

(7)

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 191 of 1998

Jabalpur, this the 9th day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.
Hon'ble Shri J.K. Kaushik - Judicial Member.

M. Changiah, S/o. Munnaswami,
aged 30 years, Ex- Bungalow Peon
with Officer on Special Duty West
Central Zone, Central Railway -
Jabalpur, R/o. Out House to Bungalow
No. 153, Pachpedhi, Jabalpur.

... Applicant

(By Advocate - Dr. R.K. Gupta)

V e r s u s

1. Union of India, through
General Manager, Central
Railway, Mumbai CST.
2. Officer on Special Duty,
West Central Zone, Central
Railway, Jabalpur.
3. Chief Personnel Officer,
Central Railway, GM's Office,
Mumbai CST.

... Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R

By J.K. Kaushik, Judicial Member :-

Shri M. Changiah has assailed his termination/
retrenchment order dated 22/01/1998 (Annexure A/1) and has
prayed for seeking a direction to keep the applicant on
employment like other workmen and continue paying his wages
and has also prayed that he may be transferred to work under
any other officer if so required.

2. The factual matrix of this case is that the applicant
was appointed as substitute Bungalow Peon on 31/07/1996 to
work in the office of respondent No. 3. He was transferred to
number of places were the Chief Commercial Manager was
transferred. He was granted temporary status with effect from

19/11/1996 after completion of required number of days.

He last worked up to 23/02/1998. He kept his family members all these days with him though he was asked to settle them at Jabalpur by the officer on special duty. He was called in the office of West Central Zone on 05/03/1998 and handed over order dated 22/01/1998 alongwith the letter dated 28/01/1998 and another letter dated 22/01/1998. The applicant tried to contact the officer on special duty but it was refused.

3. The salient ground on which the termination/retrenchment of the applicant has been challenged are that there is no valid reason for retrenchment and the termination is arbitrary. He has not been given any show-cause notice as per provisions of Article 311(2). His services could not have been terminated without following the provisions of Discipline Appeal Rules, 1968. The applicant was a workman for all purposes under Section 25(F) of the Industrial Dispute Act, 1947. But the provision of Section 25(F) which are mandatory in nature have not been followed. The principle of last come first go has also not been followed. In case the services of the applicant were not required by the respondent No. 2 he could have returned to respondent No. 3. The applicant was working against a regular post and the post had not been surrendered. There is no reduction in establishment or cadre the respondents have and thus no justification to retrench the applicant. The respondents intends to make a fresh appointment. There has been breach of principle of natural justice etc.

4. The respondents have filed a detailed counter reply and have contested the case. They have specifically submitted that the termination order dated 22/01/1998 containing the details of salary payment, retrenchment compensation and notice pay with cash was originally offered on 22/01/1998 in presence of O.S.(G), Cashier and one Sr. Clerk, but the

applicant refused to accept the same. Subsequently the termination order was sent under covering letter dated 28/01/1998 to his two addresses by registered post AD one to Mumbai and another to Andhra Pradesh, one letter has been returned undelivered. Subsequently the applicant collected these letters on 05/03/1998.

5. The further ground of defence of the respondents is that respondents have not taken any penal action against the applicant. Thus the case does not fall within the purview of Article 311 of the Constitution of India. The Substitute Bungalow peons are appointed at the discretion of the officers without issuing any notification or without positive act of selection. His termination from service was as per the rules of retrenchment. The procedure envisaged under Section 25(F) ~~(a)~~[&] (b) of Industrial Dispute Act has been followed. There is no rule for maintaining any seniority for the substitute Bungalow Peons. The competent authority decided to terminate the service of the applicant by retrenchment services as his/substitute Bungalow Peon was not required. The applicant had also not completed 3 years of service so there was no requirement for assigning any reason.

6. A detailed rejoinder has been filed almost reiterating the facts and grounds raised in the original application and the averments made in the reply have been controverted. The same is followed by the reply to the rejoinder. There are number of applications for filing documents on record and also the copies of certain judgments.

