

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPURORIGINAL APPLICATION NO. 291/00064/2015
WITH
MISC. APPLICATION NO. 291/00166/2015

DATE OF ORDER: 10.12.2015

CORAM**HON'BLE MR. JUSTICE HARUN-UL-RASHID, JUDICIAL MEMBER**

Mahesh Bohra S/o Shri Gulab Chand Ji Bohra, aged about 33 years, Bungalow Khallasi, under Dy. Financial Advisor & Chief Accounts Officer, N.W.R. Bikaner, R/o Plot No. D-457, Vidhyadhar Nagar, Sector-8, Jaipur (Raj.) – 302039.

...Applicant

Mr. S.K. Bhargawa & Mr. Nand Kishore, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. Financial Advisor & Chief Accounts Officer, North Western Railway (Construction), G.M's Office, Jawahar Circle, Jagatpura, Jaipur.
3. Chief Personnel Officer, North Western Railway, G.M's Office, Jawahar Circle, Jagatpura, Jaipur.
4. Dy. Financial Advisor & Chief Accounts Officer, North Western Railway (Construction), Bikaner.

...Respondents

Mr. Indresh Sharma, counsel for respondents.

ORDER

The Original Application is filed seeking to quash the impugned order dated 21.01.2015 (Annexure A/1), order dated 27.08.2014 (Annexure A/2) and orders dated 26.11.2014 & 02.12.2014 (Annexure A/3) and for a direction directing the respondents to continue the service of the applicant under cadre post of Bungalow Khallasi or change the category as per provisions of para 12 (i) of policy circular dated 24.01.2011.

2. The approval was granted by the General Manager for appointment of the applicant to the post of substitute Bungalow Khallasi vide letter dated 07.08.2012 subject to the conditions detailed out in the policy guidelines dated 21.04.2011. Based on the said approval, he was appointed as Substitute Bungalow Khallasi vide Office Order dated 01.11.2012 under Shri Rakesh Sharma, Dy. FA&CAO/Construction, NWR, Bikaner. Shri Rakesh Sharma retired on 30.09.2013 on attaining the age of superannuation. The applicant was granted temporary status with effect from 01.03.2013 vide Annexure A/7 order dated 01.03.2013. A communication was sent by respondent no. 4 to respondent no. 2 stating inter alia that since Rakesh Sharma, Dy. F&CO (C) Bikaner retired on 30.09.2013 and there is vacancy of Bungalow Khallasi in the cadre and, therefore, till his appointment attaching to somebody else, his service can be utilized in the office. The said communication was issued on 01.10.2013 (Annexure A/8). The respondent no. 4 again written letters to the respondent no. 2 seeking directions regarding alternative appointment of the applicant. Annexure A/9 letter dated 24.10.2013 is one of the said communication. Thereafter also there were several communications between respondent no. 4 and respondent no. 2 regarding alternative appointment to be given to the applicant. Annexure A/10 letter dated 30.10.2013, Annexure A/11 letter dated 31.10.2013 & Annexure A/12 letter dated 20.11.2013 are the said communications. The respondent No. 4 again written letter dated 11.12.2013 (Annexure A/13) to the respondent no. 2 calling upon that in accordance with para

12 of Policy Circular dated 21.04.2011 when Bungalow Khallasi has completed service between 01 to 05 years, his service can be utilized as Trackman and requested to issue the order accordingly. Again several communications were made between respondents regarding alternative appointment of the applicant. Annexure A/15 letters dated 30.07.2014 & 01.08.2014, Annexure A/16 letter dated 06.08.2014, Annexure A/17 letter dated 08.08.2014, Annexure A/18 letter dated 26.08.2014, Annexure A/19 letter dated 27.08.2014 and Annexure A/20 letter dated 01.09.2014 are the said communications. In the letter dated 28.10.2014 (Annexure A/22) issued by the respondent no. 4 to respondent no. 2 it is stated that the applicant has completed more than one year service and as such as per para 12 (ii) of Policy Circular dated 21.04.2011 his services cannot be terminated and further pointed out that action under para 12 (ii) of the said Policy can be taken only when the applicant has not completed one year service.

3. The respondents, inter alia, contended that the applicant became surplus and he had completed only 11 months of service on the date of retirement of the Officer and that since he had not completed one year of service as Bungalow Peon, his services were required to be terminated as per para (ii) of the Policy Circular dated 21.04.2011. It is also contended that the Policy Circular pertaining to Bungalow Khallasi dated 21.04.2011 under sub-para (ii) of para 12 is quite clear about the action to be taken in case of a Substitute Bungalow Khallasi not having completed 01 year of service.

4. Learned counsel for the respondents referred to sub-para (ii) of para 12 of the Policy Circular dated 21.04.2011 and contended that the services of a Substitute Bungalow Khallasi are liable to be terminated, if services rendered by him are of less than one year. It is vehemently contended that the applicant had completed only 11 months' service from his date of appointment i.e. 01.11.2012 to the date of retirement of the officer i.e. 30.09.2013 as substitute bungalow peon and, therefore, the services of the applicant stands terminated vide Annexure A/1 order dated 21.01.2015.

