

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 9th day of June, 2009

ORIGINAL APPLICATION No.187/2008

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Balu Ram Saini
S/o Shri Bhagu Ram Saini,
R/o Dhani Kheta Ka Wali,
Tan Natha Ki Nangal,
Tehsil Nim ka Thana,
District Sikar.

... Applicant

(By Advocate : Shri Nand Kishore)

Versus

1. Union of India through
General Manager,
North Western Railway,
Hasanpura Road,
Jaipur.
2. Chief Personnel Officer,
North Western Railway,
Hasanpura Road,
Jaipur.
3. Shri Anup Kumar Sharma,
Dy.CSTE (Construction),
North Western Railway,
Ajmer.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER

PER HON'BLE MR.B.L.KHATRI

MM

The applicant has filed this OA under Section-19 of the Administrative Tribunals Act, 1985, challenging the order dated 27.6.2007 (Ann.A/1) terminating his services with immediate effect. Through this OA, the applicant has prayed for the following relief :

- "i) That the termination letter dated 27.6.2007 (Ann.A/1) be declared bad in law, arbitrary and quashed and set aside.
- ii) That the applicant may be taken on duty, payment of salary and other allowance on and from 21.5.2007 may be paid to the applicant as arrears with cost."

2. Brief facts of the case are that the applicant was appointed as Substitute Bungalow Khalasi for a period of three months on work charge post w.e.f. 25.8.2006, as per Ann.A/3. He was examined by the Medical Officer, North Western Railway, Jaipur, as per fitness certificate Ann.A/4. He was granted temporary status w.e.f. 23.12.2006 after completion of 120 days continuous service and his work being satisfactory during the period from 25.8.2006 to 23.12.2006, as per Ann.A/5. The Officer, with whom the applicant was attached as Substitute Bungalow Khalasi, i.e. respondent No.3, was transferred from Jaipur to Ajmer in January, 2007. He also took the applicant with him as Bungalow Khalasi, where the applicant worked upto April, 2007. The applicant fell ill during his stay at Ajmer and as such it was told by respondent No.3 to get the treatment and then come on duty. The applicant came to Jaipur and remained under treatment of a private doctor w.e.f. 28.4.2007 to 20.5.2007. Thereafter, he approached the railway doctor who issued duty certificate to the applicant, as per Ann.A/6. The applicant approached the respondents with an application alongwith the medical certificate, as per Ann.A/7. The respondents had taken more than one month in taking decision about services of the applicant and ultimately decided to terminate the services of the applicant, as per Ann.A/1, without following any procedure/rules.

3. Learned counsel for the applicant referred to Ann.A/2, in which, in point No.8, it is mentioned that Bungalow Khalasis who have been granted temporary status can be removed only

after following DAR procedure. Thus, according to learned counsel for the applicant, the respondents were required to initiate proper action by issuing charge-sheet to hold inquiry and to follow the principles of natural justice.

4. Learned counsel for the applicant also referred to Para 1512 of the Indian Railway Establishment Manual, Vol.I, which defines "Substitutes" and reads as under :

"1512. Definition - "Substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

In the present case, the applicant was holding the post of Substitute Bungalow Khalasi and had also been granted temporary status vide order dated 17.1.2007 (Ann.A/5), in which it has been laid down that the Substitute Bungalow Khalasi with temporary status will be entitled to all the benefits which are given to a temporary employee, as per rules, but their regular appointment will be made only after the screening. Therefore, according to learned counsel for the applicant, the applicant could be removed only after following the DAR procedure, as per order dated 14.2.2008 (Ann.A/2).

5. Learned counsel for the applicant also referred to Bd's No.E(S)1-57CPC/40 of 6.4.69, according to which "railway servant" means a person who is a member of a service or who holds a post under the administrative control of the Railway Board. But the term excludes 'casual labour'. He also referred to Rule 123 and 124 of the Railway Establishment Code, Vol.I, which read as under :

"123. The Railway Board have full powers to make rules of general application to Group C & Group D railway servants under their control.

124. The General Managers of Indian Railways have full powers to make rules with regard to railway servants in Group C & D under their control provided they are not inconsistent with any rules made by the President or the Ministry of Railways."

