

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00799/2015

Jabalpur, this Thursday, the 3rd day of May, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Krushna Chandra Tripathy S/o Late Shri Ramakant Tripathy Aged about 23 years, Presently working as Substitute Telephone Attendant and Dat Khalasi (Fresh Face) a.k.a. TADK South Eastern Central Railway O/o Chief Security Commissioner Railway Protection Force, South Eastern Central Railway District Bilaspur (Chhattisgarh) PIN Code-495004 Resident of Village –Dhaunchat, Post-Gamundi, Police Station-Bhanjananagar, Tehsil-Ghumusar, District-Ganjam (Odisha) PIN Code 462039
-Applicant

(By Advocate –**Smt.Naushina Ali**)

V e r s u s

1. Union of India,
Through General Manager
South East Central Railway
SECR Zonal Headquarters, Bilaspur
District-Bilaspur (Chhattisgarh) PIN Code-495004 fiduciary

2. Chief Personnel Officer,
Personnel Department, 1st Floor
South East Central Railway
Headquarters Office Bilaspur
District-Bilaspur (Chhattisgarh)
PIN Code 495004

3. Chief Security Commissioner
Railway Protection Force, South East Central Railway
Zonal Headquarters, Bilaspur
District Bilaspur (Chhattisgarh)

PIN Code 495004

4. Shri Munawar Khursheed, Son of Shri M.K. Alam
Aged about 45
Deputy Inspector General/RPF
Ex Chief Security Commissioner
Currently on Study Leave
C/o Chief Security Commissioner
Railway Protection Force
South East Central Railway Zonal
Headquarters Bilaspur
District Bilaspur (C.G.) 495004

- **Respondents**

(By Advocate –**Shri Vivek Verma** for respondents Nos.1 to 3
and **Shri Ajay Kulkarni** for respondent No.4

(Date of reserving the order: 09.11.2017)

ORDER

By Navin Tandon, AM:-

The applicant is aggrieved by withdrawal of order of his engagement as Substitute Telephone Attendant and Dak Khalasi (for short 'TADK').

2. The applicant was engaged by the official respondents and attached with respondent No.4 as substitute TADK vide order dated 21.10.2014 (Annexure A-2). The respondent No.4 proceeded on study leave with effect from 04.08.2015. Vide order dated 10.08.2015 (Annexure A-5) in accordance with Para 10.2 of the Establishment Rule 250/2010, the applicant was directed to report to the Office

Superintendent of Chief Security Commissioner for further duty. The applicant in pursuance of the said order reported for duty and started working as office Peon. However, vide order dated 24.08.2015 (Annexure A-6) the Chief Security Commissioner had withdrawn aforesaid order dated 10.08.2015, for initiating action as per Para 7(i) of the Establishment Rule No.250/2010 as the applicant had not completed one year of continuous service at the time of relinquishment of the charge of respondent no.4. Thereafter, a show cause notice dated 09.09.2015 (Annexure A-9) was served upon the applicant, intimating him that his services shall be terminated with one month's notice to be counted with effect from the date of releasing by the CSC's office i.e. 24.08.2015, and asking him to submit his representation by 23.09.2015. Hence, this Original Application.

3. The applicant has sought for the following reliefs in this Original Application:-

“8.1 This Hon’ble Tribunal be pleased to summon the entire record pertaining to the present case.

8.2 This Hon’ble Tribunal be pleased to quash and set aside the impugned order dated 24.08.2015 (Annexure A/6) whereby the order dated 10.08.2015 (Annexure A/5) has been withdrawn.

8.3 *This Hon'ble Tribunal be pleased to quash and set aside the Show Cause Notice dated 09.09.2015 (Annexure A/9).*

8.4 *This Hon'ble Tribunal be pleased to direct the Respondent Authorities to implement the order dated 10.08.2015 (Annexure A/5) against an already existing vacancy of TADK in the office of respondent No.3.*

8.5 *This Hon'ble Tribunal be pleased to direct the Respondents to treat the period wherein the Applicant is out of engagement as TADK as period spent on duty.*

8.6 *This Hon'ble Tribunal be pleased to direct the Respondents to grant all consequential benefits to the Applicant including salary and other emoluments.*

8.7 *This Hon'ble Tribunal be pleased to Award the cost of this OA*

8.8 *This Hon'ble Tribunal be pleased to Grant any other relief as may be deemed fit and proper by this Hon'ble Tribunal in the facts and circumstances of the present case."*

4. The case of the applicant is that the provisions of para 7(i) of the Establishment Rule No.250/2010 were not applicable to the present case, as the respondent No.4 has not been transferred but is on leave and the provision which deal with the circumstances when an officer is on leave is Para 10.2 of the Establishment Rule 250/2010. However, the Chief Personnel Officer, SECR Bilaspur without application of mind and without considering the representation of the applicant served the impugned show cause notice dated 09.09.2015 whereby the applicant has been called upon to furnish his reply as to why his services be not terminated by applying the provisions of Para

7(i) of the Establishment Rule No.250/2010 as the applicant had not completed one year on the date when the respondent No.4 had relinquished the charge.

5. On the other hand the respondents have stated that the respondent No.4 proceeded on study leave on certain terms and conditions and accordingly relinquished his charge. Shri Ravindra Verma has taken over the charge of the said post vide respondent No.4 on regular measure and not for the time being. The very purpose of posting the applicant as Bungalow Peon to respondent No.4 was defeated and his services were not further required. The applicant had not completed one year service and not allowed by the new officer to continue with him as TADK. The new officer has engaged a fresh TADK under him. Hence the purpose of his engagement as Sub.TADK is defeated and no more exists.

