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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01065/2017
M.A. 350/00628/2017

Date of order: 31-07-2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Uttam Kumar Sahoo,
Son of Kamal Kumar Sahoo,
At present residing at 506, O.H. South Side,
Kharagpur, Kharagpur Town,
Paschim Midnapore,
Pin - 721 301.

.. Applicant

- VERSUS -

1. Union of India,
Service through the General Manager,
Department of Railways,
South Eastern Railway,
Garden Reach,
Kolkata - 700 043.
2. The General Manager,
Department of Railways,
South Eastern Railway,
Garden Reach,
Kolkata - 700-043.
3. The Chief Personnel Officer (Rectt.),
South Eastern Railway,
Garden Reach,
Kolkata - 700 043.
4. The Senior Divisional Mechanical Engineer,
South Eastern Railway,
Adra,
District - Purulia,
Pin - 723 121.
5. The Senior Divisional Personnel Officer,
South Eastern Railway,
Adra,
District - Purulia,
Pin - 723 121.

.. Respondents

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For the Applicant : Mr. A.K. Bera, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has come up in third stage litigation as a sequel to O.A.s No. 350/00527/2015 & 350/01833/2015 respectively. In particular, the following relief has been sought for in the instant O.A.:-

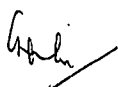
"Pass a mandatory order directing the Respondents to consider the prayer of the applicant afresh for re-instatement bearing in mind that termination letter was issued due to false criminal case against the applicant which was punitive in nature and ultimately proved false and acquittal order was also obtained by the applicant treating his absence in duty as on duty till the date of re-instatement after set aside the impugned order dated 06.04.2016 passed by the appellate authority."

2. Heard, Ld. Counsel for both sides examined pleadings and supporting documents.

3. M.A. No. 628 of 2017 arising out of O.A. No. 1065.2017 has been filed for condonation of delay of about 15 months on the ground that the applicant was awaiting the response of the Respondents to references from the Union. The delay, not being of a significant period, is condoned and the M.A. is disposed of accordingly.

4. On behalf of the applicant, his Ld. Counsel submitted that the applicant, having received his appointment letter on 21.12.2010, had joined his services on the same date and that, a termination letter was issued on 12/13.05.2011 stating that his services were non-satisfactory on grounds of non-devotion to duty and carelessness.

That, a false theft case was initiated deliberately and intentionally to penalise the applicant but the said criminal case No. 114 of 2011 was disposed



of on 8.9.2014 and the applicant was exonerated from the charges levelled against him.

That, after acquittal in the said criminal case, the applicant submitted his prayer dated 8.10.2014 for reinstatement and that, upon being aggrieved with non-consideration of his prayer for reinstatement, the applicant had moved the Tribunal and the Tribunal passed an order dated 1.6.2015 directing the respondent authorities to consider the said application and to pass a reasoned and speaking order which was issued by the respondents on 3.9.2015 rejecting the applicant's prayer for re-instatement.

That, the applicant filed another original application challenging the said speaking order and the Tribunal disposed of the same on 4.2.2016 directing the appellate authority to dispose of the appeal wherein the applicant had prayed for re-instatement.

That, the appellate authority having denied his prayer for re-instatement by order dated 6.4.2016, the applicant, being aggrieved, has approached the Tribunal with the instant Original Application.

5. The grounds advanced by the applicant in support of his prayer in the instant O.A. are that:

- (i) No show-cause notice had been issued to the applicant prior to his termination.
- (ii) That, the termination orders are not "termination simplicitor."
- (iii) That, principles of natural justice had been violated.
- (iv) That, no disciplinary proceedings was drawn up by the respondent authorities against the applicant.

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(v) That, the applicant was unable to pay money demanded by the officer with whom he was attached for continuation of his services consequent to which his services were terminated.

(vi) That, the provisions of Railway Civil Service Rules, 1965 have been violated and the order of termination is arbitrary, illegal.

(vii) And that his acquittal from the criminal case vindicates his right for reinstatement.

6. Per contra, the respondents have argued as follows:-

That the applicant was engaged as a Substitute Bungalow Peon to serve the Sr. DME/Adra in his Bungalow on 21.12.2010 but his performance was not at all satisfactory. On 18.3.2011, when Sr. DME/Adra went outside Adra for some official work, the applicant had been directed to be very careful regarding safety and security of the Bungalow. An evidence of theft, however, occurred in the Bungalow due to applicant's carelessness and negligence. The matter was reported to the local police station and the police authority filed a criminal case in the Court of Addl. Chief Judicial Magistrate, Purulia. The administration also issued a show-cause notice to the applicant on 28.4.2011 and finally he was removed from his capacity as Bungalow Peon on 12.5.2011. The applicant had earlier filed an O.A. being No. 350/00527/2015 on the same cause of action and the said O.A. was disposed of by the Tribunal on 1.6.2015 with a direction upon the respondents to dispose of the pending representation of the applicant dated 4.10.2014. The order passed by the Hon'ble Tribunal was complied with by issuing a reasoned and speaking order on 3.9.2015 by General Manager, S.E. Railway. The applicant thereafter moved this Tribunal by filing another O.A. No. 350/00833/2015 which was also disposed of by the Tribunal on 4.2.2016 directing the respondents to dispose of the appeal of the applicant within a period of three months from the date of production of the certified copy of the order. The order was complied with by the Appellate authority i.e. Additional Divisional