7. We have heard learned counsel for the parties at considerable length and have carefully considered the pleadings and the records of this case. The learned counsel for the applicant has submitted and has placed heavy reliance

g

on the judgment of Hon'ble Supreme Court in Union of India and another Versus Mohan Pal etc. reported in 2002SCCL.COM28 The learned counsel of the applicant has submitted that this scheme of 1993 is similar to the one which governs the casual labour employee in the Railways. In this scheme various provisions have been included relating to the dispensing with the services of the individuals especially that of the person who have been granted temporary status and their lordships have held that temporary status is required to be given as per the scheme and the scheme is not an on going scheme. An employee will not be removed from service for the reason of misconduct as per Clause 7 of the Scheme. Firstly the said judgment does not apply to the facts and circumstances of the present case. Secondly the very scheme of 1993 known as Casual Labour Grant of Temporary Status and Regularisation Scheme of Government of India, 1993 has no application to the Railway and Para 3 of the Scheme makes special provision to this effect, wherein it has been said that "it shall not be applicable to Casual Labour Workers in Railways and Telecommunication Department, who have already their own schemes." In this view of the matter we do not find any false in the submission of the learned counsel for the applicant.

8. The learned counsel for the applicant was confronted with specific query relating to the various notices, letters relating to his retrenchment as to whether he has received the same or not but there was only one answer that all these he has received only on 05/03/1998. Regarding refusal as contended by the learned counsel of the respondents, there was no direct answer. After this the learned counsel for the respondents has placed strong reliance on a Full Bench decision of the Tribunal in OA No. 896/1995 Shyam Sunder Vs.

Union of India and others decided on 12/02/1999. He has submitted that the case of the applicant is squarely covered on all fours and does not remain *res-integra*. He has placed reliance on paras 19, 20 and 21(b)(iv). He has further submitted that the complete action in this matter have been taken under Section 25(F) of the Industrial Dispute Act and in view of the judgment in Shyam Sunder's case supra this Tribunal does not have any jurisdiction to entertain this case.

9. To appreciate the controversy it is necessary to extract the relevant paras i.e. Paras 19, 20 and 21(b)(iv) of the aforesaid judgment which is as under :

"19. In the case of Ram Kumar (Supra), the Supreme Court observed :

With the acquisition of temporary status the casual labourers are entitled to :

- (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).
- (2) Scales of pay.
- (3) Compensatory and local allowances.
- (4) Medical attendance.
- (5) Leave rules.
- (6) Provident Fund and terminal gratuity.
- (7) Allotment of Railway accommodation and recovery of rent.
- (8) Railway passes.
- (9) Advances.
- (10) Any other benefit specifically authorised by the Ministry of Railways.

It is not disputed that the benefit of Discipline and Appeal Rules is also applicable to casual labour with temporary status. It is also conceded that on eventual absorption in regular employment half the service rendered with temporary status is counted as qualifying service for pensionary benefits."

"However, the Supreme Court did not say that the Tribunal has jurisdiction to entertain an application of a workman under the Industrial Disputes Act for granting any relief under the provisions of that Act. According to us the Industrial Disputes Act is a special Act containing provisions for the investigation and settlement of industrial disputes, which can be done only by the authorities and



Tribunals constituted under the Act. In other words, if the applicants wanted reliefs under Section 25-F of the Act their remedy was to move the Labour or Industrial Court under the Act for that purpose. This Tribunal has no such jurisdiction to investigate and settle the dispute under section 19 of the Administrative Tribunals Act, 1985. There was a contrary decision of a Full Bench of this Tribunal in *Padmavally Vs. C.P.W.D. & Telecom F.B.* Judgments of C.A.T. (1989-1991) Vol. II, page 334, which was impliedly over-ruled by the Supreme Court in *Krishan Pd. Gupta Vs. Controller Printing & Stationery*, (1996) 32 ATC 211 (SC), as held by Jabalpur Bench of this Tribunal in *Bheesam Singh Vs. Union of India*, O.A. No. 71/97, decided on 29.9.1998 (Jabalpur). Accordingly, the conclusion otherwise arrived at in *Santosh Kumar Yadav (supra)* deserves to be over-ruled and is hereby over-ruled."

