

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3640/2012

Reserved on: 28.02.2018
Pronounced on: 13.03.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Shri Anup Kumar s/o Shri Radha Kishor
Ex.Telephone Attendant/DAK Khjalsi
(Bungalow Khallasi)
R/o 1167, Muhalla Imli,
Sri Radha Kishan Mandir
Sunaron Wali Dharamshala,
Delhi.

...Applicant

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India through

1. General Manager,
Northern Central Railway,
Allahabad.
2. Dy. Chief Engineer (TMC),
HQ Office, North Central Railway,
Subedar Ganj,
Allahabad.

...Respondents

(By Advocate: Sh. VSR Krishna and Sh. Shailender Tiwari)

O R D E R

By Hon'ble Mr. Uday Kumar Varma, Member (A):

The applicant's grievance in this Original Application is that Respondent No.2, namely, the Deputy Chief Engineer (TMC), HQ Office, North Central Railway, Subedar Ganj, Allahabad discharged him from services in an arbitrary and illegal manner, vide Annexure A-1 letter dated 23.07.2012 while he was working as a Bungalow

Khalasi with temporary status in contravention of Railway Board letter of January 1995 that prescribes the following specific procedure for such discharge:-

“ii. Persons who has attained temporary status cannot be discharged from service without applying full procedure as described in the D&A Rules. The grant of Temporary Status to Bungalow peons before 2 years service will create problems for the officer in case Bungalow 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 Bungalow Khallasi is a must.

iii. The above conditions are not included in the IREC or IREM as Bungalow Peons is a special category as they are neither casual labour nor substitute. Their service conditions, 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.(underlining supplied)”

2. According to the applicant, there is rampant misuse of the services of Bungalow Khallasis by many of the Railway Officers. Even though they are engaged mainly to perform the duties such as attending telephone calls at the residence of the officer concerned, carrying files from office to the residence of the concerned officer and back etc., in actual practice, they are treated as domestic servants to do the work of cleaning, washing, cooking etc. and they are thrown out even for the slightest mistake on their part. She has also stated that the applicant in this case is one of

such victims of the officer in whose residence he was posted.

3. As far as the service details of the applicant is concerned, he was appointed as Substitute Telephone Attendant and Dak Khallasi (TADK) also known as Bungalow Khallasi w.e.f. 28.06.2011. After having completed 120 days of continuous service, he was granted temporary status w.e.f. 26.10.2011 vide the respondents Annexure A-3 letter dated 09.01.2012 issued by the Office of the South Central Railway, Allahabad under the signature of APO/IR GP (P). In the said letter, the APO has categorically stated that the Shri Anup Kumar (Applicant herein) S/o Shri Radha Kishore, AVJ TADK has been appointed on the post of TADK in PB-4440-7440 with (GP) 1300 by Shri Prakash, Dy. Chief Engineer/TMC/Headquarter/Umra/ Allahabad along with letter dated 797-E/Dy/CE/TMC/ 163/Umra/11 dated 27.06.11 in the Pay Band Rs.4440-7440 Grade Pay Rs.1300 and has accepted the said post on 28.06.2011. As he has completed 120 days of continuous service from 28.6.2011 to 25.10.2011, therefore, he was granted temporary status w.e.f. 26.10.2011. As he is a matriculate, therefore, he entitled to be placed in the pay scale of Rs.5200-20200 with Grade Pay Rs.1800/- (Rs.7000). He

will also be entitled to other benefits such as Pass/PTO/Leave and Medical facilities etc.

4. He was posted at the residence of the Respondent No.2 Shri Prakash Upadhyay. According to the Applicant, Shri Upadhyay extracted work from him as a domestic help from 6.00 O'clock in the morning till 11.00 O'clock in the night. He has also stated that he took leave for 9 days in April, 2012 and 5 days in May, 2012. Later on, he became sick and was admitted in the hospital during the period from 13.6.2012 to 11.7.2012 and he had informed the Respondents about it. But the Assistant Engineer (EMC), vide notice dated 10.07.2012, asked him to explain within 3 days as to why he was absent for the aforesaid periods. In reply, he informed the respondent no.2 that he went on leave after the same was sanctioned for the aforesaid period and it was not a case of absence without sanction. So far as the period of his absence from 14.06.2012, he informed him that he was sick and was admitted in the Railway Hospital on 13.06.2012. He reported for duty on 11.07.2012 before respondent no.2 with the Sick and Fitness Certificates. However, respondent no.2 did not allow him to join his duties on 12.07.2012 as well as 13.07.2012, either in his office or at his residence stating that he was not fit for joining duty although he had the

