

(Reserved on 01.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00523/2007

This the *14th* day of *August, 2018*

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Sanjay Charles, aged about 35 years, son of Shri Anthony Charles, Resident of Araji No. 103, Dev Prayagam Chauraha Near Dhussa Power House, Jhalwa, Allahabad.

.....Applicant

By Advocate: Shri Sudama Ram

Versus

1. Union of India through General Manager, North Central Railway, Headquarter Office, Allahabad.
2. General Manager, North Central Railway, Headquarters Office, Allahabad.
3. Shri Rajeev Saxena, Dy. Chief Material Manager, N.C. Railway, Sangam Palace, 3rd Floor, Allahabad.
4. Assistant Personnel Officer, in the office of the Chief Personnel Officer, 8th Floor, Sangam Palace, Civil Lines, North Central Railway, Allahabad.
5. Controller of Stores, 3rd Floor, Sangam Palace, Civil Lines, Allahabad.
6. Assistant Material Manager, 3rd Floor, Sangam Palace, Civil Lines, Allahabad.

.....Respondents

By Advocate : Shri S.K. Ray

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application (in short OA) filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for following main reliefs:-

“(i).to quash the impugned order dated 17.04.2007 (served on 10.05.2007) (Annexure A-1) passed by the Respondent No. 5, and also quash the contents of paras 3, 4, 18 and 19 of the Circular dated 14.04.2003 (NCR PS No. 1447/03) issued by the GM/NCR, Allahabad (Annexure A-1/1) being ultra vires.

2. To issue a mandamus directing the respondents to issue appointment letter to the applicants on the basis of selection held by the respondents on 20-24th Feb. 1997 on the post of Chowkidar”.

2. The applicant's case is that he was appointed on 14.6.2005 as a substitute bungalow khalasi with approval of General Manager after his medical examination. Prior to that date, he was asked by Shri Rajeev Saxena (respondent no.3) to perform duty from 18.10.2004 in his Bungalow without any pay and after being satisfied with his services, respondent no. 3 recommended the applicant's name for appointment as bungalow khalasi to the competent authority. Then the appointment order dated 15.6.2005 (Annexure A-3) was issued in favour of the applicant after completion of formalities.

3. These contentions of the applicant have not been denied in the Short Counter Affidavit (in short SCA) filed on 14.8.2007 which quotes an order dated 14.4.2003 (copy attached as Annexure No. 2 to the SCA).

4. After 120 days, the applicant was given temporary status, after which he was allowed facilities like privilege pass and medical treatment etc. His duty in the bungalow of the respondent no. 3 was from 7am till 9 pm as stated in para 4.6 of the OA. It is further stated in the OA that on 25.12.2006 he was asked to receive the respondent no. 3 in the railway station and since the train was late and he had to return to his home for Christmas Day after informing the driver of the respondent no. 3. On 26.12.2006, when he went to the bungalow of the respondent no. 3 for duty, he was informed by the respondent no. 3 that he will not engage the applicant. Thereafter, he went to his bungalow daily, but he was not allowed to join duty. On 5.1.2007 he was issued a letter, which was received by him on 24.1.2007, stating that he was on unauthorized absence and he was directed to join duty immediately. When he went to the bungalow of the respondent no. 3, he was refused duty again and he came to know that the respondent no. 3 had engaged another bungalow khalasi in his place. Then he submitted representation on 20.3.2007 to the respondents stating that although he was reporting for duty, he was not allowed by the respondent no.3. He followed up with subsequent representations, before he received the termination order dated 17.4.2007 (Annexure A-1), against which the applicant has filed this OA.

5. It is contended by the applicant in the OA that after conferment of the temporary status, the bungalow peon/Khalasi does not remain contractual as mentioned in the impugned order. It is also stated in the OA that certain paras of the circular dated 14.4.2003 which is applicable for engagement of Bungalow Khalasi / Peon by the respondents, are violative of the Article 311 (2) of the Constitution of India. Hence, services of temporary status bungalow peon cannot be dispensed with for unsatisfactory services without issuing show cause and without following the process specified under the Article 311(2) of the Constitution of India.