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He had submitted that any directions issued by the General Manager, which are inconsistent and contrary to the rules made by the President or Ministry of Railways, will not have any legal force.

6. Learned counsel for the applicant also relied upon para-11 of the judgement of the Apex Court in the case of *L.Robert D'Souza v. The Executive Engineer, Southern Railway and Anr.* [AIR 1982 SC 854], which reads as under :

"11. In order to satisfactorily establish that the applicant belonging to the category of casual labour whose service by deeming fiction enacted in Rule 2505 will stand terminated by the mere absence, it must be shown that the appellant was employed in any of the categories set out in clause (b) of Rule 2501. What has been urged on behalf of the respondent is that the appellant was employed in construction work and, therefore, labour on projects irrespective of duration would belong to the category of casual labour. That, however, does not mean that every construction work by itself becomes a work-charged project. On the contrary sub-clause (1) of clause (b) of Rule 2501 would clearly show that such of those persons belonging to the category of casual labour who continued to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment. Similarly, seasonal labour sanctioned for specific works for less than six months' duration would belong to the category of casual labour. However, sub-clause (iii) of clause (b) of R.2501 provides that if such seasonal labour is shifted from one work to another of the same type, as for example, 'relaying' and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. The test provided is that for the purpose of determining the eligibility of casual labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers. It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months of continuous employment. It is equally true of even seasonal labour. Once the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII."

7. Learned counsel for the respondents, on the other hand, placed reliance on the reply, and the additional reply filed during the course of hearing on 27.5.2009 in pursuance of the order-sheet dated 6.4.2009, and inter-alia, made the following submissions :

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- i) That the applicant was appointed as a Substitute Bungalow Khalasi with the approval of General Manager for a period of three months with the condition that this period will be extended only on the basis of satisfactory quarterly report and if the report is not satisfactory, his services can be terminated without any prior intimation.
- ii) Learned counsel for the respondents also referred to the order dated 7.7.2004 (Ann.R/5) and made specific reference to para 7 and 8 of the order, wherein it is mentioned that those Substitutes Bungalow Khalasis who become surplus on account of transfer/retirement of the officers concerned will be controlled by the Personnel Department and their services will be utilized under the upcoming officers with their consent. Normally, Substitute Bungalow Khalasis can be regularized after completion of three years service and after the screening. If, after three years, he is regularized on the post other than Bungalow Khalasis then approval of Chief Personnel officer is a condition. Therefore, the services of Substitute Bungalow Khalasi had correctly been terminated, as per Ann.R/5 and as per this circular for terminating the services of Substitute Bungalow Khalasi DAR procedure is not required to be followed.
- iii) That Ann.A/2 came into force w.e.f. 14.2.2008, whereas services of the applicant were terminated vide order dated 27.6.2007 (Ann.A/1) in accordance with the terms and conditions of the offer of appointment (Ann.A/3) as well as keeping in view the policy of the circular dated 7.7.2004 (Ann.R/5), as amended vide communication dated 13.6.2005 (Ann.R/6).
- iv) Reliance placed on the case of L.Robert D'Souza (supra) is misplaced as facts of that case and the facts of the case before this Bench are distinguishable. That case was decided under the Industrial Disputes Act regarding termination of services of a workman. Therefore, the ratio of that case cannot be applied while deciding the

issue of termination of a Substitute Bungalow Khalasi with temporary status.

- v) The definition of 'railway servant' would reveal that it does not include casual labour. The applicant does not fall within the definition of casual labour, therefore, the provisions of Chapter XX including Rule 2005 are not attracted in the present case.
- vi) That keeping in view the offer of appointment of the applicant being 'Substitute Bungalow Khalasi' with specific terms and conditions as stipulated in the offer of appointment dated 25.8.2006, governed by the policy circulars issued by the competent authority from time to time, it can safely be concluded that the case of the applicant is not covered under the provisions with reference to casual labour. Therefore, engagement of the applicant is not governed by the statutory rules as referred to and relied upon by the applicant and, therefore, claim of the applicant to be treated as 'railway servant' is not sustainable in the eye of law.
- vii) That the applicant has not completed even one year of service and his services were found to be unsatisfactory by the controlling authority. Therefore, his services have rightly been terminated.