5. Though the respondents contended that since the applicant had not completed one year's service as Bungalow Peon, his services were required to be terminated as per sub-para (ii) of para 12 of the Policy Circular dated 21.04.2011, the applicant was retained as 'waiting for orders' since final decision / direction were received on 26.11.2014 and 02.12.2014. It is submitted that the applicant was terminated from service with immediate effect i.e. on 21.01.2015 giving one month's advance salary.

6. According to the respondents the applicant became surplus on 30.09.2013 the date on which Shri Rakesh Sharma retired and, therefore, he had not completed one year's service as Bungalow Peon. Though such contention was raised, in para (xv) of the reply, it is admitted that the applicant was retained as 'waiting for orders since final decision / direction were received on 26.11.2014 and 02.12.2014.

7. It is true that applicant had completed only 11 months' service on the date of retirement of officer i.e. on 30.09.2013. Nothing prevented the respondents to terminate the services of the applicant immediately on 30.09.2013 or few days thereafter. Instead the respondents retained the applicant in service till the date of Annexure A/1 termination order passed on 21.01.2015. ^{AG} No reasons are stated for not passing the order within a reasonable time. Though the officer with whom the applicant was attached attained superannuation on 30.09.2013, no termination order has been passed instead the applicant was retained with the respondents and finally his services were terminated only on 21.01.2015.

8. In the said context, I will examine the reasons for not terminating the services of the applicant within a reasonable period from 30.09.2013. ^W

9. The applicant denied the averments made in the reply that he has not completed one year of service. It is submitted on behalf of the applicant that he has completed 02 years and 02 months continuous service on the date of termination order was issued. The applicant produced Annexure A/15 letter dated 30.07.2014 issued by the GM in which the respondents were suggested to change of category of the applicant as Trackman and vide Annexure A/16 reminder dated 01.08.2014 and letter dated 06.08.2014 it was directed to absorb him consequent upon the retirement of his attached officer. It is also pointed out that vide ^A

letter dated 11.07.2014 (Annexure A/23) it was stated that in compliance of the Policy Circular dated 21.04.2011 in future all the surplus Bungalow Khalasi shall be absorbed and posted after change of category. Learned counsel for the applicant submits that the said Circular was complied with by the respondent no. 4 by reporting the facts about the applicant vide letter dated 01.10.2013. The applicant also produced sufficient material on record to show that he worked beyond one year as on 21.01.2015 i.e. the date on which the termination order was passed.

10. Learned counsel for the applicant placed reliance on the decision of the Hon'ble High Court of Delhi in WP (C) No. 18407/2006 - Union of India vs. Vijay Kumar, dated 07.08.2007. That case also pertains to a Bungalow Khalasi whose services had been terminated after he acquired temporary status. In that case the termination notice accused the employee, inter alia, of remaining absent from duty without intimation. In the said case, the Hon'ble High Court of Delhi held that 'no doubt, if a person is holding temporary status or is a temporary employee, his service can be dispensed with by passing an order of discharge simplicitor under Rule 5(1) CCS Temporary Service Rule. In case the respondent's conduct was not satisfactory, this rule could have been invoked. However, a perusal of the impugned order shows that it is stigmatic in nature, inasmuch as, allegations are leveled against the respondent that his working report was found unsatisfactory, he was not able to perform his duties, he remained unauthorized

absent from duty, and was found unsuitable. The High Court has held that in such a case procedure as contained in Disciplinary and Appeal Rules was required to be followed'.

11. The Railway Board issued instructions in January, 1995 which inter alia states that person who had attained temporary status cannot be discharged from service without applying the procedure as described in the D & A Rules.

12. The Hon'ble High Court of Delhi in the case of Shri Lakhi Ram vs. Union of India & Ors. [Writ Petition (C) No. 6070/2006] decided on 05th October, 2007 held that termination order could not have been issued without affording an opportunity to the petitioner to meet the accusations of indecent behavior/misbehaviour in a departmental enquiry. The Hon'ble Delhi High Court has also held that instead of resorting to the same, the respondents adopted the short cut method of terminating his services by issuing the impugned order of termination, which is illegal.

13. In the present case, there is no allegation of any accusation of indecent behavior/misbehaviour against the applicant or about his service conduct. Admittedly, the applicant has been granted temporary status on 01.03.2013 vide Annexure A/7 order dated 01.03.2013.

14. Even in the cases as discussed above, where there is accusations of indecent behavior/misbehaviour or misconduct,

termination order could not have been issued without affording an opportunity to the petitioner to meet the accusations of indecent behavior/misbehaviour in a departmental enquiry. In the present case, the termination order simplicitor was passed terminating the services of the applicant for the only reason that he has not completed one year of service. From the materials on record, it is clear that the applicant had completed more than one year of service. The applicant claimed that he served the department for 2 years, 2 months & 21 days as on the date of passing of the termination order on 21.01.2015.