6. In the SCA filed on 14.8.2007, the Counter Reply filed on 31.8.2007 and two Supplementary Affidavits filed on 18.9.2007 and 18.3.2008, the respondents have averred the following main points:-

- The applicant was appointed on contract basis, as per the general policy circular dated 14.4.2003 for bungalow peon/khalasi and as per this circular, if the performance report of the bungalow peon would be found to be unsatisfactory, then his services shall be terminated automatically without any notice.
- The applicant was under unauthorized absence from 18.12.06. He was informed to join duty vide letter dated 5.1.2007, but the letter was returned undelivered, after which it was served on the applicant through messenger on 24.1.2007.
- The applicant represented on 20.3.2007 i.e after two months from the date of delivery of the letter dated 5.1.2007 to the applicant.
- As bungalow khalasi, the applicant needs to be trustworthy. But he remained under unauthorized absence for more than 2 months.

Two judgments of the Principal Bench of this Tribunal have been annexed by the respondents. The judgments, after referring to a Full Bench judgment have dismissed the OAs filed by the bungalow khalasi/peons who were similarly placed as the applicant in this OA.

7. Rejoinder Affidavit and Suppl. Rejoinder Affidavit have been filed by the applicant denying the contentions of the respondents in the Counter and SCA and reiterating the contentions in the OA. Since the respondents have cited the policy circular dated 14.04.2003 to justify their action to terminate services of the applicant, the applicant moved an amendment applicant to challenge certain portion of the circular dated 14.04.2003 in the OA. This was considered by this Tribunal vide order dated 04.01.2008. Accordingly, the amendments in the OA were incorporated. Prior to that, it was mentioned that on first date of hearing i.e. 17.05.2007, the OA was admitted for hearing and notices were issued to file reply. It was further ordered to stay the operation of the impugned

order dated 17.04.2007 wherein the applicant's services were terminated w.e.f. 18.12.2006. On 14.08.2008, the following order was passed : -

“Interim order, if not already rendered infructuous, shall continue until further orders.”

8. Heard learned counsel for the applicant. He argued mainly on three points. Firstly, he was argued that the appointing authority of the applicant is the General Manager since his appointment was made with prior approval of the General Manager. However, termination order has been issued by an authority subordinate to the General manager, which is illegal. Secondly, learned counsel for the applicant submitted that the impugned punishment order dated 17.04.2007 has been made applicable retrospectively w.e.f. 18.12.2006, which is void ab-initio and illegal, as contended in para 5(a) of OA. Thirdly, it was submitted that the reason of unauthorized absence from duty and unsatisfactory service given in the termination order is stigmatic and should not have been passed without giving opportunity to the applicant or without initiating a disciplinary proceeding as these findings impute misconduct on the part of the applicant. It was also submitted that since, the applicant is an employee with temporary status, his services cannot be terminated without following the procedure under Railway Servants (Discipline & Appeal) Rules, 1968, hence, the impugned order dated 17.04.2007 is in contravention of Article 311(2), as contended in para 5(o) of OA.

9. In support of his contention, learned counsel for the applicant submitted a detailed written arguments enclosing copy of more than 22 judgments. In addition, he also filed copy of three judgments at the time of hearing. He particularly highlighted the judgment of Calcutta Bench of this Tribunal in the case of Ram Bilas Paswan Vs. Union of India and

others (1991) 16 Administrative Tribunals Cases 18. In this case, there was disagreement between two Members of the Tribunal and the matter was referred to third Member, who after considering the facts and case laws applicable for the subject came to a finding to which our attention was drawn to para 20 of the said judgment in support of the applicant's case.

10. Shri S.K. Rai, learned counsel for the official respondents, on the other hand reiterated the stand taken in the Counter Affidavit and referred to the following two judgments, which have been enclosed with the Suppl. Affidavit filed on 18.09.2007, i.e. (i). order dated 02.08.2006 passed by the CAT, Principal Bench in OA No. 2456/2005 – Smt. Raj Kumari Vs. Union of India & Ors. and (ii) order dated 11.12.2006 passed by the CAT, Principal Bench in OA No. 1687/2005 – Baijnath Mandal Vs. Union of India & Ors. Shri S.K. Rai also submitted the written arguments, broadly reiterating the stand of the respondents in the pleadings.