8. I have heard the rival submissions and perused the relevant rules on the subject and the material available on record.

9. In this case, the applicant was appointed as Substitute Bungalow Khalasi for a period of three months on work charge post w.e.f. 25.8.2006, as per Ann.A/3. He was granted temporary status w.e.f. 23.12.2006 after completion of 120 days continuous service and his work being satisfactory during the period from 25.8.2006 to 23.12.2006, as per Ann.A/5. The Officer, with whom the applicant was attached as Substitute Bungalow Khalasi, i.e. respondent No.3, was transferred from

Jaipur to Ajmer in January, 2007. He also took the applicant with him as Bungalow Khalasi, where the applicant worked upto April, 2007. The applicant fell ill during his stay at Ajmer and as such it was told by respondent No.3 to get the treatment and then come on duty. The applicant came to Jaipur and remained under treatment of a private doctor w.e.f. 28.4.2007 to 20.5.2007. Thereafter, he approached the railway doctor who issued duty certificate to the applicant, as per Ann.A/6. The applicant approached the respondents with an application alongwith the medical certificate, as per Ann.A/7. The respondents had taken more than one month in taking decision about services of the applicant and ultimately decided to terminate the services of the applicant, as per Ann.A/1, without following any procedure/rules.

10. The controversy involved in this case is whether 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 ? It was clarified in the order dated 17.1.2007 (Ann.A/5) that a Substitute Bungalow Khalasi, after having been granted temporary status, is entitled to all the privileges available to temporary employees, as per rules. Another question to be decided is whether as per Clause (43) of Rule-103 of Volume-I of the Indian Railway Establishment Code, 1985 Edition, includes any such railway servant who is a Substitute Bungalow Khalasi with temporary status. Clause (43) of Rule-103, referred to above, reads as under :

“(43) **Railway servant** means a person who is a member of a service or holds a post under the administrative control of the Railway Board. It also includes a person who is holding the post of Chairman, Financial Commissioner or a Member of the Railway Board. Persons lent from a service or post which is not under the administrative control of the Railway Board to a service or post which is under such administrative control do not come within the scope of this definition. The term excludes casual labour.”

In this connection, it is also considered necessary to refer to **RB's No.E(NG)60CL-13 of 13.5.63**, which reads as under :

“(ii) Casual labours and substitutes on completion of four month service, when paid regular scales of pay, attain temporary status and are, as such governed by these rules.”

11. It is also pertinent to refer to para -11 the case of **L.Robert D'Souza v. The Executive Engineer, Southern Railway and Anr.** [AIR 1982 SC 854], which reads as under :

“It is thus abundantly clear that if a person belonging to the category of casual labour employed in construction work other than work-charged projects renders six months' continuous service without a break, by the operation of statutory rule the person would be treated as temporary railway servant after the expiry of six months continuous employment. It is equally true of even seasonal labour. Once, the person acquired the status of temporary railway servant by operation of law, the conditions of his service would be governed as set out in Chapter XXIII.”

Thus, as per the above judgement of the Apex Court, casual labourers (casual substitutes) who have rendered continuous service for a specified period, shall acquire a status of temporary railway servants by operation of law.

12. It is also pertinent to quote relevant portion of para-27 and 28 and to quote para 29, 30, 31, 32, 38 and 39 of the judgement in the case of **Rukhiben Rupabhai v. Union of India and Ors.** [2006 (2) ATJ 1], as under :

“27. With a view to highlight the mischief played by the Railways, it is necessary to quote the judgement to the extent it is relevant.

28. From perusal of Dakshin Railway Employees judgement, it is clear that Railways did not bring to the notice of the Apex Court its Circular dated 11th September, 1989, whereby it had, deviated from the Apex Court decision in Inder Pal Yadav case (supra) from treating casual labour “temporary” on completion of 360 days continuous employment to “temporary status”. By making this change, Railways seek to create one more category of labour, namely, ‘casual labour with temporary status’, otherwise, there were only categories of casual labour, temporary, permanent and substitute. By this change, ‘casual labour’ becomes ‘casual labour with temporary status’ and not ‘temporary railway servant’.