15. The applicant produced several documents on record including the copies of the attendance register, privilege passes, duty passes, remuneration paid for work etc. to prove that the applicant worked for more than 02 years. In the light of the said documents produced by the applicant, this Tribunal directed the learned counsel for the respondents to ascertain and submit as to what are the true facts. In response to that, the respondents' counsel submitted that the signing on the attendance register does not give any entitlement to the applicant that his service period has been extended by the respondent-authorities. Learned counsel for the respondents also admitted that the applicant has worked with the respondent-department after 30.09.2013 but he contended that the said fact does not give any right to the applicant to get appointment. I have gone through the counter affidavit filed today by the respondents. The aforesaid facts are mentioned in para 2 and 5 of the counter affidavit filed by the respondents.

16. For the reasons more than one, this Tribunal feels that the termination orders of the applicant is bad in law. Firstly, there is no sufficient reason on record for not terminating the services of the applicant immediately after 11 months i.e. on the date on which Shri Rakesh Sharma, the officer to whom the applicant was attached, who retired on attaining the age of superannuation on 30.09.2013. The termination order was passed after 15 months i.e. on 21.01.2015 (Annex. A/1) and by that time the applicant had completed service beyond one year. Secondly, the termination order is bad in law for not given any opportunity to the applicant to explain and for the reasons that no such order can be passed when a person crossed more than one year of service and acquired temporary status. If a person attained temporary status cannot be discharged from service without applying the procedure as described in the D & A Rules. Then on the facts of the case, the termination order is bad in law because it is proved that the applicant was engaged for other duties after completion of 11 months of service and he put in services beyond one year.

17. Learned counsel for the applicant referred to the decision of the Central Administrative Tribunal, Jaipur Bench, Jaipur in the case of Balu Ram Saini vs. Union of India & Ors. (OA No. 187/2008) decided on 09th June, 2009. In that case, the controversy was whether the services of a Substitute Bungalow Khalasi, who has been granted temporary status, can be terminated without following the Railway Servants (Discipline

and Appeal) Rules, 1968. This Tribunal after discussing the various decisions on the subject held that the employees who have been recruited as 'substitutes' are entitled to all the rights and privileges which are admissible to temporary railway servants from time to time on completion of four months continuous service as per Para 1515 of the Indian Railway Establishment Manual, Vol.I. This Tribunal also held that the services of the applicant therein was terminated without following the Railway Servants (Discipline and Appeal) Rules, 1968, which is against the principles of natural justice. The Tribunal directed the respondents to take the applicant on duty and pass necessary order for payment of salary and other allowances.

18. The Central Administrative Tribunal, Jaipur Bench, Jaipur also decided a similar issue vide order dated 24th January, 2014 in the case of Ganesh Dadhich vs. Union of India & Anr. (OA No. 514/2013). In that case also similar contention is raised by the respondents contending that the applicant's services was terminated in terms of Para 12 (ii) of the letter dated 21.04.2011 issued by the General Manager Office, North Western Railway, Jaipur. According to said para 12 (ii), if a Bungalow Peon/Bungalow Khallasi has not completed one year of service, his services can be terminated after giving him one month's pay and gratuity as per rules. In that case the applicant joined the service on 11.06.2012 as Bungalow Peon/Bungalow Khallasi. He was granted temporary status on 09.10.2012 and the service of the applicant was terminated w.e.f. 10.06.2013.

This Tribunal held that a temporary status employee cannot be simply terminated in such an arbitrary manner. The Tribunal quashed the termination order and directed the respondents to reinstate the applicant in service forthwith with all consequential benefits including the future increments except the full back wages. His service shall also be treated continuous from the date of his appointment ignoring the impugned termination order. As far as the back wage is concerned, the applicant being a low paid employee shall be paid 50% of his back pay last drawn with full allowances for the entire period he was kept out of service in terms of the impugned termination order.

19. In the light of the facts and circumstances discussed above and the principles laid down by the Tribunal as well as Hon'ble Court as noticed above, I am inclined to allow this Original Application.

20. In the result, the Original Application is allowed. The impugned termination order dated 21.01.2015 (Annexure A/1) is quashed and set aside. Consequently, the respondents are directed to reinstate the applicant in service forthwith with all consequential benefits. The period during which the applicant was out of service consequent upon passing of the termination order dated 21.01.2015, shall be treated as spent on duty ignoring the aforesaid impugned termination order. As far as the back wages are concerned, the applicant being a low paid employee shall be paid 50% of his basic pay last drawn with full allowances for the entire period he was kept out of service in

terms of the aforesaid impugned termination order Annexure A/1. The respondents shall also pass appropriate orders in compliance with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs. The applicant shall produce a copy of this order before the respondents within a period of fifteen days.

21. In view of the order passed in the O.A., no further order is required to be passed in the Misc. Application for recalling/modification of order of the Tribunal dated 25.02.2015 and, hence, it is closed.

(JUSTICE HARUN-U-RASHID)
JUDICIAL MEMBER

Kumawat