11. We have considered the submissions and carefully gone through the pleadings and documents placed before us on record and also the case laws cited by the learned counsels for both sides.

12. First of all, we will examine two cases cited by the respondent in Suppl. Affidavit filed on 18.09.2017 will be examined. In the case of Smt. Raj Kumari (supra) enclosed with Suppl. CA, the applicant therein was appointed by the CPO as substitute bungalow khalasi-cum- Telephone Attendant, where she joined on 13.03.2003. She was granted temporary status with consequential facilities. She had given a representation to the CPO that the officer with whom she was attached for duty had made up his mind to terminate her services and her services were terminated on 13.08.2004

after one year five month based on a note by the authority with whom she was attached on the ground of illness. In the order, the following para would be relevant as quoted below: -

“12. The question here is, whether applicant’s service could have been terminated in these circumstances or it is to be termed as illegal or arbitrary. This question need not detain me for long because this issue has already been decided by the Full Bench in the case of Shyam Sunder (Supra) decided on 12.02.1999. It was admitted by the counsel for applicants therein that Bunglow Peons/ Khalasis in Railway are not Railway employees and their services are purely contractual in nature. The other two questions which were framed by the Full Bench were as follows: -

whether after acquisition of temporary status by a bunglow peon / Khalasi, his services can be terminated on the ground of unsatisfactory work without holding a departmental inquiry; and

whether for want of notice or retrenchment compensation under section 25-F of the Industrial disputes Act, 1947, termination of service of a Bunglow Peon / Khalasi after acquisition of temporary status is bad or illegal ?

Reference was made by the Full Bench to the Railway Boards letter dated 31.12.1997, as has been referred to by the applicant, paragraph 1512 of the Establishment Manual Volume -1 Para 1515 and 205 of IREM and also to number of other judgments and ultimately the Full bench answered the above questions as follows:

Yes. After acquisition of temporary status by a Bunglow Peon / Khalasi , his / her services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry, as discussed in Paragraph 14, 15 and 16 of the order.

No. The termination of the service of a substitute Bunglow Peon/ Khalasi, 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 the order. The question whether for want of retrenchment compensation under section 25-F of the Industrial Dispute Act, 1947, the termination of the service of a substitute Bunglow Peon / Khalasi, who has acquired temporary status, is bad or illegal, is beyond the scope and jurisdiction of this Tribunal.”

Following the order of Full Bench of this Tribunal in the case of Shyam Sunder (Supra), the OA was disposed of with direction to give the applicant one month salary and no other relief was granted.

13. Similarly, another case cited by the respondents in the Suppl. CA in the case of Baijnath Mandal (supra), a similar finding has been made following the aforesaid Full Bench judgment and the OA was dismissed.

14. It is seen that in both the said cases, relied upon by the respondents, the termination order did not have any stigma or imputation of misconduct. Simple notices were issued to dispense with the service of bungalow khalasi, which can be done as per the existing provision of rules or circulars of the Railway Board and this procedure was not followed in this OA. In other words, in both the cases discussed at para 12 and 13 above, the termination orders were discharge simpliciter.

15. However, in the instant OA before us, the applicant has challenged the policy circular dated 14.04.2003 in which the bungalow khalasis / peons are engaged with the terms and conditions, which the applicant feels not as per law. Most importantly, here the termination order cannot be said to be discharge simplicitor. The services of the applicant have been terminated on the ground that he was under unauthorized absence. Hence, the cases cited by the respondents are distinguishable considering the facts and circumstances of the present case and since the termination order in the present OA is not discharge simpliciter.

16. In view of the above, the following issues are required to be determined: -

(i). Whether the impugned order dated 17.04.2007 is in accordance with the terms and conditions of the engagement of the

applicant, since the respondents have taken a stand that the impugned order is justified in view of the averments of the respondents in this regard.

(ii). Whether the impugned order of termination of service with retrospective effect is legally sustainable.

(iii). Whether there is violation of Article 311(2) of Constitution of India in this case.