fitness certificate issued by the Railway doctor (Annexure A-5). The applicant, therefore, submitted an appeal on to the General Manager on 14.07.2012 complaining that respondent no.2 wrongfully turned him away from his lawful duty in an unjustified manner despite the fact that he produced the Sick and Fitness Certificate. A copy of the said appeal was also sent to the Chief Personnel Officer, North Central Railway, Allahabad to intervene in the matter and to allow him to join his duty. According to the Applicant, the respondent no.2, realizing his action was wrong, tried to justify his indefensible action and issued the Annexure A-1A letter 23.07.2012 in which he falsely stated that the applicant had been absent without information from 04.04.2012 to 12.04.2012 and again on 25.05.2012 and 26.05.2012, although he had got the leave sanctioned for the aforesaid period. Further, the respondent no.2 falsely stated that the Applicant gets headache quite often and on 12.06.2012, he fell down and he had to be sent for treatment to the Railway Hospital and after discharge from hospital, he again fell ill. According to the Applicant, those allegations made by Respondent No.2 were not at all true but they were concocted. In any case, according to the applicant, he could not have been turned away from his duty without giving him an opportunity for

being heard and without following the procedure for holding the inquiry as per Rules contained in Railway Servant (Discipline & Appeal) Rules, 1968. The Applicant further contended that even after more than 2 months, his aforesaid appeal to the General Manager has also not been considered. Therefore, he approached the APO who signed the Annexure A-3 and the Annexure A-2 orders dated 09.01.2012 and 27.06.2011 appointing him as TADK and granting him the Temporary Status, to intervene in the matter but he expressed his inability to do so.

5. The applicant has, therefore, filed the instant Original Application seeking the following relief(s):-

- “(i) That this Hon’ble Tribunal may graciously be pleased to allow this Application and quash the impugned orders dated 23.07.2012 and 30.07.2012;*
- (ii) That this Hon’ble Tribunal may be graciously pleased to direct the respondents to reinstate the applicant with all consequential benefits including back wages;*
- (iii) That this Hon’ble Tribunal may be further pleased to grant any other or further relief which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.”*

6. In support of her contention, learned counsel for the applicant relied upon Tribunal’s order passed in an identical matter i.e. OA No. 2867/2002 wherein similar issue was involved, which was allowed vide order dated 24.11.2005 with direction to the respondents

to reinstate him in service with back wages. The respondents challenged the aforesaid order of the Tribunal before the High Court of Delhi by way of WP(C) No.3263/2006, which was dismissed vide order dated 08.03.2006.

7. The learned counsel has also relied upon a similar judgment of the Delhi High Court in W.P. (C) 6070/2006 - **Lakhi Ram Vs. U.O.I. & Others** decided on 5.10.2007.

The relevant part of the said judgment reads as under:-

“8. It is not in dispute that upon the grant of temporary status the petitioner acquired the right of being dealt with under the Discipline and Appeal Rules of the Railways. Therefore, if it is held that the order of termination is stigmatic and therefore punitive, and not one of termination simplicitor, it would follow that the order of termination is bad since, admittedly, no departmental enquiry has preceded the passing of the said order of termination. It would also be in violation of the principles of natural justice.

“9. From the order of termination passed in the present case it is apparent that the respondent did accuse the petitioner of not only unsatisfactory work but also unsatisfactory behaviour. Accusation also is that there was no improvement in the work and behaviour of the petitioner despite verbal and written warnings given on various occasions on 10.5.2004, 25.8.2004 and 27.1.2005. Two of these warnings have been placed on record and they are issued in Hindi in Devanagiri script and the petitioner has filed English translations of the same. On perusal of the termination order and the warning letters in the language in which they were passed, it transpires that the translations are not accurate and therefore do not give a true and complete picture. We have, therefore, relied on the actual language used in the order and the other communications...”

