

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

13.08.2013

OA No. 48/2013

None present for the parties.

Since the Advocates are abstaining from work, the case be listed on 30.08.2013.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

30.08.2013

OA No. 48/2013

Mr. S. S. Ola, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for Respondents.

Heard

O.A. is disposed of by a
separate order on the separate
sheets for the reasons recorded
therein.

Anil Kumar
[Anil Kumar]
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 48/2013

DATE OF ORDER: 30.08.2013

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Bhura Subhas Bhai S/o Shri Bhura Ram Singh, aged about 25 years, at present working on the post of Substitute Bungalow Peon under Deputy CEE (RS), R/o House No. 19, Gujarati Mohalla, Poonam Colony, Kota (Raj.).

...Applicant

Mr. S.S. Ola, counsel for applicant.

VERSUS

1. The Union of India through the General Manager, Western Central Railway, Jabalpur (M.P.).
2. Chief Personnel Officer, Western Central Railway, Jabalpur (M.P.).
3. Dy. CEE (RS), Western Central Railway, Jabalpur (M.P.).

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER (ORAL)

The present Original Application has been filed by the applicant being aggrieved by his termination order dated 12.06.2012 (Annexure A/1).

2. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially engaged as Substitute Bungalow Peon by the respondents vide their Office Order dated 17.10.2011 (Annexure A/2). Vide Office Order No. 34/2012 dated 02.04.2012 (Annexure A/3), he was granted temporary status.

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3. Learned counsel for the applicant further submitted that after the engagement of the applicant, he was continuously working under the Dy. CEE (RS). The applicant was sent to Bangalore with the wife of respondent No. 3 and the applicant stayed there from 23.05.2012 to 01.06.2012. In the meantime, the applicant fell sick and he returned to Jabalpur on 02.06.2012. On his return, the applicant was working at the bungalow of respondent no. 3, but the respondent no. 3 declared that the applicant was on unauthorized absence from 02.06.2012 to 12.06.2012.

4. Learned counsel for the applicant also submitted that the respondent no. 3 issued a letter dated 12.06.2012 (Annexure A/1) vide which the services of the applicant have been terminated.

5. Learned counsel for the applicant further submitted that being aggrieved by the action of the respondent no. 3, the applicant filed a representation dated 03.07.2012 before the General Manager, West Central Railway, Jabalpur. This representation has been decided by the respondent no. 3, who has dismissed the representation dated 03.07.2012 vide order dated 13.09.2012 (Annexure A/1-a), but the respondent no. 1 & 2 have not given any finding on the impugned order dated 12.06.2012. Therefore, the impugned order dated 13.09.2012 is not just and proper in the eye of law.

6. Learned counsel for the applicant argued that while passing the termination order dated 12.06.2012, approval of

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the competent authority was not obtained by the respondent no. 3, therefore; it is an illegal order. He drew my attention to letter dated 07.08.2008 ((Annexure R/1) issued by the GM's Office, HQ's Personnel Branch, West Central Railway, Jabalpur. Relevant para 4.3 of the letter dated 07.08.2008 is quoted below:-

"4.3) Officer who has engaged Bungalow Peon should carefully watch performance of the Bungalow Peon and can retrench his service if he is not found satisfactory but with the approval of his PHOD/DRM/CWM."

7. Learned counsel for the applicant further submitted that the temporary status has been given to the applicant so that in the case of the applicant, the procedure of the Railway Servants (Discipline & Appeal) Rules, 1968 should be adopted but in the present case, the mandatory requirement was not adopted, therefore, the impugned order dated 12.06.2012 is liable to be quashed and set aside.

8. Learned counsel for the applicant also submitted that as per para 1502 of the Indian Railway Establishment Manual, the applicant is entitled for 14 days notice prior to his retrenchment / termination, but in this case neither notice has been given to the applicant prior to his termination nor the salary was paid for 15 days to the applicant, therefore, the impugned order dated 12.06.2012 is illegal and is liable to be quashed and set aside.

9. Learned counsel for the applicant further submitted that no personal hearing was given to the applicant before passing the termination order. Therefore, he submitted that the

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termination order dated 12.06.2012 (Annexure A/1) and the rejection order on his representation dated 13.09.2012 (Annexure A/1-a) should be quashed and set aside.