(iv). Whether the authority, who has issued the impugned termination order was competent to issue such order as per rules.

17. The impugned termination order dated 17.04.2007 states as under: -

“In reference of above referred letter of GM(P)/NCR your contractual services as substitute Bunglow Peon attached to Shri Rajeev Saxena, Dy. CMM/HQ/ALD stand automatically terminated w.e.f. 18.12.2006 due to unauthorized absence from duty and hence unsatisfactory service.

This has the approval of competent authority.”

From the impugned order, it is clear that the reason for terminating contractual service was due to his unauthorized absence from duty due to which his service was found to be unsatisfactory. In the pleadings of the respondents, it is stated that the applicant was appointed as bunglow khalasi as per the policy letter dated 14.04.2003 (Annexure -2 to the Suppl. CA filed on 14.08.2007). It is seen that para 3, 4, 18 and 19 of this circular have been challenged by the applicant in this OA. Para 3 of the said circular states as under : -

“3. The person being engaged as Bunglow Peon / Khalasi should give his / her consent in writing i.e. he/ she is willing to work as a Bunglow Peon / Khallasi and in case of any eventuality such as his/her unwillingness to work as Bunglow Peon / Khallasi or he/she is found unsuitable or his/her performance is found unsatisfactory , his / her services shall automatically stand terminated without any notice and he/she

will has no presumptive right claim to an alternative class-IV appointment on the Railway.”

18. As per the above para, if the services are found unsatisfactory, the services shall be terminated without notice. However, if the termination order will be stigmatic with adverse observations against the applicant, it has to follow the principle of natural justice and provisions of the Article 311(2) of the Constitution of India irrespective of circular dated 14.04.2003. Para 3 of the circular will apply in case of discharge simpliciter as per the provision of IREM as applicable to the substitute bungalow khalasi/peon. From the impugned order, it is clear that the respondents have terminated the services of the applicant for unsatisfactory service because of unauthorised absence, which is an alleged misconduct and such misconduct, which has not been proved against the applicant as per the rules. Hence, the impugned order is not as per the terms and conditions of engagement of the applicant since the conclusion of unsatisfactory service is due to his unauthorized absence, which has not been proved against the applicant as per rules. Hence, the answer to the issue (i) of para 16 is answered in negative.

19. Further, the impugned order dated 17.04.2007 has been given effect from retrospective date i.e. 18.12.2006. In this regard, counsel for the applicant has cited the case of Ram Bilas Paswan Vs. UOI & Ors – 1991(16)ATC-18 CAT (Calcutta Bench). In that case, the applicant was appointed as substitute bungalow peon in the office of General Manager, CLW w.e.f. 20.01.1987. on 30.06.1987 services of Shri Paswan were terminated as per the terms and conditions of his appointment and it was not a penal order. The termination order in this case did not cite any misconduct as the impugned order dated 17.04.2007 in the present OA. After examining the different facts and circumstances and provisions of IREM, the judgment of third Member states as under: -

“20. I, therefore, record my findings that I am in agreement with Mr. Mukherji’s findings that order dated 30.6.1987 cannot stand. I answer the questions as follows:

Question	Answer
(a) Whether the impugned order of retrospective removal is legal	No
(b) Whether the impugned order can be given only prospective effect	No, as the order was not communicated
(c) If so, whether the applicant even as a substitute with more than 120 days of service has acquired temporary status, or	Yes
(d) Whether the applicant in the running scale of pay was holding a civil post ?	Yes
(e) Whether in case either (c) or (d) is answered in the affirmative, the impugned order even with prospective effect is violative of Article 311 of the Constitution and / or Section 25-F of the Industrial Dispute Act, 1947	Yes
(f) If (c) and (d) are both answered in the negative and the applicant is held to be a casual worker without temporary status, whether the impugned order with an explicit stigma of misconduct and punitive consequences is violative of the rules of natural justice and is thus void ?	In view of my findings on the questions set out above, it is not necessary to answer this question.”

Hence, the answer to the issue at (ii) of para 16 is in negative.

