

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.1275 of 2014

**Order Reserved on: 11.09.2018
Order pronounced on: 17.09.2018**

Between:

A. Ram Babu, Aged 21 years, S/o. A. Uppalaiah,
Ex. Substitute Bungalow Peon, SC Rly,
H. No. 2-20-3/166/A, Anand Nagar colony,
Uppal, Hyderabad.

... Applicant

And

UOI, rep. by its

1. The General Manager, South Central Railway,
3rd Floor, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer, South Central Railway,
4th Floor, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager,
Sanchalan Bhavan, Secunderabad Division,
Secunderabad.
4. The Senior Divisional Personnel Officer,
Sanchalan Bhavan, Secunderabad Division,
Secunderabad.
5. The Sr. Divisional Material Manager,
Sanchalan Bhavan, Secunderabad Division,
Secunderabad.

... Respondents

Counsel for the Applicant ... Mr. G.S. Rao
Counsel for the Respondents ... Mrs. Vijaya Sagi, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... *Member (Admn.)*
Hon'ble Mr. Swarup Kumar Mishra ... *Member (Judl.)*

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The OA is filed against the illegal termination of the applicant by the 4th respondent vide letter no SCR/P-SC/211(a)-E-ADMN/B.Peons dt. 20.11.2013.

3. Brief facts are that the applicant joined on 28.1.2013 as substitute Bungalow peon on being appointed to the post with due approval of the General Manager. He reported to the 3rd respondent on 28.1.2013 and worked without any remark upto 6/10/2013. After completing 240 days of continuous service, applicant represented for temporary status to the Chief Office Supdt (G) — Chief (OS/G) vide lr dt 1.10.2013. On making the application the applicant was informally advised by the Chief OS /G not to report for duty to the bungalow any more. In response the applicant vide letter dt 8.10.2013 informed the Chief (OS/G) that he will not make any representation hereinafter and that he be allowed to join duty. The applicant followed it up by another representation dt 4.11.2013 to 3rd respondent informing that he was told by Chief OS/G not to report to duty from 7.10.2013 and that he was marked as absent from 7.10.2013 to 4.11.2013 in the muster roll. In response the 5th respondent issued a show cause notice dt 6.11.2013 for unauthorized absence. Applicant denied the charge vide his letter dt 11.11.2013 and based on the same the 5th respondent asked the 4th respondent to take further action in the matter vide lr dt 19.11.2013. Accordingly the 4th respondent issued show cause notice and termination orders vide the same office memorandum dt 20.11.2013 without giving reasonable opportunity to explain his version in regard to the unauthorized absence. Aggrieved by the termination orders the present OA has been filed.

Applicant contends that though he worked from 28/1/2013 to 6/10/2013 without any complaint the whole problem has emerged the moment he made a representation for granting of temporary status. From 7/10/2013 onwards he was not allowed for duty and on representing to the 3rd respondent about the same he was issued show cause notice alleging unauthorized absence and terminated him from service without giving reasonable opportunity to defend himself. The

applicant contends that since he has completed 240 days of continuous service he is deemed to have attained temporary status as per para 2003 and para 2005 of IREM and therefore the rights and privileges of temporary employees are automatically extended to him as per CPO/SC 1r dt 30.1.2004. The applicant quoted many judgments supporting his cause. Further, the applicant contends that the order of termination is against rule (2) of Railway Servants (D&A) Rules 1968 and against Articles 311 (1) & (2) of the Constitution of India and also the Principles of Natural Justice were violated.

4. The respondents respond by stating that the applicant who is a substitute bungalow peon was on unauthorized absence from 7.10.2013 onwards and that a show cause notice was issued as to why his services should not be terminated for the same on 5.11.2013 by the 5th respondent. Treating the reply of the applicant as violative of discipline, the 5th respondent informed the applicant vide letter dt 19.11.2013 that the 4th respondent was asked to take further action in the matter. Accordingly the 4th respondent gave show cause notice on 20.11.2013 and terminated his services by paying 14 days wages in lieu of notice period. Further the respondents admit that the applicant did complete 240 days of continuous service as substitute bungalow peon by 24.9.2013 and that before his case could be processed for temporary status the applicant continued to be on unauthorized absence. The respondents also claim that the PS to the 3rd respondent did counsel the applicant on 7.10.2013, in the presence of his father and a Khalasi Sri M. Venkatesh, and asked him to join duty but he did not. Therefore, the further action in regard to unauthorized absence. Besides the respondents contend that nowhere in his reply to the show cause notice the applicant has mentioned that he was attending duties at the bungalow. The respondents flatly denied that the

applicant was prevented from doing his duties and that even though he attended duty he was marked as absent.