8. The Tribunal, after having gone through the pleadings on record, taking into consideration the judicial

pronouncement on the subject and hearing the learned counsel on either side, allowed the OA vide order dated 19.07.2013. The relevant portion of the order reads thus:-

“14. Now on the merit of the case. Admittedly, the Applicant is a TADK who attained temporary status w.e.f. 26.10.2011. Therefore, the Respondents are duty bound to hold an enquiry against him in accordance with the existing rules and instructions as applicable to employees with temporary status before his service was terminated. In terms of Railway Board’s letter No.803E/1/Pt.X.B-4 issued in January, 1995, “persons who has attained temporary status cannot be discharged from service without applying full procedure as described in the D&A Rules”. Admittedly, the Respondents, vide their impugned order dated 23.7.2012, terminated the service of the Applicant without following the aforesaid Rules. Therefore, not only the said but the 2nd impugned order dated 30.07.2012 directing the Applicant to surrender the Railway Pass issued to him cannot be sustained.

15. We, therefore, allow this OA. Consequently, we quash and set aside the impugned orders dated 23.07.2012 and 30.07.2012. As in the case of Lakhi Ram (supra) [W.P.(C) No.6070/2006] decided by the Hon’ble High Court of Delhi on 05.10.2007, we direct the Respondents to reinstate the Applicant herein also in service as TADK with temporary status immediately on production of a certified copy of this order and to allow him to join duty with all consequential benefits except pay and allowances from 23.07.2012 to the date of reporting for duty on the basis of this order. In case, the Respondents fail to do so, the Applicant will be entitled for pay and allowances from that date. In the facts and circumstances of the case, he is also entitled for the cost of this litigation amounting to Rs.5000/- (Rupees Five Thousand only). However, the Respondents are at liberty to proceed against the Applicant in terms of Railway Servants (Discipline and Appeal) Rules, if so advised.”

9. Aggrieved, the respondents filed Review Application bearing RA No.150/2013 seeking review of the Tribunal’s order dated 19.07.2013 on the ground that this Tribunal had come to the conclusion that the applicant had attained

temporary status after completion of 120 days of service and as a consequence of that had come within the purview of Discipline & Appeal Rules. Consequently, he could not have been terminated without following the procedure prescribed in the aforesaid rules. However, learned counsel stated that a Full Bench of this Tribunal in the case of ***Shyam Sunder vs. Union of India*** [OA No.896/1995), considered the similar issue and held that *‘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’*. It is also held therein that *‘the question whether for want of retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947, the termination of the service of a substitute Bungalow Peon/Khallasi, who has, acquired temporary status, is bad or illegal, is beyond the scope and jurisdiction of this Tribunal..’* Learned counsel for the respondents further submitted that the above decision could not be brought to the notice of the Tribunal at the time of hearing of the present OA and, therefore, the Tribunal came to an erroneous conclusion against the findings of the Full Bench.

10. The Tribunal, after considering the Full Bench decision, relied upon by the respondents, recalled its

earlier order and restored the OA to its original number vide order dated 24.05.2016. Hence, the instant OA was re-heard and reserved on 28.02.2018.

11. Apart from the decision of Full Bench in ***Shyam Sunder vs. Union of India*** (supra, learned counsel for the respondents has relied upon the decision of coordinate Bench of this Tribunal in ***Manish Yadav vs. Union of India & Ors.*** [OA No.2283/2013 decided on 29.05.2015] and argued that the Tribunal relying upon the Full Bench decision in ***Shyam Sunder vs. Union of India*** (supra), dismissed the OA and, therefore, on the same terms, the instant OA also deserves to be dismissed.

