

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.671 of 1991

DATE OF JUDGMENT: 29th JULY, 1992

BETWEEN:

Mr. L.Rosaiah

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Applicant

AND

1. The General Manager,
Personnel Branch,
South Central Railway,
Secunderabad.
2. The Divisional Manager,
Personnel,
Broad Gauge,
Secunderabad.
3. The Senior Divisional
Personnel Officer,
Broad Gauge,
Secunderabad.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. M.Jagannadha Sarma

COUNSEL FOR THE RESPONDENTS: Mr. V.Bhimanna, SC for Rlys.

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER (JUDL.)

The applicant herein was appointed as a Substitute Bunglow Peon, having been medically found fit and attached to the bunglow of Mr. T.Ram Mohan Rao, DSO/SC(BC), in the pay scale of Rs.750-940 vide orders dated 17.10.1989 issued by the 2nd respondent. The applicant worked from 4.10.1989 to 20.7.1990, for a period of 9 months and 16 days as Bunglow Peon in the said Bunglow. The said officer was transferred and a new incumbent has come in his place and he did not accommodate the applicant since the new officer has already his Bunglow Peon and the applicant was granted 30 days of leave.

2. On the expiry of the leave, the applicant has not been accommodated anywhere. On 30.8.1990, the applicant represented to the 3rd respondent to accommodate him as Bunglow Peon or Office Peon anywhere else but it was not done. On the other hand, a termination order which is impugned dated 31.8.1990, No.CP/121/P.8/ADMN/B.Peon. S.00.No.125/8/90, has been issued by the 2nd respondent terminating the services of the applicant with effect from 31.8.1990.

3. The reason for the termination stated being that the services of the applicant are no longer required consequent on the transfer of the officer under whom he was working. It is further stated that the applicant is eligible for payment of 14 days wages in lieu of notice

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period. The applicant aggrieved by this order which terminated his services has filed this application under Section 19 of the Administrative Tribunals Act, 1985 claiming the relief, to set-aside the order impugned No. CP/121/P.8/ADMN/B.Peon, S.O.O.No.125/8/90, dated 31.8.90 issued by the 2nd respondent terminating the services of the applicant with effect from 31.8.1990, as Substitute Bunglow Peon by holding the same to be illegal arbitrary and void-ab-initio being violative of Articles 14, 16 and 21 of the Constitution of India and direct the respondents to reinstate the applicant as Bunglow Peon with all consequential benefits that would have followed had the applicant not been terminated from service including all arrears of pay and allowances, seniority for the purpose of absorption into regular class-IV establishment, and all other benefits, and pass such other orders as this honourable court may deem fit and necessary in the interests of justice and in the circumstances of the case.

4. The respondents have filed a counter stating that the applicant was picked-up by the concerned officer in terms of the Rules of Recruitment which provides that the officers who are entitled to Bunglow Peon are eligible to pick-up candidates in whom they have trust. The officer who picked up the applicant was transferred as Senior Transport Officer (Safety), Headquarters Office, Secunderabad/^{and he} is not entitled for a Bunglow Peon and the incumbent

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posted in the place of Mr. T. Ramamohan Rao (by name Shri Bharath Bhushan) had picked up another person and as per the terms ~~of~~ and conditions of his appointment, the services of the applicant were terminated on 31.8.1990 giving him 14 days wages in lieu of notice period. The termination is in order and in accordance with the terms and conditions of the appointment of the applicant as per Annexure 'A' filed by the respondents. It is stated that there is no violation of Articles 14 and 16 of the Constitution of India as the rules laid down clearly state that the officer who is entitled to Bungalow Peon is to choose the person in whom he has trust and is satisfied about ~~his~~ character. This is so because the person ~~so~~ chosen, is to be in the Bungalow to assist the officer and to look after the Bungalow even in the absence of the officer. The applicant can claim to continue in service provided he had put in 3 years of service or has been regularised. His termination is, therefore, strictly in accordance with the terms and conditions of his appointment. The respondents further raised the following grounds:-

- a) As the applicant has not completed 3 years of service, clause II(b) of his appointment letter is of no help to him. It is submitted that the contention of the applicant is not correct. The very first clause in the

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rules states that the officer entitled for a Bungalow Peon is to choose a candidate of his choice. The Bungalow Peon who has not put in 3 years of service or whose services are not regularised, ~~is~~ not entitled for transfer to Class-IV post, but ~~his~~ services are terminated and his name is taken on a Live-Register for consideration for engagement as casual labour/substitute appointment in future requirements in the unit in which his name is entered in the live register.

b) The proceedings dated 12.10.1990 and 4.1.1991 were in pursuance to the instructions dated 21.7.1988 to keep his name in the Live Register for screening for consideration as casual labour/substitute and appointment in future vacancies along with others in the department where his name is borne on the live register.

c) The facts and circumstances of the case in O.A.No.814/90 are different and the applicant in the present O.A. is not similarly placed, and which is distinguishable. Therefore, the applicant cannot claim any benefit relying on the Judgment of this Hon'ble Tribunal in O.A.No.814/90.