20. Similarly, in the case of Rajendra Kumar Khandela Vs. UOI & Ors – 2004 (1) ATJ 20 CAT, Jodhpur, it was held that a disciplinary action was conducted and penalty of removal was imposed. It was found that the penalty was imposed by a subordinate authority, hence it was held to be illegal.

21. In the case of Santosh Kumar Yadav Vs. Dy. CAO, NE Railway (All) – (1991) 15 ATC 625 cited by the counsel for the applicant, it is noted that in that case, the applicant was appointed on daily wage basis and his services could be terminated without giving notice. He was given temporary status. Thereafter, his services were terminated and the applicant alleged that he was not given opportunity or to show cause before such termination. After examining the facts and circumstances of the case, the Tribunal quashed the impugned termination order dated 28.11.1985 and directed the respondents to reinstate him in service.

22. We note that in the case of Shri Dharmendra Kumar Yadav v. Union of India 2006(1) ATJ 408 C.A.T./P.B. OA No. 2867/2002, cited by the applicant's counsel, the applicant was also refused to be given any duty and subsequently, his services were terminated on the ground of unsatisfactory service. This Tribunal vide the order dated 24.11.2005 stated as under:-

“18. If one has regard to the above, in the present case it is not disputed that applicant had not been accorded temporary status, which had been bestowed upon him in 1999. By virtue of the above termination in terminating the services of a temporary status holder casual labour benefit of Discipline & Appeal Rules ibid is also applicable, i.e., to dispense with the services of a CLTS on a misconduct a valid proceeding under the Railway Servants (Discipline and Appeal) Rules, 1968 is a pre-requisite. However, I may not lose sight of the decision of the Full Bench of this Tribunal in Shyam Sunders case (supra) where the referred question as to whether on acquirement of status of a temporary employee whether service could be dispensed with on unsatisfactory performance on a notice or after pursuing a departmental proceeding. On a meticulous discussion of the aforesaid the Full Bench observed as under:

“16. We may now conclude that for the reasons aforesaid the services of a Bungalow Peon/Khallasi, who has acquired temporary status, may be terminated on the ground of unsatisfactory work without holding a departmental enquiry as per service Rules or the contract of his employment.”

19. In the answered reference though the case of Ram Kumar (supra) of the Apex Court was taken into consideration, yet the following conclusion has been drawn:

“(b) Yes. After acquisition of temporary status by a Bungalow Peon/Khallasi, his services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry as discussed in paragraphs 14, 15 and 16 of this order.”

.....

22. Though the respondents counsel relied upon the decision in Ranjeet Kumars case (supra) and Raj Bahadur Singh v. Union of India, OA-1809/2002 decided on 23.10.2003 wherein relying upon the Full Bench decision in Shyam Sunders case (supra) on unsatisfactory performance termination has been upheld.

23. In Shyam Sunders case (supra) the only exception not to resort to disciplinary proceedings after acquisition of temporary status by a bungalow khallasi is his unsatisfactory work. An unsatisfactory work would be judged from the performance of a person on temporary status. This is to be certified by the competent authority under whose jurisdiction and control a CLTS has been working. There are no hard and fast rules to lay down any definite criteria but this unsatisfactory performance has to be judged in the peculiar facts and circumstances of each case.

.....

36. It is trite law that any action which is actuated with malafides which is established to its hilt on laying down a foundation would vitiate the order as it is an anti thesis not only to the rule of law but against justice as well.

37. In my considered view the grounds of termination against applicant were though under the guise of unsatisfactory performance or unwillingness of applicant to work, which on misuse of the powers are really founded on the misconduct of applicant which has not been probed into and thus deprivation of reasonable opportunity and when resort to the rules under the Discipline and Appeal Rules ibid the decision of the Full Bench would not be applicable in the present case as it is not the unsatisfactory performance on which services of applicant have been dispensed with but it is the attitude and conduct of the supervisory officer which led to non-accord of duty to applicant. However, I am not competent authority to adjudge this. The same will be considered as per law.”

23. The order in OA No. 2867/2002 was challenged by the Union of India in Writ petition before Hon'ble Delhi High Court in the Writ petition No. 3263/2006 and Hon'ble Delhi High Court while deciding the aforesaid Writ petition did not interfere with the order dated 24.11.2005 and held that the findings on the fact that the applicant was not entrusted with any job by the CCM to whom he was attached, was not shown to be flawed.