10. In support of his submissions, learned counsel for the applicant referred to the following case law: -

- (i). **Balmer Lawrie & Co. Ltd. and Ors. vs. Partha Sarathi Sen Roy and Ors.** (Civil Appeal Nos. 419-426 of 2004 with Civil Appeal No. 926 of 2013) - date of judgment 20.02.2013 - [reported in 2013(2) Service Cases Today, page 232] - Supreme Court of India.
- (ii). **Basudeo Prasad vs. State of Bihar & Others** (Civil Writ jurisdiction Case No. 9081 of 2006) - date of judgment 02.08.2012- [reported in 2013(2) Service Cases Today, page 445] - Patna High Court.
- (iii). **Mukut Bihari vs. Union of India & Ors.** - (OA No. 510/2011) - Date of Order 30.08.2012 - C.A.T., Jaipur Bench

11. On the other hand, learned counsel for the respondents submitted that the services of the applicant were terminated vide order dated 12.06.2012. In fact, the conduct of the applicant was not commensurate with the Railway Service and also he did not fulfill the conditions of services. Therefore, the competent authority had no option except to terminate the services of the applicant.

12. Learned counsel for the respondents further submitted that Substitute Bungalow Peon is attached with the person and has to serve as per his directions. The applicant did not report for duty on 02.06.2012. The officer with whom the applicant was attached was out of station on sanctioned leave since

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04.06.2012 to 10.06.2012. As such, there was no possibility of working of the applicant between 04.06.2012 to 10.06.2012. Further, the applicant failed to report to the duties even after 10.06.2012 when the Officer returned from leave. He also did not even inform the officer that he would be absent during that period. Therefore, he was treated to be absent.

13. Learned counsel for the respondents also submitted that the applicant was negligent to his duties and despite repeated verbal warnings, there was no improvement in his working. Accordingly, his services were terminated in terms of his engagement order.

14. Learned counsel for the respondents further submitted that the Hon'ble Tribunal while disposing of O.A. No. 474/2012 vide order dated 17.07.2012 directed the respondents to consider and decide the representation of the applicant dated 03.07.2012 and pass a reasoned and speaking order. In compliance of this order, the respondents have considered the representation of the applicant dated 03.07.2012 and it has been rejected by a speaking order dated 13.09.2012 (Annexure A/1-a). There is no illegality or infirmity in the speaking order dated 13.09.2012 passed by the respondents. The applicant has no reason to be aggrieved by the order dated 13.09.2012.

15. Learned counsel for the respondents also submitted that as per the conditions of Policy of Engagement, Regularization

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and Discharge / Termination of services of Bungalow Peon contained in the circular dated 07.08.2008 (Annexure R/1), the applicant's services were purely temporary and liable to be terminated at any time without assigning any reason. He further submitted that as per provision of para 4 of the Policy 'Termination / Discharge', the services of the applicant were terminated with the approval of the competent authority. He drew my attention to the approval given by the competent authority i.e. the Chief Electrical Engineer on 12.06.2012 (Annexure R/2).

16. Learned counsel for the respondents further submitted that this Bench of the Tribunal in the case of **Padam Chand vs. Union of India & Ors. (OA No. 181/2009)** vide order dated 10.01.2012 has held that temporary employee unless absorbed or his services are regularized is not governed by the Railway Servants (Discipline & Appeal) Rules, 1968. Therefore, the Railway Servants (Discipline & Appeal) Rules, 1968 are not applicable even in the present case.

17. Learned counsel for the respondents also submitted that as per termination order dated 12.06.2012, 15 days payment in lieu of notice period was to be made to the applicant and the same has been paid to the applicant in his Bank Account by Cheque No. 722491 dated 03.06.2013 (Annexure R/3). Thus, there has been no violation of any rules while terminating the services of the applicant or while rejecting his representation dated 03.07.2012. Therefore, there is no merit

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in this Original Application and it should be dismissed with costs.

18. The applicant has also filed rejoinder to the written reply.

19. Heard the learned counsel for the parties, perused the documents available on record and the case law referred to by the learned counsel for the parties.