5. Heard the learned counsel and examined the documents presented in detail.

6. The applicant has completed 240 days of continuous service and therefore he is entitled for temporary status as per the appointment letter annexed as A-1. The applicant represented on 1.10.2013 for temporary status which was due to him vide A-5 which the respondents claim has not been received. Any employee would be too eager to rise up in career and hence would always make all out effort to realize what is due to him as per rules. Therefore applicant would have made a representation but what happened to it should be known to the respondent themselves. That apart, the notice issued on 6.11.2013 by the 5th respondent refers to counselling (R-II dt 5.11.2013) of the applicant, by the P.S to the 3rd respondent, in the presence of the father of the applicant and khalasi Mr M. Venkatesh. Surprisingly the note is signed by Mr M. Venkatesh but not by the applicant or his father testifying that the applicant has been counselled. The same was not given to the applicant confirming such counselling and for record to defend his case. The 2nd respondent vide letter dt 13.7.2006 (A-15) has stated that the temporary status will be given to substitute bungalow peon on completing 240 days of continuous service. The Railway Board vide letter No.E(P&A)1-84/CPC/LE-3 dt 19/23.3.85 has made it clear that temporary railway servants should be afforded an opportunity to show cause under the Discipline and Appeal rules before they are removed from service for unauthorized absence. As per para 1515 of Indian Railway Establishment Manual substitutes should be afforded temporary status completing 120 days

continuous service but was later revised to 240days as per lr dt 13.7.2006 of 2nd respondent.

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.

Further, as per para 1501 of Indian Railway Establishment Manual a temporary railway servant can be terminated only after following the provisions laid down under clause 2 of Article 311 of the Constitution.

1501. (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".

1502. Termination of service and periods of notice.— (1) When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service, if such termination is due to the expiry of the sanction of the post which he holds or the expiry of the officiating vacancy, or to his compulsory retirement due to mental or physical incapacity or to his removal

or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India.

Article 311 (2) of the constitution reads as under:

“ No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed... ”

7. Besides, the Honorable Central Administrative Tribunal, Allahabad Bench in Syed Shamim Ahamd vs UOI and ors, ATJ 1997 (1) CAT/All P-530 (DB) dt 22.11.1996 held that if a substitute completes 6 months service he is deemed to have attained temporary status and is eligible to the rights and privileges admissible to temporary railway servants in terms of Rule 25F of I.D. Act 1947. Even the Hon Apex Court in the case of Miss Sujatha orai vs UOI and ors in 1987 (A) SLR (CT) page 625 has held that

“an applicant acquires a right to the post only as per terms of appointment.”

8. This tribunal too in OA362 of 2006 dt 11.6.2007 in a similar case held that the termination is illegal and directed the respondents to reinstate the applicant. This was upheld by the Honorable High court of A.P in W.P no 16381 of 2007. In one another case of Bungalow peon before this tribunal in O.A no 530 of 2000 ordered that the applicant has temporary status and therefore Railway (D&A) rules apply. This was upheld by Honorable High court of A.P in WP No. 10691 of 2001.

9. Based on the facts discussed above, it is evident that the applicant was appointed as substitute Bungalow peon vide appointment letter dt 28.1.2013. As

per para 1515 of Indian railway establishment manual (IREM) substitutes who have put in four months of service should be afforded the rights and privileges of a temporary railway servant. The applicant has put in 240 days of regular continuous service which satisfies para 1515 of IREM and condition of 240 days in lr dt 13.7.2006 of 2nd respondent for conferring temporary status. A temporary railway servant can be terminated as per clause (2) of Article 311 of the Constitution which states that due inquiry has to be conducted before terminating the services of the govt. servant. The respondents have not conducted the inquiry as envisaged in Article 311(2). Further the judgments cited supra fully cover the case. Principles of Natural justice have not been upheld. Therefore we, in the tribunal, declare the action of the respondents as illegal, arbitrary and violative of rules on the subject. The impugned order cited at para 2 is quashed.

10. Hence, the respondents are directed to consider reinstating the applicant as substitute bungalow peon as on 7.10.2013 fixing his seniority notionally from this date. No back wages need to be paid. However, benefits stated at para 2 of the terms and conditions of appointment letter dt 28.1.2013 be extended to him treating him as being in service from 7.10.2013 but for his termination by the impugned order. Time period allowed for compliance is 90 days from date of receipt of this order.

11. The O.A is accordingly allowed. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 17th day of September, 2018

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