5. For the above reasons, it is stated that there are no merits in the application and the application is liable to be dismissed.

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6. We have heard Ms. Srikala, Proxy Counsel for Mr. M.Jagannadha Sarma, learned counsel for the applicant and Mr. V.Bhimanna, learned Standing Counsel for the Respondents) and we have perused the records.

7. The applicant has filed the appointment order dated 17.10.1989, his representation dated 30.8.1990, termination order dated 31.8.1990, proceedings of DOS/Chg/BG/SC, dated 12.9.1990 about requirement of Bunglow Peons, letter of CTPS/Hqrs to DPO/BG/SC dated 24.10.1990 to send names of two persons for appointment in the scale of Rs,750-940, proceedings of DRM/BG/SC, dated 4.2.1991 taking the applicant on the Live Register of Peons, Judgment dated 21.2.1991 in OA 814/90 of Central Admve. Tribunal, Hyderabad Bench and the proceedings dated 3.4.1991 of DRM(P)/BG/SC, seeking particulars of those in Live Register including of the applicant. The respondents also filed an Annexure 'A' to their counter viz., S.O.O.No.144/10/89, dated 17.10.1989.

8. The appointment order dated 17.10.1989 issued by the DRM(P)/BG/SC shows that the applicant was appointed as Substitute Bunglow Peon to be attached to the Bunglow of Mr. T.Rama Mohan Rao, DSO/SC(BG) with effect from 5.10.1989. The terms and conditions are also given therein, viz., -

"a) If while serving as a Bunglow Peon and before completion of 3 years of service

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as a Bunglow Peon he applies for and get selection for appointment to Cl.IV post he will be assigned proforma position in such post according to his turn on the panel.

b) On completion of 3 years continuous service as a Bunglow Peon, he will be screened for absorption in regular establishment. Initially, his regularisation in Cl.IV service will be only as a Bunglow peon. If he is found suitable and screened for absorption in Cl.IV service, he will transfer^{yes} to the regular establishment when the officer to whom he is attached is transferred to another station on S.C.Rly., or to other Railway or ceased to be eligible to have a bunglow peon attached to his post. In case no vacancy is available, he shall continue to work as such against the post of Bunglow Peon sanctioned in respect of the Gazetted post from which the Officer is transferred out of the Rly. or to a post to which a Bunglow Peon is not attached.

c) His screening initially for the post of B/Peon subject to his suitability and absorption in regular Class IV service on completion of 3 years is further subject to the condition that his services as a Bunglow Peon continue to be satisfactory and are required by the Officer to whom he is attached even after completion of 3 years service.

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d) In the event of his services as a Bunglow Peon are not required by the officer either before or after completion of 3 years of service and he is declared unsuitable for absorption in regular class-IV establishment by the officer, he will have ~~to~~ no title to be transferred to the regular establishment and his services will be terminated without assigning any reason, giving him the requisite notice and/or payment of retrenchment compensation as admissible under the rules."

The orders of termination were given on 31.8.1990. The learned counsel for the applicant argues in the beginning that the applicant was on one month leave but she did not file any leave letter. On 30.8.1990 when the applicant ~~was~~ approached the officer for an appointment, he is not taken on duty. The learned counsel for the applicant admits that a 14 days ~~notices~~ wages were in lieu of notice given to the applicant. The applicant made a representation on 30.8.1990 to accommodate him on temporary basis as Bunglow Peon/Office Peon. Unless the applicant serves for three years, he will have no right to the post according to the recruitment rules. The Judgment in O.A.No.814/90 is not applicable to the present case as the applicant in the OA 814/90 was terminated with retrospective effect. In that case, there was a vacancy available and the Industrial Disputes Act was applied

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but here in this case, the termination notice was preceded by 14 days wages and there is no vacancy available as the ^{incoming} ~~transferred~~ Officer ^{candidate.} has picked up his own So, the Judgment in OA 814/90 cannot be applied so as to make this applicant also similarly situated with reference to the applicant in OA 814/90.

9. After going through the Recruitment Rules, we find that even after three years, the applicant could be removed from service if he is found in screening as unsuitable.

10. It is the post of a Peon attached to a Bungalow in which an officer who is eligible to have a Bungalow resides Peon at his Bungalow/but after the officer in this case has been transferred, the other officer who has come in his place has got his own Peon.