12. At this juncture, learned counsel for the applicant submitted that the decision of Full Bench in ***Shyam Sunder vs. Union of India*** (supra), relied upon by the respondents by virtue of which the Review Application preferred by them was allowed and the OA was restored, has been discussed by another Full Bench of the Tribunal at Ahmedabad in case of ***Shri Suresh Bhagwansing Sainee vs. Union of India*** [OA No.671/2004 decided on 03.09.2008]. It is seen that in OA No.671/2004, the applicant was engaged as a substitute Bungalow Khalasi with Project Manager Railway Electrification, Surat and

posted to work as Bungalow Khalasi under him against existing vacancies in URJE Project with immediate effect. The GM (P) CORE/ALD had issued a policy circular No.E/O/38/Project dated 21.04.2003 in this regard. The applicant had approached the Tribunal against his apprehended termination and during the pendency of the OA, he was served with the order dated 28.11.2004 terminating his service on the grounds of unauthorized absence. The respondents amongst others have relied on the Full Bench decision of the Principal Bench in the case of ***Shyam Sunder vs. Union of India*** (supra) in support of their contentions that the services of even those Bungalow Khalasi, who have acquired temporary status, can be terminated on account of unsatisfactory work without holding a departmental enquiry. Division Bench of this Tribunal at Ahmedabad referred the following three questions to the Full Bench:-

- “(i) *Whether the General Manager in exercise of power conferred under Rule 124 of IREC can issue instructions overriding the orders of Railway Board, though not issued in exercise of powers conferred under Rule 123 of IREC;*
- (ii). *If the answer to above question is in negative is the order issued by General Manager CORE bad in law being in violation of provisions for appointment of substitutes only in the circumstances mentioned therein and not for a period of three years;*
- (iii) *Whether the services of substitute Bungalow Peon, who had acquired temporary status, can be terminated by a stigmatic order without holding departmental enquiry?”*

13. The Full Bench, after considering several judicial pronouncements of higher courts, was of the opinion that the Full Bench decision in case of **Shyam Sunder vs. Union of India** (supra) is not applicable where the service of a substitute Bungalow Peon, who had acquired temporary status, are sought to be terminated by a stigmatic order and answered accordingly. However, the Full Bench did not feel appropriate to refer the matter back to the Division Bench, rather heard the same on merit as well. The Full Bench having heard the parties at length allowed the same vide order dated 03.09.2008. The operative portion of the order reads as under:-

“18. The respondents have brought on record the application submitted by the applicant and taken us through the declaration given by him. The offer dated 08.04.2004 contains a number of conditions including (a) that his services are absolutely temporary and can be terminated by 14 days notice. His services can be terminated after notice in case of acts of indiscipline/misconduct. Condition 1(d) of Office Order No.30/04 dated 15.04.2004 appointing him refers to conferment of temporary status after four months of continuous service and making him eligible for wages and increments like other substitutes. His services were terminated vide order dated 28.11.20104. This order refers to Policy of 2003, Office Order dated 30/2004 appointing the applicant and noting at page 17 of the Project Manager. The relevant part of the order reads:-

“But you have not fully followed the terms and conditions of your employment and have unauthorizedly abstained yourself from 08.10.2004.”

*19. If we follow the principles laid down in **Lakhi Ram** (supra) the order is stigmatic. We accordingly quash and set aside the said order. He should be reinstated in service forthwith. He will be granted continuity of service for purposes of seniority and*

pension. Back wages to the extent of 50% awarded. Costs payable by the respondents quantified at Rupees Two Thousand only. We give liberty to the Respondents to proceed against the applicant in terms of a properly constituted charge sheet, if they so desire.”

14. It is also seen that the above decision of Full Bench was challenged by the respondents before the High Court of Gujarat at Ahmedabad by way of Special Civil Application No.1505/2009 which was dismissed vide order dated 29.07.2013. The relevant part of this order is extracted below:-

“...It appears that the order of the Full Bench of the Tribunal has been challenged by the petitioners in this writ petition and in compliance with the order passed by this Court dated 16th February, 2009 in the present writ petition, respondent was permitted to join his duty on 13th April, 2009 and he is working as such.

For the aforesaid reason, we do not find any merits in the writ petition. This writ petition fails and the same is dismissed accordingly. Rule is discharged. No order as to costs.”

The wording of this order makes it evident that as the respondents in compliance of the Hon’ble High Court’s order dated 16th February, 2009 permitted the applicant to join his duty on 13th April, 2009, therefore, in a way, it may be said that the Hon’ble High Court had dismissed the Writ Petition without discussing the merits of the case.

