

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

Thurs <sup>DAY THE</sup> ~~eighteenth~~ <sup>June</sup> DAY OF  
ONE THOUSAND NINE HUNDRED AND EIGHTY SEVEN

: PRESENT :

THE HON'BLE MR. B.N.JAYA SIMHA: VICE-CHAIRMAN  
AND  
THE HON'BLE MR.D.SURYA RAO: MEMBER.

ORIGINAL APPLICATION NO. 107/87

Between:-

V. Siva Rama Krishna

1) <sup>And</sup> ~~Senior Divisional Electrical Engineer~~ ....Applicants.  
1) Senior Divisional Electrical Engineer  
(Maintenance) S.C.Rly, Vijayawada - 520001  
2) Sri Syed Moosa, Office Superintendent  
Senior Divisional Electrical Engineer,  
Office maintenance, Vijayawada - 520001.  
3) The Divisional Railway Manager.  
3) The Divisional Railway Manager - 520001;....Respondents.  
S.C.Rly, Vijayawada - 520001;

Application under Section 19 of the Administrative  
Tribunals Act, 1985 praying that in the circumstances stated therein  
the Tribunal will be pleased to a) direct the respondent to  
immediately take back the applicant to duty  
b) To grant regular status as class I employee and transfer  
him to any other post as per conditions of appointment  
c) to treat the period from 5-12-86  
as duty and pay him all arrears of salary and allowances  
with all consequential benefit and d) to award costs  
of sufficient amount gone.

Original Application No. 107 of 1987

The applicant herein was appointed as substitute Bungalow peon with effect from 15.12.1980 vide letter No. SP.Con/Sec.7 dated 31.1.1981 of the Divisional Railway Manager, South Central Railway, Vijayawada (Respondent No.3). The applicant states that after three years of continuous service, he applied for grant of regular status in Class IV Service. The applicant was deprived of this status whereas a large number of his juniors who were originally working as Bungalow peons have been absorbed. According to him, the bungalow peons have to perform various domestic duties. While the applicant was working as a bungalow peon, he applied for casual leave on 5.12.1986 and when he went to resume duty on 6.12.1986, the Senior Divisional Electrical Engineer, S.C.Railway (1st respondent) ~~xxxx~~ abused him and did not allow him to join duty. The applicant made several oral requests for permission to resume duty. He also submitted a written representation dated 12.12.1986 to the Divisional Railway Manager. He also submitted a representation dated 23.12.86 to the Regional Labour Commissioner. Despite all this, the respondents, however, did not take any action on his representations. The applicant was marked

absent from duty on 5.12.1986 and not paid any wages therefor.

2. On behalf of the respondents, a counter has been filed stating that the applicant was appointed on 15.12.1980 as a substitute bungalow peon and was attached to the Senior Divisional Electrical Engineer, Maintenance, Vijayawada, S.C.R. His appointment was subject to certain conditions laid down in the agreement according to which he is eligible for transfer to the regular establishment only when the Officer to whom he is attached is transferred out of the Railways or ceases to be eligible to have a bungalow peon attached to him. He is also eligible for such transfer to the regular establishment only after he had completed three years of continuous service. In the event of the Officer to whom he is attached not requiring his services and he is not satisfied about his suitability for absorption in the regular establishment, his services will be terminated forthwith. It is further stated that the applicant was given regular status on 15.12.1983 on his completing three years of continuous service. He is found medically unfit for Class A-2. He was subsequently allotted for absorption in the Engineering Branch but, however, could not be released in view of the conditions in the agreement i.e., his

physical transfer from the post of bungalow peon will be effective only after the Senior Divisional Electrical Engineer, Maintenance, Vijayawada to whom he is attached is transferred out of the Railway or ceases to be eligible to have a bungalow peon. The applicant was, therefore, required to serve as bungalow peon in terms of the agreement. It is further stated in the counter that the applicant was unauthorisedly absent from duty ~~on~~ 5.12.86 in regard to which a charge sheet has been issued under the Discipline and Appeal Rules. The reply to the charge sheet had been received and that an inquiry ~~is~~ <sup>has been</sup> ordered against him. In the meantime the applicant had prematurely rushed to this Tribunal when the charge sheet is pending for inquiry.

