OA is allowed to the extent that the order of termination of service of the applicant dated 11.10.2004 contained in Annexure A/6 is quashed, and the applicant will be reinstated. The respondents will, however, be free to proceed against him under the provisions of Railway Service [D&A] Rules. No order as to costs.


[Bidisha Banerjee] M [J]


[A.K. Jain] M [A]

/cbs/