15. The decision of Full Bench of Ahmedabad in ***Shri Suresh Bhagwansing Sainee vs. Union of India*** (supra) wherein all the relied upon decisions on either side were

discussed, reveals that first two questions were not addressed being academic in nature. However, the third question as to whether the services of substitute Bungalow Peon/Khallasi, who had acquired temporary status, cannot be terminated by a stigmatic order without holding departmental enquiry was answered in the following terms:-

“We are accordingly of the view that the Full Bench decision in case of Shyam Sunder is not applicable where the service of a substitute Bungalow Peon, who had acquired temporary status, are sought to be terminated by a stigmatic order. We answer the reference accordingly.”

16. Now, what we have to see in this case is that whether the order dated 23.07.2012 vide which the applicant has been discharged from service is a stigmatic one or not. Before we start examining this issue, it is necessary to reproduce the relevant contents of the appointment letter of the applicant, which reads thus:-

“श्री अनूप कुमार पुत्र श्री राधा किशोर को वरिष्ठ मंडल चिकित्सा अधिकारी, केंद्रीय चिकित्सालय, उत्तर मध्य रेलवे, इलाहाबाद द्वारा बी-२ वर्ग में फिट मेंमों क्रमांक 287978 दिनांक 21.06 .2011 द्वारा उपयुक्त घोषित किये जाने पर श्री प्रकाश उपाध्याय, उप मुख्या इंजीनियर/टीएम्सी/मुख्या./उमरे/इलाहाबाद के साथ एवजी टीएडीके वेतनमान रु 4440 -7440 जी पी रु 1300 के रिक्त पद के विरुद्ध नियुक्त किया जाता है | यह पद वर्कचार्ज है | जिसकी करेंसी दि. 30 .06 .२०११ तक की है | इनकी एवजी टीएडीके के पद पर नियुक्ति विशुद्ध कौंट्राक्टुअल बेसिस पर इस कार्यालय द्वारा जारी टीएडीके की पालिसी संख्या 797 -ई/टीएडीके/ट्रांसफर/एनसीआर /पार्ट-2 दिनांक 03.07 .2009 के अनुसार अधिशोषित होगी |

श्री अनूप कुमार पुत्र श्री राधा किशोर एवजी टीएडीके को इस शर्त के साथ भी नियुक्त किया जाता है कि यदि इनका कार्य असंतोषजनक या अयोग्य पाया जाता है या संबंध अधिकारी स्थान्तरण पर चले जाते हैं और

टीएडीके को अपने साथ नहीं ले जाते हैं तो इनकी रेल सेवा समाप्त समझी जायेगी। इनका कार्यकाल छः माह के अन्तरकाल पर अधिकारी द्वारा दिये गये संतोषजनक कार्य रिपोर्ट पर आधारित होगा ।

उपरोक्त सभी परिस्थितियों में रेल सेवा से हटा दिये जाने पर श्री अनूप कुमार पुत्र श्री राधा किशोर एवजी टीएडीके वर्ग /श्रेणी 'घ' एवं किसी भी वैकल्पिक पद पर नियुक्ति के हकदार या दावेदार नहीं होंगे ।”

The termination order reads as under:-

“आप दिनांक 28.06.11 से टीएडीके के पद पर कार्यरत हैं । परन्तु अप्रैल -12 से आपका स्वस्थ्य अधिकांशत ठीक नहीं रहा जिसके कारण आप दिनांक ०४.०४.१२ से १२.४.१२, दिनांक २२.५.१२ से २६.५.१२ तक लगातार कार्य से अनुपस्थित रहे । परन्तु इधर जून महीने से आपको अक्सर चक्कर आकर गिरने की शिकायत रही एव दिनांक १२.६.१२ को पुनः चक्कर खा कर गिर जाने से अधोहस्ताक्षरी ने आपको रेलवे अस्पताल, इलाहाबाद में इलाज के लिए भेजा । वहां से वापस आप अपने घर गये जहाँ आपकी तबियत और खराब को गयी आप ने अपने पत्र में जैसा कि कई डॉक्टर की रिपोर्ट में भी लिखा है चक्कर आकर गिरने, अत्यधिक रक्तचाप होने व् हार्ट में सूजन होने की बात कही है । इन सभी कारणों से आप दिनांक १३.०६.१२ से ११.७.१२ तक अनुपस्थित रहे एव दिनांक ११.७.१२ को आपने एक साथ सिक फिट प्रमाण पत्र जमा किया परन्तु आपकी स्थिति ऐसी नहीं थी कि आपसे टीएडीके का कार्य कराया जा सके । इसके कारण आपको कार्य पर वापस नहीं लिया जा सका ।