29. Railway Establishment Manual (2511) [now 2005] envisages rights and privileges admissible to casual labour who are treated as ‘temporary’ after completion of six months’ service. In this also, casual labour is treated as ‘temporary’ and there is no mention of ‘temporary status’ in Clause (a) of the Rule. Railway Establishment Manual Chapter XXIII deals with terms and conditions applicable to Railway servants and Substitutes in temporary service – Sec.(A) Non-Gazetted Staff (I) Temporary Railway Servants(2301):

"Definition:- A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour" "a contract" or "part-time" employee" or an "apprentice"."

30. In the above definition 'casual labour with temporary status is not included, which means, only casual labour is not temporary railway servant". The definition of "casual labour" is given in Chapter XXV, which reads:

"2501 Definition :- (a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short period. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour."

31. After the decisions of Apex Court, one is Inder Pal Yadav and the other in Writ petition (Civil No. 332 of 1986 (Dakshin Railway Employees, Trivandrum Division v. General Manager, Southern Railway & Others, JT 1987 (1) SC 531), the change has been made in definition of "temporary railway servants" in Chapter XV (Vol., 1 Revised Edition 1989, pg 168) and in the terms and conditions applicable to the Railway servants and Substitutes in temporary service, non-gazetted staff (1501) as under:

"(i) **Temporary Railway Servants:-** Definition A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "casual labour", including 'casual labour with temporary status', a "contract" or part-time employee or an apprentice"

32. This change has been made by Railways after the Apex Court decision in Inder Pal Yadav case (supra). The original definition 'temporary railway servant' is clear, but in the above-quoted definition in Clause (1501), Railways have included the 'casual labour ' with temporary status' thereby , taking them out from the category of "temporary railway servant". How and why this change has been made, what procedures were adopted for making the change, there is no whisper, although, this change has grievously affected the casual labour becoming temporary on completion of 360 days continuous employment, and committed breach of the Apex court's decisions in Inder Pal Yadav case (supra) followed by Dakshin Railway Employees case (Supra), making causal labour 'temporary railway servant'. Since , there exists only four categories, namely, (1) permanent, (2) temporary, (3) causal labour, and (4) substitutes, causal under the original scheme approved in cases referred to hereinbefore, becomes "temporary railway servant", after completion of 360 days' continuous employment, therefore, he cannot be made 'casual labour with temporary status' by subsequent gerrymandering by the Railways by its Circular dated 11th September, 1986: which was not brought to the notice of the Apex Court in Dakshin Railway, Employees case (Supra). Therefore, this circular has not legal sanction, against the Apex court decisions in Inder Pal Yadav case (supra), contrary to original scheme and as such, hit by Arts, 12,14,21,41 and 42 of the Constitution of India.

38. With regard to substitutes, we may quote Rules 1512, 1513, 1514 and 1515 (Chapter XV, Terms and Conditions Applicable to

Railway Servant and Substitutes in Temporary Service) of Indian Railway Establishment Manual, Vol. I, (Revised Edition -1989):

“ 1512. Definition:- “Substitutes” are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts all vacant on account of a railway servant being on leave or due to non -availability of permanent or temporary railway servants and which cannot be kept vacant.

1513. Circumstances under which substitutes can be recruited.

(i) Ordinarily, there should be no occasion to engage “substitutes” having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. However, when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective as in the case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration. (ii) As far as possible substitutes should be drawn from a panel of suitable candidates selected from Group ‘C’ and ‘D’ posts and should be engaged subject to the observations made in (i) above, only in the following circumstances:-

- (a) Against regular vacancies of unskilled and other categories of Group ‘D’ staff requiring replacement for which arrangements cannot be made within the existing leave reserve.
- (b) Against a chain vacancy in the lower category of Group ‘D’ staff arising out of the incumbent in a higher Group ‘D’ category being on leave where it is not possible to fill the post from within the existing leave reserve.
- (c) Against posts in categories for which no leave reserve has been provided.
- (d) Against vacancies in other circumstances notified by the Railway Board from time to time.

1514. Emolument payable to the Substitutes:- Substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy.

1515. Rights and privileges admissible to the Substitutes:- Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of four months continuous service. Substitutes school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their service should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection.”