11. The proceedings dated 12.10.1990 and 4.1.1991 were in pursuant to the instructions dated 21.7.1988 to keep the name of the applicant in the Live Register for screening for consideration as Casual Labourer/Substitute and appointment in future vacancies along with others in the Department where his name is borne on the Live Register.

12. The argument of the learned counsel for the respondents that the respondents had called for applications for

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filling up the posts vide letter N of CTPS/Hqrs. No.T.143.5 IX.NG, dated 24.10.1990 addressed to DPO/BG/SC for operation of workcharged post of Peon/^{against} the provision in the sanctioned deposit works estimates, which reads as follows:-

"Please arrange to send two CLRS/ELRs from the Live Register to enable this office to operate the work-charged posts of Peons in scale Rs.750-940 each for one year against the provision available in the sanctioned deposit works estimates. The posts are likely to be further extended from time to time.

The earlier incumbants of the work-charged posts were absorbed on regular basis and when these workcharged posts were extended, the Personnel Branch of Headquarters office could not arrange the Substitutes for want of persons. Therefore, it is requested to send two CLRs/ELRs from the Live Register to this office."

13. The above cited letter does not show that there are vacancies of Peons attached to Bunglows. ^{These vacancies relate to the office.} This letter will not help the applicant and does not support the argument that the posts are vacant. But, the letter No. C/P/95/P/7/68, dated 4.2.1991 of the DRM/P/BG/SC addressed to CTPS/SC shows that the name of the applicant who has worked as Bunglow Peon to Former DSO/SC ~~was~~ taken in

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the Live Register of SS/Gaz/SC vide letter No.C/P/121/PE/Admn. Peons, dated 7.9.1990 and his name was recommended by Sr.DOS/SC for the above post and the CTPS/SC was asked to take further action at his end. Besides, the Bunglow Peon must have good character and found fit and he should be a trusted person of the officer to whose Bunglow he was attached. When the officer is transferred, the next officer is entitled to have his own man in whom he has trust and confidence.

14. The appointment order dated 17.10.1989 clearly shows that, in the event of his services as a Bunglow Peon are not required by the Officer either before or after completion of three years of service and he is declared unsuitable for absorption in regular Class-IV establishment by the office, the applicant will have no title to be transferred to the regular establishment and his services will be terminated without assigning any reason, giving him the requisite notice and/or payment of retrenchment compensation as admissible under the rules.

15. As stated above, the applicant was already paid 14 days wages ^{and also admitted by the learned counsel in the Africane} as in lieu of notice for termination of his services. Besides, the argument of the learned counsel for the applicant that the applicant was on leave cannot be accepted because there is no evidence produced before us. However, we direct the respondents to consider the

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case of the applicant for appointment to the post of Bunglow Peon or equivalent suitable post in his turn if he is on the Live Register.

16. With these observations/directions, the application is disposed of. There is no order as to costs.

R.B.S.

(R.BALASUBRAMANIAN)
Member(Admn.)

urby
(C.J.ROY)
Member(Judl.)

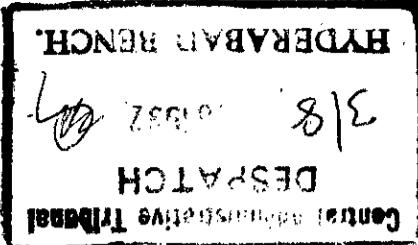
S-30/7/92
Dated: 29/7/92. Deputy Registrar(J)

To

1. The General Manager, Personnel Branch,
S.C.Rly, Secunderabad.
2. The Divisional Manager, Personnel,
Broad Gauge, Secunderabad.
3. The Senior Divisional Personnel Officer,
Broad Gauge, Secunderabad.
4. One copy to Mr.M.Jagannadha Sarma, Advocate,
(vsn) 3-6-226, Himayatnagar, Hyderabad.
5. One copy to Mr.V.Bhimanna, SCfor Rlys, CAT.Hyd.
6. One copy to Hon'ble Mr.C.J.Roy, Member(J)CAT.Hyd.
7. One spare copy.

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*sent to Mr. C.J. Roy
30/7/92*



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No order as to costs.
M.A. ordered/Rejected.
Dismissed for Default.
Dismissed as withdrawn
Dismissed
Disposed of with directions
Allowed
Issued
Admitted and Interim directions
W.P. No. T.A. No.
O.A. No. 671/91
F.A./C.A./M.A. No.

P.M.

ORDER/JUDGMENT

Dated: 29-7-1992

THE HON'BLE MR.C.J. ROY : MEMBER(J)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY :

AND

THE HON'BLE MR.K.BALASUBRAMANIAN: M(A)

AND

THE HON'BLE MR.

BUNAL : HYDERABAD BENCH.

IN THE CENTRAL ADMINISTRATIVE TRIB

APPROVED BY CHECKED BY

COMPARED BY TYPED BY

29-7-1992