3. We have heard the learned counsel for the applicant and Sri.Devraj, Standing Counsel for the Railways. Sri.Devraj has produced a letter No.B/ E.150/II/8/ VSR dated 8.5.1987 relating to posting of the applicant as Class IV under AEN-TUNI. The learned counsel for the applicant ~~states~~ that the applicant joined duty on 25.4.1987. ~~and~~

4. The relief asked for by the applicant in so far as reinstatement is concerned, ~~be~~ has been granted (the same). The learned counsel, however, presses for treating the period from 5.12.86 to 25.4.1987 as on duty since the charge sheet

is pending. It is now for the Railway Administration to issue orders relating to treatment of the period of absence from duty as duty or otherwise since absence from duty is the subject matter of disciplinary proceedings. If the applicant is aggrieved by any order passed in this behalf, it is open to him to approach the Tribunal in accordance with the rules.

5. Before parting with this case, we are constrained to observe that the appointment of bungalow peons and the conditions of service regulating the appointment of such peons are violative of Articles 14 and 16 of the Constitution. It is stated in the counter that the applicant was appointed on 15.12.80 as substitute bungalow peon and was attached to Senior Divisional Electrical Engineer, Maintenance, Vijayawada (S.C.Railway). His appointment is subject to certain conditions laid down in the agreement, according to which he is eligible for transfer to the regular establishment only when the officer to whom he is attached is transferred out of the Railways or ceases to be eligible to have a bungalow peon attached to him. He is eligible for such transfer to the regular establishment only after he had completed 3 years of continuous service. His absorption in regular

establishment of the Railway in the above circumstances

is further subject to the condition that the officer to whom

he is attached requires his <sup>Services</sup> service as long as he is eligible

for bungalow peon and he is working on South Central Railway.

In the event of the officer to whom he is attached not

requiring his services and he is not satisfied about his

suitability for absorption in the regular establishment his

services will be terminated forthwith. The appointee is

required to execute a declaration in the following form:-

" (i) I will be eligible for transfer to the regular establishment only when the officer to whom I am attached is transferred out of the Railway or ceases to be eligible to have a bungalow peon attached to him.

(ii) I will be eligible for such transfer to the regular establishment only after I have completed 3 years of continuous service.

(iii) My absorption in the regular establishment of the Railway will be only after I have been screened and found suitable for such absorption in Class IV service.

(iv) My absorption in the regular establishment of the Railway in the above circumstances is further subject to the condition that the officer to whom I am attached requires my services as long as he is eligible for a bungalow peon and is working on the South Central Railway and that he certifies that I continue to be suitable for absorption in the regular establishment. In the event of the officer to whom I am attached not requiring my services and is not satisfied about my suitability for absorption in the regular establishment, my services will be terminated forthwith."

No rule or order or Circular relating to the <sup>mode of</sup> appointment

of bungalow peons has been produced before us. In a similar

case disposed of in T.A. No. 489/86 dt. 11.6.87 by us, we had referred to such appointments and

directed the Railway Board to examine the procedure and rules relating to such appointments with reference to the constitutional validity. We have to reiterate that these appointments have been made in an arbitrary manner <sup>Contrary to</sup> ~~Chairman~~ under Articles 14 and 16 of the Constitution. A copy of this judgment shall be sent to the ~~Chairman~~ Chairman Railway Board for further action.

6. With these observations, the application is disposed of but, in the circumstances of the case, there will be no order as to costs.

Dictated in the open court.

*B.N.Jayashimha*  
( B. N. Jayashimha )  
Vice Chairman

*D.S.Rao*  
( D. Surya Rao )  
Member

Dated this 18th day of June 1987

mdj\*

*Copied to Smt. Mr. B. N. Jayashimha*