39. In the backdrop of these circumstances and the submissions advanced for our consideration, the irresistible and legitimate conclusion is that when casual labourer has served for requisite period continuously, he has to be treated temporary, in other words, he is a ‘temporary railway servant’. This is incidence of statutory provision and judicial pronouncements. Having acquired this status, he is entitled

to pension and other consequential benefits on superannuation, and on his demise in harness or after superannuation his widow becomes entitled to family pension. Regularization against a permanent post made on availability or creation of a permanent post, may be there, but pensionary right do not depend on regularization/ confirmation, of course, whether such posts are available or not, employee should be deemed to have become permanent, since laxity in this regard on the part of the employer should not militate against the right of the employee. Describing an employee 'casual/temporary status/ and depriving him statutory and constitutional rights under Arts. 14, 16, 21, 41 and 42. Therefore, appointment against permanent posts along with colleagues as per seniority in the Department, which, he is deemed to be appointed against the available post. Circular dated September 11, 1986 is against decision of Apex Court in Inder Pal Yada case ? (supra), therefore illegal, and cannot be given effect to by the Railways changing the position of 'casual labour' from 'temporary casual labour' to be 'casual labour with temporary status'.

13. It is also considered necessary to refer to para 2005 of the Indian Railway Establishment Manual, Vol.2, which reads as under :

"2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 of continuous employment (as the case may be) – (a) Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rules. However, their service prior to absorption in temporary / permanent / regular cadre after the required selection / screening will not count for the purpose of seniority and the date of their regular appointment after screening / selection shall determine their seniority vis-à-vis other regular / temporary employees. This is, however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered."

In this connection, it is also considered necessary to quote the definition of 'Substitutes' as given in para 1512 of the Indian Railway Establishment Manual, Vol.I, as under :

"1512. Definition - "Substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

14. It is also considered necessary to quote para 1515 of the Indian Railway Establishment Manual, Vol.I, as under :

"1515. Rights and privileges admissible to the Substitutes – Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on

completion of four months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection."

15. Accordingly, the substitutes who have been granted temporary status are entitled to all the rights and privileges as may be admissible to temporary railway servants and in such a case as per this para Discipline and Appeal Rules are applicable to such employees. As per Rule-123 and 124 of the Indian Railway Establishment Code, Vol.I, any direction contained in order of the General Manager dated 7.7.2004, which is contrary to the instructions of the Railway Board, will not be applicable. As per para-8 of the order of the General Manager dated 14.2.2008 it has been held that Substitute Bungalow Khalasis, who have been granted temporary status, can be removed only after following the DAR procedure, whereas as per order of the General Manager dated 7.7.2004 it was contended that in such a case DAR procedure is not applicable. It can also not be said that at a particular time DAR procedure is applicable and at another particular time the same is not applicable.

16. From the perusal of various rules and judgements, it is clear 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.

17. It is also evident from perusal of order dated 17.1.2007 (Ann.A/5) that the applicant, being a Substitute Bungalow Khalasi, was granted temporary status with the stipulation that all the privileges of temporary employees would be applicable to the applicant.

18. Having regard to the facts and legal issues discussed in this order, I do not find any merit in the contention of learned counsel for the respondents that as per order dated 7.7.2004,

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(Ann.R/5) there is no applicability of Disciplinary and Appeal Rules in the present case.

19. After appreciation of facts, rules and legal pronouncements, it is observed that Railway Servants (Discipline and Appeal) Rules, 1968 are applicable in the present case. The respondents had terminated the services of the applicants, vide order dated 27.6.2007 (Ann.A/1), without following the said rules, which is against the principles of natural justice. Accordingly, the order dated 27.6.2007 (Ann.A/1) is quashed and set aside. It is, however, clarified that the respondents shall be at liberty to proceed against the applicant as per procedure laid down in the Railway Servants (Discipline and Appeal) Rules, 1968.

20. As regards relief clause (ii) i.e. "that the applicant may be taken on duty, payment of salary and other allowance on and from 21.5.2007 may be paid to the applicant as arrears with cost", the respondents are directed to take the applicant on duty and pass necessary order for payment of salary and other allowances.

21. The OA stands disposed of accordingly with no order as to costs.

(B.L.KHATRI)
MEMBER (A)

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