"20. Our conclusion, therefore, is that the question whether termination of a Bungalow Peon/Khallasi after acquisition of temporary status is bad or illegal for want of retrenchment compensation, is beyond the scope and jurisdiction of this Tribunal."

"21(b)(iv) No. The termination of the service of a substitute Bungalow Peon/Khallasi, who has acquired temporary status, is not bad or illegal for want of notice before termination. In such a case, he may be entitled to pay for the period of notice in lieu of notice, as discussed in paragraph 17 of this order. The question whether for want of retrenchment compensation under section 25-F of the Industrial Disputes Act, 1947, the termination of the service of substitute Bungalow Peon/Khallasi, who has acquired temporary status, is bad or illegal, is beyond the scope and jurisdiction of this Tribunal, as discussed in paragraphs 19 and 20 of this order."

10. Before coming to the statement of law and examining the case by applying the said law, we resort to the factual score of this case. It is an admitted position of the case that the applicant was paid one months salary in lieu of the notice and has also been paid the compensation under Section 25(F) of the Industrial Dispute Act. It has been specifically pleaded on behalf of the respondents that the services of the applicant have not been dispensed with on account of any misconduct and therefore there was no need to conduct any enquiry or to apply provisions of Article 311 of the Constitution of India. We also find that the judgment in *Nar Singh Pal Versus Union of India* reported at 2000(2) ATJ Page 644 relied upon and placed on record by the applicant also does not have any

S

to this case application, since in that case the termination was due to misconduct. In the present case it is clear and there is also specific ground indicated in para 5.3 on behalf of the applicant that there has been violation of Section 25(F) of the Industrial Dispute Act and also it is categorically submitted that the applicant was a workman as per the definition of workman in the Industrial Dispute Act. There is also a ground that the principle of last come first go i.e. Section 25(G) of the Industrial Dispute Act have not been complied with. Thus the complete action in this matter has been taken under the provisions of Industrial Dispute Act.

11. As far as the matter relating to the Industrial Dispute Act is concerned this Tribunal has absolutely no jurisdiction and this position is clear from the judgment of Full Bench in Shyam Sunder's case (supra) and the relevant portion have already been extracted in this order in paragraph 9 ibid. It may also be pointed out that the case of Shyam Sunder (supra) also related to a Bungalow Peon but was terminated from the service on the ground of un-satisfactory service. In addition to the question relating to termination on unsatisfactory work the full bench replied the other question of the jurisdiction relating to the retrenchment under Section 25 of the Industrial Dispute Act. We are bound to follow the law laid down by the Full Bench of this Tribunal and have no hesitation in following the same. In this view of the matter this Tribunal has no jurisdiction to adjudicate upon the controversy in issue.

12. In view of the aforesaid discussion, we are of the firm view that the original application cannot be entertained by this Tribunal as we have no jurisdiction. Thus, the

same stands dismissed for want of jurisdiction without going on to the merits. However the applicant shall be at liberty to agitate his grievances before appropriate forum as may be available to him. No order as to costs.

JK Kaushik

(J.K. KAUSHIK)
JUDICIAL MEMBER

RK Upadhyaya

(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

पूर्णकाल सं ओ/न्या..... जवलपुर, दि.....
परिविवाहि लालो दिल्ली:-

- (1) सरिंग, उच्च व्यावसाय विवाहि दिल्ली, जवलपुर
- (2) उच्च व्यावसाय विवाहि दिल्ली, जवलपुर
- (3) उच्च व्यावसाय विवाहि दिल्ली, जवलपुर
- (4) उच्च व्यावसाय विवाहि दिल्ली, जवलपुर

Dr. R.K. Gupta, Adv.
SP Singh, Adv.

सूचना एवं आवश्यक विवरण की तरफ

JK Kaushik

12/5/03

Issued
on 13.5.03
BB

"SA"