24. The facts in the OA No. 2867/2002 and the facts in the present OA before us are similar, as the applicant before us, was also not given any duty by the officer with whom he was attached, before allegations of unauthorized absence was raised against him by the respondents, which led to his discharge from service. As the findings in the OA No. 2867/2002 show, in this case also, the impugned order is punitive in nature as the officer concerned was not satisfied with his work, for which no work was allotted to him after 25.12.2006 and the impugned order was issued as a measure of punishment. Hence, the findings of the cases cited by the respondents as well as the Full Bench judgment of this Tribunal in OA No. 896/1995 in the case of Shyam Sunder vs. Union of India will not be applicable to the present OA. The impugned order to discharge the service in OA No. 896/1995 was not held to be punitive, as it was an order of a simple discharge on account of unsatisfactory service of the bungalow peon in that case. But in the OA before us, from the facts and circumstances of the case, the impugned order is clearly a punitive order, in which the authorities seem to be punishing the applicant by not entrusting any duty to him after 25.12.2006 and holding him responsible for unauthorized absence since 18.12.2006, as mentioned in the impugned order dated 17.4.2007, without conducting any inquiry as required under the rules.

25. The judgment of Hon'ble Delhi High Court in Writ petition no. 3263/2006, which confirmed the order of this Tribunal in the OA No.

2867/2002, was followed by the Tribunal in another case of Sunil Kumar Mishra vs. Union of India and others in OA No. 823/2007 and the order dated 22.10.2010 of this Tribunal in 823/2007 stated as under:-

“8. One important legal issue calls for consideration at this juncture. True, the Full Bench would have stated that there need not be a full fledged inquiry and the Respondents have heavily relied upon the same in their written submission. And on the basis of the same a division Bench of this Tribunal in OA No. 401 of 2007 had held that in such a case of termination of Bunglow Peons on temporary status, there is no need to even put them to notice. The Full Bench order is dated 13th February, 1999. In the said order, there is a reference of instructions for appointment of substitute Bunglow Peons / Khalasis vide 803-E/I/Pt. X/IV dated 13.01.1995. The same reference has been made in the decision of the Hon’ble High Court in W.P. No. 3263/2006 (though indicating issued in January, 1995) and the following extract has been made from out of that reference: -

“ii. Person who has attained temporary status cannot be discharged from service without applying full procedure as described in the D&A Rules. The grant of ty. Status to Bunglow peon before 2 years service fill create problems for the office in case Bunglow Peon indulge in unwarranted activities. No officer will allow his family members to be dragged in Official D&A enquiring etc. Thus condition of two years service for grant of ty. Status to Bunglow Khalasi is a must.

iii. The above conditions are not included in the IREC of IREM as Bunglow peons is a special category as they are neither casual labour nor substitute. Their service condition, until they attain ty. Status after completion of two years continuous service, are governed by the administrative orders issued from time to time with the approval of competent authority on Zonal Railways.”

9. After quoting the above portion of the Railway Board’s letter, Hon’ble Delhi High Court had held as under: -

“4. It is not in dispute that the respondent no. 1 had attained the temporary status and the procedure under the D&A Rules was admittedly not followed while discharging him from service for unsatisfactory conduct. In any case, the certificate given to the

respondent no. 1 by Shri Sangeev Garg and the grant of temporary status to him rules out the pleas that the respondent no. 1's conduct was not satisfactory. Thus in light of the above fact, the findings of the CAT are wholly sustainable and not liable to be interfered with.

5. In view of the findings recorded above, it is not a fit case for interference under Article 226 of the Constitution and the writ is consequently dismissed and stands disposed of. Miscellaneous applications for exemption and interim stay also stand disposed of as having become infructuous.

*10. Now, between the decision of Full Bench of the Tribunal (coupled with the division Bench judgment cited above) and the judgment of the Hon'ble High Court of Delhi, obviously, the latter has to be followed. This is the settled law See **Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644**, wherein the Apex Court has held as under:-*

"A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench".