5.1 The respondent No.4 in his reply has submitted that in view of the study leave granted for pursuing LL.B course he successfully completed the 1st year of law course. In the meanwhile vide order dated 06.07.2016 (Annexure R-4/2), he has been appointed as Chief Vigilance Officer in Mahanadi Coalfield Limited Sambalpur on deputation for a period of 3 years from the date of his taking over

charge of the post on or after 28.08.2016, which is extendable for a further period of 2 years. He joined as CVO,MCL on 28.08.2016.

6. Heard the learned counsel of both sides and carefully perused the pleadings of the respective parties and the documents annexed therewith.

7. We may first reproduce the provisions of Paragraphs 7 and 10 of the Establishment Rule 250/2010 as under:

“(7). Transfer of Officers:-An officer of SECR who is permitted to engage an TADK has to continue the same TADK even on his transfer from one unit to another unit within SECR till the TADK is screened for regular absorption and provided a lien after which the officer can propose a fresh face as indicated in para-6 above. If in the new place of posting, the post of the officer does not carry a TADK, then the officer has to leave his existing TADK in the previous unit. The continuity of the TADK in such a situation will be as per the procedure laid in paras-(i) (ii) (iii) below.

In case the officer is transferred to a post outside the jurisdiction of SECR, he has the option of carrying his TADK to his new place of posting provided the existing TADK gives his willingness to go on transfer along with the officer.

In case the officer does not wish to take the existing TADK to the new place of posting, the continuity of the TADK in SECR would be governed by the following conditions:-

- (i) If the TADK has not completed a minimum of one year's continuous service on the date the officer relinquishes his charge in SECR, the services of TADK would be terminated unless some other officer proposes to continue him as his TADK.*
- (ii) If the TADK has completed one year but less than three years' service on the date of relinquishment of the charge by the officer, he would be*

continued as substitute in an appropriate post by the divisions/units till he completes three years of service. On completion of three years' service he will be screened and absorbed against a regular post as per the procedure in para-5 above.

- (iii) If the TADK has completed three years' service and has been screened, he will be posted to the post where his lien is maintained. If he has completed three years, but his screening is yet to be done, the screening should be completed and the TADK should be absorbed against a regular Group-D post.

.....”””

10. Miscellaneous

10.1 Whenever an officer is transferred out of the zone and has not taken the TADK along with him, the TADK should report to the Office Superintendent of the concerned department who maintains attendance. He should in turn direct the candidate to personnel department for further action as given in para-7 above. In case, there is a time lag between the date of relinquishment of the officer and the date on which the Telephone And Dak Khalasi (TADK) reports to the personnel branch, it will be deemed to be unauthorized absence and will not be regularized at any cost. It is the responsibility of the concerned supervisor maintaining the attendance in the department to ensure this.

10.2 The officer proceeding on a long leave/training for more than a month's duration should direct the Telephone And Dak Khalasi (TADK) to report to the concerned supervisor and his services should be utilized in the office till such time the officer comes back from training/leave. This policy issues with the approval of General Manager and any deviation to these instructions will require personal approval of General Manager. These instructions will take effect from 09.12.2010 i.e. from the date of issue of Board's letter regarding revision of educational qualification”.

8. Learned counsel for applicant submitted that since respondent No.4 has proceeded on Study Leave, Para 10.2 of Establishment Rule 250/2010 is applicable.

9. Learned counsel for official respondents submitted that Study Leave is not like any other leave. It is defined under head “Special kinds of leave” in Rule 556, Chapter V of Indian Railway Establishment Code, Volume-I. There are several conditions attached before Study Leave is granted, including execution of Bond. Hence, this can not be considered as normal leave granted to an officer.

9.1 He also cited a case where an officer proceeded on 184 Child Care Leave. The services of the TADK attached to the officer were terminated.

9.2 Further, it was mentioned in the appointment letter that his services are liable to be terminated without assigning any reason before completion of three years’ satisfactory service. However, one month’s notice or one month’s pay in lieu of notice may be given in such cases. This condition was accepted by the applicant.

9.3 Learned counsel for official respondents averred that the case of the applicant is covered by Para 7(i) of Establishment Rule 250/2010.

10. Respondent No.4 has agreed with the stand taken by official respondents that Para 7(i) of Establishment Rule 250/2010 is applicable in the instant case.

11. In the instant case we find that the respondent No.4 was granted Study Leave to complete LL.B course of 3 years and relinquished the charge on 04.08.2015 to Shri Ravindra Vema. At the time of relinquishing the charge by the respondent No.4, the applicant had not completed one year of service and the new officer had not allowed the applicant to continue with him as a TADK. The new officer has already engaged a fresh TADK under him.

12. In the circumstances, it is clear that there was very little chance of Respondent No.4 coming back to South East Central Railway, where he was working as Chief Security Commissioner prior to proceeding on Study Leave.

12.1 Learned counsel for the official respondents has successfully demonstrated that Study Leave is not like normal leave, which is referred to in the Establishment Rule. Hence, application of Para 10.2

of the Establishment Rule 250/2010 in the instant case does not make sense.

13. Having faced with such a situation the official respondents have rightly issued the show cause notice of termination of service to the applicant after considering the provisions of both Para 10(i) and 7 (i) of the Establishment Rule 250/2010, as reproduced hereinabove, and we do not find any illegality or irregularity in their action.

14. Accordingly, we do not find any merit in this Original Application. The same is dismissed. The interim order passed earlier stands vacated. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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