20. It is not disputed between the parties that the applicant was initially engaged as Substitute Bungalow Peon vide order dated 17.10.2011 (Annexure A/2) and that he was given temporary status vide order dated 02.04.2012 (Annexure A/3). His services have been terminated vide order dated 12.06.2012 (Annexure A/1). From the perusal of this order, it is clear that it is a speaking order. Since the services of the applicant on 12.06.2012 were less than one year, therefore, the services of the applicant were terminated under para 4 of letter dated 07.08.2008 (Annexure R/1). Relevant para 4 of letter dated 07.08.2008 is reproduced as below: -

"4. TERMINATION / DISCHARGE

4.1) The services of Substitute Bungalow peons who have not completed even one year of continuous / aggregate service should be terminated in the event of transfer / retirement of officer if it is not feasible to adjust him against vacant post of Bungalow peon with any other willing Officer.

4.2) The following terms and conditions will be mentioned in the appointment letter issued to Substitute Bungalow Peon: -

"The Substitute Bungalow peon will be on probation for a period of 3 years during which

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period his service can be terminated without assigning any reason."

- 4.3) Officer who has engaged Bungalow Peon should carefully watch performance of the Bungalow Peon and can retrench his service if he is not found satisfactory but with the approval of his PHOD/DRM/CWM.

21. A perusal of these instructions clearly shows that they are applicable on the applicant as he was engaged as Substitute Bungalow Peon, but he has not completed one year of continuous/aggregate service. A bare perusal of instruction 4.3 shows that if the services of Bungalow Peon are not found satisfactory then he can be retrenched by the officer, who has engaged him as Bungalow Peon. However, the approval of his PHOD/DRM/CWM is to be obtained.

22. In the present case, the applicant was engaged for Shri Vikash Tripathi, Dy. CEE (RS)/HQ/WCR/JBP against the available vacant post of Bungalow Peon. Therefore, in my opinion, according to the provision of para 4.3 of the said Policy, he was competent to terminate him from services. A perusal Annexure R/2 dated 12.06.2012, which is a note from Shri Vikash Tripathi, Dy. Chief Electrical Engineer /RS shows that the approval of the Chief Electrical Engineer has been obtained on 12.06.2012. Thus, the condition that the approval of the competent authority should be obtained has also been fulfilled.

23. Learned counsel for the applicant argued that if the approval was taken from the competent authority then the respondent no. 3 should have mentioned this fact in the

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termination order dated 12.06.2012 but there is no such mention in the termination order. Learned counsel for the respondents submitted that it is not necessary to mention the fact that the approval has been obtained from the competent authority. It is the internal matter between the Officer with whom the applicant was working and the competent authority, who has given the approval for the termination of the services of the applicant and the fact that the termination order does not mention that the approval has been obtained from the competent authority will not make the termination order as illegal or arbitrary. I am inclined to agree with the averments made by the learned counsel for the respondents that once the approval of the competent authority has been taken then the mere fact that it has not been mentioned in the termination order will not make the termination order invalid, void or illegal. Therefore, I am of the considered view that the termination order dated 12.06.2012 does not suffer from any infirmity and it is not an illegal order or passed in violation of any administrative instructions. Thus, I am of the view that no relief can be granted to the applicant on this count.

24. Learned counsel for the applicant argued that as per para 1502 of the IREM, the applicant was entitled for 14 days notice prior to his termination but neither the notice was given nor the salary was paid in lieu of the period of notice.

25. A bare perusal of the termination order dated 12.06.2012 makes it clear that the applicant was to be given 15 days pay in lieu of 15 days notice period. The respondents

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in their written reply have categorically stated that 15 days payment in lieu of the notice period has been made in the Bank Account of the applicant by Cheque No. 722491 dated 03.06.2013 (Annexure R/3). Therefore, even on this ground, the applicant is not entitled for any relief.

26. Learned counsel for the applicant has also submitted that after being granted temporary status, his services could have been terminated only after following the procedure as laid down in the Railway Servants (Discipline & Appeal) Rules, 1968. Therefore, the termination order dated 12.06.2012 is liable to be quashed and set aside.