11. Thus we respectfully follow the decision of the Hon'ble High Court of Delhi in this case."

26. Hon'ble Delhi High Court, in another similar case of bungalow khalasi/peon whose services were also terminated, in the case of Baijnath Mandal vs Union of India & Ors (<https://indiankanoon.org/doc/98608461>) in W.P.(C) 4151/2008, has held as under:-

"16. There can be no dispute that when an employee has been granted a temporary status and the order of his termination is stigmatic and punitive, and not of discharge simplicitor, then a departmental inquiry has to precede the termination. For when the order of termination is stigmatic, termination of an employee without holding a departmental enquiry would be in violation of principles of natural justice. It has severe consequences for the employee, since he gets branded and blemished with the stigmatic declaration made against him, thus marring his future prospects of employment.

17. In the present case, the termination was due to alleged misbehaviour of the Petitioner, and hence, is stigmatic and punitive. Such termination, without holding a departmental enquiry, is clearly impermissible. The Respondents

should have conducted a departmental enquiry before termination of the services, thereby providing the Petitioner with an opportunity to meet the accusations of his misbehaviour. The procedure as contained in the Rules of 1968 was required to be followed. Instead, the Respondents resorted to a short cut method by issuance of a stigmatic termination order dated 30.04.2002 and terminating his services. Since there was no departmental enquiry conducted before the termination, in accordance to the procedure prescribed in Rules of 1968, the termination order is against the principles of natural justice and hereby set aside.

18. In view of the aforesaid discussion, the writ petition is allowed and the impugned orders of the CAT, are hereby quashed. Consequently, the Respondents are directed to reinstate the Petitioner within four weeks with all consequential benefits including notional fixation and fitment of salary for the period he was out of service, though he would not be entitled to any actual arrears of salary. In other words, all consequential benefits, except back wages, shall be given to the Petitioner. The said orders of pay fixation, fitment, and notional increments, etc shall be issued within four weeks of the Petitioner's joining the service pursuant to the present order."

27. The averment of the applicant in the OA that after the incident on 25.12.2006 he was not allowed any duty by the respondent No. 3 with whom he was attached, has not been specifically contradicted by the respondents in their pleadings except stating that the applicant was issued a letter dated 05.01.2007 advising him to join duty. Although there is no representation or letter of the applicant to the higher authority that he was not being given any duty after 25.12.2006, it is clear from the record that he was not allowed any duty after 25.12.2006 and there is no document produced by the respondents to show that he was actually allotted the duty by the officer to whom he was attached. After receipt of the notice dated 5.1.2007, the applicant has stated that he immediately went to the bungalow of the respondent no. 3 for duty, but he was not allowed to resume the work and this contention has also not been specifically denied by the respondents. Applicant represented on 20.03.2007 (Annexure A-8) in which he stated that he was not being allowed duty since 26.12.2006 although he was present in the bungalow. The representation dated 20.03.2007 has been admitted by the respondents in the pleadings, but no reply was sent to the applicant before issuing the termination order dated 17.04.2007 or the contentions in the representation dated 20.03.2007 did not seem to have been taken note of by the authorities, as there is no pleading to that effect available

on record. Hence, it is clear that the pleas of the applicant to the authorities were not duly considered before passing the impugned termination order dated 17.04.2007 and that the said impugned order dated 17.04.2007 is stigmatic and punitive.

28. It is clear that as per the ratio of the judgment of Hon'ble Delhi High Court as quoted in para 25 and 26 above, services of a casual employee with temporary status, cannot be terminated for unsatisfactory conduct or a punitive measure without following the procedure laid down for the disciplinary proceedings. Thus, the judgment of Full Bench of this Tribunal which was followed in two cases cited by the respondents will not be helpful for the respondents. Further, since the applicant in this case has been allowed temporary status, the impugned order dated 17.04.2007, terminating his services without following the procedure as applicable for disciplinary proceeding, is violative of the Article 311(2) of the constitution of India. Hence, the reply to the issue at (iii) of para 16 is answered in positive.