आपको यह बताना आवश्यक है कि आपको अक्सर बुखार आने, चक्कर खा कर गिरने व् उच्च रक्तचाप के कारण कहीं भी आपकी दुर्घटना ग्रस्त होने की सम्भावना बनी रहेगी । अतः आप शारीरिक अस्वस्थता के आधार पर टीएडीके कार्य करने हेतु उपयुक्त नहीं माने जा सकते हैं।

टीएडीके की पालिसी के अनुसार आपकी सेवा संतोषजनक न होने के कारण आपको टीएडीके के कार्य पर वापस नहीं रखा जा सकता है अतः आपकी सेवा तत्काल प्रभाव से स्वस्थ्य ठीक ना होने के आधार पर अयोग्य मानते हुए समाप्त की जाती है ।”[Emphasis added]

17. At the time of oral submissions, the learned counsel for the applicant drew our attention to the expression ‘संतोषजनक न होने के कारण’ in the termination order and argued that such an expression is stigmatic.

18. It is an admitted position that the applicant was not keeping well and, therefore, remained absent from duty on various occasions in the months of April and May, 2012 without any timely information. It is also an admitted position that from the month of June, 2012 the applicant started feeling giddiness and on 12.06.2012 he fainted and fell down. Resultantly, he was sent to Railway Hospital, Allahabad by the concerned officer. After discharge from the hospital, the concerned doctor opined that the applicant was suffering from high blood pressure, giddiness and swelling in heart because of which he remained absent from 13.06.2012 to 11.07.2012. However, even on 11.07.2012 when the applicant came to office with medical fitness certificate to join his duties, he was not in a position to perform his duties because of which he was not allowed to join. It is also a fact that due to the ailment being suffered by the applicant, there was every likelihood of his falling or meeting with an accident and, therefore, he was not fit for the job.

19. Whether the impugned order of discharge is stigmatic or not has to be considered taking the order as a whole, in its totality and not in piece meal or picking a fraction of a sentence. Admittedly, the termination order essentially describes the various phases of illness of the applicant and

eventually states that on account of his illness, his work has rendered unsatisfactory. In our view, such an expression cannot be deemed to be stigmatic. If seen holistically, the applicant's termination has been effected on account of his keeping indifferent health to which the applicant does not object though he does not agree with each specific detail of indisposition given by the respondents. However, he has not denied that he was not keeping well or has not asserted that he had an excellent health throughout his employment with the respondents. In our considered view, such an order cannot be characterized as 'stigmatic' and, therefore, the argument of the applicant that his case is fully covered by the Full Bench decision of Ahmedabad Bench of this Tribunal in ***Shri Suresh Bhagwansing Sainee vs. Union of India*** (supra) is not tenable.

20. Given these facts, it is apparent that the applicant was discharged from service only for want of keeping satisfactory health. Hence, it cannot be assumed that his services have been dispensed with by passing a stigmatic order.

21. In view of our above discussion, we are of the view that the Full Bench decision of Ahmedabad Bench in ***Shri Suresh Bhagwansing Sainee vs. Union of India*** (supra)

is distinguishable to the extent that had the applicant been discharged from service on the ground of stigmatic order, he would have been ordered to be reinstated. But that is not the case here. Therefore, we are of the considered view that the above decision of the Full Bench is not applicable to the present case as we find no infirmity in the impugned order dated 23.07.2012 passed by the respondents.

22. In view of the facts and circumstances of the case, we have no hesitation in dismissing the OA, which is accordingly dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/Ahuja/