27. However, in the termination order dated 12.06.2012, it has been clearly stated by the respondent no. 3 that since his services are less than one year, therefore, the Railway Servants (Discipline & Appeal) Rules, 1968 is not applicable in the case of the applicant. The respondents in their written reply have also referred to the case of **Padam Chand vs. Union of India & Ors. (OA No. 181/2009)** order dated 10.01.2012 (supra) wherein this Bench of the Tribunal has held as under: -

"6. Thus it is clear from the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 that a casual worker has been excluded from the applicability of these rules. It is nowhere stated that casual worker with temporary status are on a different footing and they are covered under the provisions of these rules. The Railway Board was given an opportunity to clear this point by this Tribunal but Railway Board has not given its finding on this point. Therefore, it can be concluded that at the time of issuance of the charge sheet and punishment order, the applicant was having temporary status, therefore, he cannot be said to be a Railway Servant in terms of Railway Servants

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(Discipline & Appeal) Rules, 1968, and since he is not a Railway servant in terms of Railway Servants (Discipline & Appeal) Rules, 1968, no disciplinary proceedings could have been initiated against him under the said Rules. Therefore, the issuance of charge memo, passing of the penalty order and appellate order are void abinitio. Hence they are quashed and set aside."

The facts and circumstances of the present case are similar to the case of **Padam Chand vs. Union of India & Ors.** (supra) since the applicant in the present O.A. was also holding temporary status only, therefore, I am of the view that the Railway Servants (Discipline & Appeal) Rules, 1968 are not applicable in the present case also.

28. With regard to the rejection of the representation dated 03.07.2012 by the respondent no. 3 vide order dated 13.09.2012; I find no infirmity in this order since it is a speaking and a detailed order. Therefore, there is no reason to interfere with this order.

29. I have carefully perused the case law referred to by the learned counsel for the applicant in support of his averments.

30. In the case of **Mukut Bihari vs. Union of India & Ors.** (supra), the applicant was not given any formal order of termination and, therefore, this Bench of the Tribunal directed the respondents to allow the applicant to work on the post of Substitute Bungalow Khalasi and the respondents were given liberty to pass formal order of termination in accordance with provisions of law, if the respondents are not satisfied with the work of the applicant, whereas in the present case, formal

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termination order has been passed by the respondents against the applicant, therefore, the ratio decided in the case of **Mukut Bihari vs. Union of India & Ors.** (supra) is not applicable in the present case.

31. With regard to the judgment of the Hon'ble Supreme Court in the case of **Balmer Lawrie & Co. Ltd. and Ors. vs. Partha Sarathi Sen Roy and Ors.** (supra), I am of the view that the facts and circumstances of that case are different than the facts and circumstances of the present case. In the case of **Balmer Lawrie & Co. Ltd. and Ors. vs. Partha Sarathi Sen Roy and Ors.** (supra), the Hon'ble Supreme Court in para 28 has held that "*In such a fact-situation, clause 11 of the appointment letter is held to be an unconscionable clause, and thus the Service Condition Rules are held to be violative of Article 14 of the Constitution to this extent.*" However, in the present case, the applicant has not challenged the terms of his appointment order or the instructions issued by the respondents vide their letter dated 07.08.2008 (Annexure R/1), which govern the conditions of the service of the applicant, therefore, in my opinion, the ratio laid down by the Hon'ble Supreme Court in the case under reference is not applicable in the present O.A.

32. With regard to the judgment of the Hon'ble High Court of Patna in the case of **Basudeo Prasad vs. State of Bihar & Others** (supra), I am of the view that the facts and circumstances of that case are quite different than the facts and circumstances of the present case. In that case, the

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authorities themselves had found the order of dismissal to be wholly illegal and unjustified, whereas in the present case, the respondents have issued the termination order of the applicant and they have not found this order to be illegal or unjustified. In the case before the Hon'ble High Court of Patna, the question was with regard to the denial of back wages of the petitioner. Therefore, the ratio laid down by the Hon'ble High Court of Patna in the case of **Basudeo Prasad vs. State of Bihar & Others** (supra), is not applicable to the present case.

33. Thus, in view of the above discussions, I find that there is no merit in the present Original Application and the same is liable to be dismissed.

34. Consequently, the Original Application is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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