29. Regarding the reply to the issue no (iv) of para 16 of this order, as discussed above, the termination order for the applicant's service on the ground of misconduct has to be passed under the rules applicable for disciplinary proceedings. Hence, such termination order is required to be issued by the appointing authority as per the provisions of the rules for disciplinary proceedings. The appointment order dated 15.06.1995 for the applicant (Annexure A-3) is signed by Assistant Personnel Officer with approval of the General Manager. Hence, the appointing authority for the applicant is considered to be the General Manager. The authority issuing the impugned termination order is Controller of Stores, who is obviously subordinate authority to the General Manager. However, the order has noted that it has the approval of the competent authority (para 17 be referred to). Hence, we answer the issue no (iv) of para 16 in positive.

30. Regarding challenge to some of the paragraphs of the policy Circular dated 14.04.2003, we do not find any justification for interfering with said Circular in view of our findings that services of an employee with temporary status cannot be terminated on the ground of misconduct without following the rules for disciplinary proceedings in spite of the provisions in the Circular dated 14.04.2003, we are unable to accept the pleas of the applicant in respect of the Circular dated 14.04.2003.

31. While considering the policy circular for engagement of bungalow khalasi/peon in Railways, we noted a judgment of the Principal Bench of this Tribunal in the case of Uttam Kumar Tewari vs Union Of India in OA No. 875/2013 (<https://indiankanoon.org/doc/62346876>), following observations were made by this Tribunal in the order, regarding the policy of engaging bungalow khalasi:-

“10. Before we part with this order, we are constrained to observe that the engagement of Bungalow Khalasis now being given the glorified designation of TADK is a matter to be re-looked by the Respondent-Railway Board. It is understood that no rules or regulations are being followed in their appointments. The Respondents have neither framed any Recruitment Rules for the said post nor they notify the vacancies. Their appointments are made in an arbitrary manner by the officers concerned. Even in this case, Respondent No.4 has been boasting in his complaint to the police that he was instrumental in getting him employed as TADK. When the Apex Court in a number of judgments has frowned upon the administration to stop backdoor entries into the Government, the appointments of TADKs through the officers concerned are still going on at the whims and fancies of the officers. Further, it is observed that the Respondent No.4 in this case is only a Dy. Chief Engineer, which is comparatively of a very lower level post. Such officers are also allowed to engage their own Bungalow Khalasis without even considering the fact whether there is no sufficient accommodation available with them. In this case, the Respondent No.4 is not in possession of any Bungalow allotted by the Railway but only a lower type of accommodation in Babar Road. Therefore, in our considered view, such uncontrolled freedom to the officials to appoint TADK on their own and later leaving the burden upon the Railways to grant them temporary status and regular appointment cannot be allowed.

11. We, therefore, direct the Registry to send a copy of this order to the Chairman, Railway Board, New Delhi to look into this matter so that if at all it is necessary to appoint TADKs, such appointments shall be made in accordance with the rules and not according to the whims and fancies of the officials concerned as in the present case.”

32. With reference to the discussions in paragraphs 30 and 31 above, while we do not interfere with the existing circular dated 14.4.2003, we would like to reiterate the observations of the Principal Bench of this Tribunal in OA No. 875/2013 as quoted above in paragraph 31 above and also suggest a review of the circular dated 14.4.2003 by the respondents in the light of the observations in this order. The Registry is directed to send a copy of this order to the respondent no. 1 for taking necessary action as deemed appropriate in this regard.

33. In view of the above discussions and taking into account the legal precedents and case laws discussed, we are of the considered opinion that the impugned order, being stigmatic and punitive in nature, cannot be sustained and hence, it is liable to be set aside and quashed. Accordingly, the impugned order dated 17.4.2007 (AnnexureA-1 to the OA) is set aside and quashed. The respondents are directed to reinstate the applicant in service as substitute bungalow khalasi/TADK with temporary status, if the applicant is not reinstated already by virtue of the interim order passed by this Tribunal and to allow all consequential benefits of service as per rules to the applicant within two months from the date of receipt of a certified copy of this order. It is made clear that the respondents are at liberty to initiate appropriate action as per rules in case there is any allegation of misconduct against the applicant.

34. The OA is allowed in terms of the paragraphs 32 and 33 above. There will be no order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...