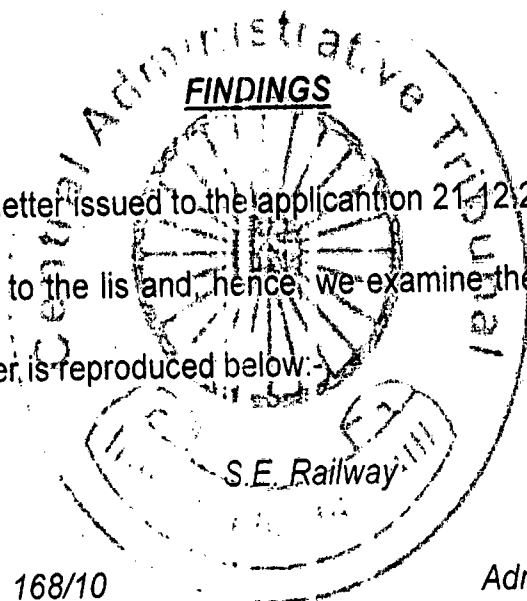
Railway Manager, Adra vide his order dated 6.4.2016. Being further aggrieved, the applicant has moved this instant original application which, according to the respondents, is devoid of merit.

ISSUE

7. The issues to be resolved are:-

- (i) whether the order so impugned in the instant O.A., namely, that of the appellate authority dated 6.4.2016 (Annexure 'J' to the O.A.) is bad in law and deserves to be set aside.
- (ii) Whether the applicant is entitled to reinstatement as pleaded in the instant O.A.

8. The appointment letter issued to the applicant on 21.12.2010 (Annexure 'A' to the O.A.) is germane to the lis and hence, we examine the same in detail. The said appointment letter is reproduced below:-



Office Order No. 168/10

Adra, Dt.: 21.12.2010

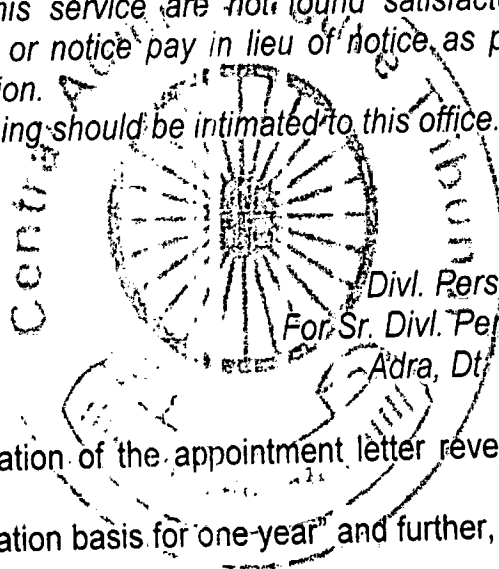
Sanction of the General Manager, S.E. Rly./GRC is hereby communicated towards the engagement of Sri Uttam Kumar Sahoo, S/o. Sri Kamal Kumar Sahoo as substitute bungalow peon under Sr. DME/ADA, in scale PB-IS-4440-7440+G.P. 1300/- at stage of Rs. 4440/- on probation basis for one year and only after completion of satisfactory service his tenure shall be extended. His service as substitute bungalow peon is attached to the post of Sr. DME/ADA under Sr. S. Bairva vide CPO/GRC's No. P/Rectt./Cl. IV/B. Peon/ADA/297/670 dt. 07.12.2010.

NOTE

1. The date of birth of Sri Uttam Kumar Sahoo is 25.7.1989 and educational qualification is Class-VIII passed. He has passed Medical Examination in A2 and below vide Sr. DMO/ADA's certificate No. 617101 dt, 14.12.10. His identification mark are (i) One black mole on left side on chest (ii) One round cut mark on right leg 6" above the ankle joint.
2. All the particulars as entered by the candidate in support of his qualification and date of birth, caste etc. if found to be false, later on his service shall be liable to be terminated without assigning any reasons.

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3. The engagement of bungalow peon is coterminus along with the officer to whom he has been attached/posted.
4. That the service of the bungalow peon can be terminated at any time without assigning any reason by following extant rules.
5. On completion of three years of continuous/aggregate and satisfactory service, the bungalow peon will be screened and given paper lien against permanent cadre of Gr. D vacancies in field units including safety categories like Gangman, Gatekeeper, Porters, Helpers etc. but shall continue to work as bungalow peon till five years under whom he has been absorbed. If any officer is transferred to a different Rly. Organization outside of the administrative control of S.E. Railway and if his bungalow peon has completed three years continuous service and has been screened and given paper line his service can be regularized with the personal approval of CPO. The service of bungalow peon if have not completed 120 days of continuous/aggregate service should be terminated as per rules. In the event of transfer outside S.E. Railway of the officer who engaged him and if he does not go with the officer to the new assignment in the new railway in respect of those who have completed more than 120 days and upto three years provisions as at 3(d) of CPO/GRC's letter dt. 09.06.2010 will apply.
6. The bungalow peon will be treated as on probation for a period of one year from the date of his engagement during which his service may be terminated, if his service are not found satisfactory and after giving required notice or notice pay in lieu of notice as per existing provision before termination.
7. The date of joining should be intimated to this office.



Detailed examination of the appointment letter reveals that the applicant was engaged "on probation basis for one year" and further, Clause (4) of the said appointment letter states that the service of the Bungalow Peon can be terminated at any time without assigning any reason by following extant rules. Clause (6) of the said appointment letter mandated that the Bungalow Peon will be treated as on probation for a period of one year from the date of his engagement during which his service may be terminated, if his service are not found satisfactory and after giving required notice or notice pay in lieu of notice as per existing provision before termination.

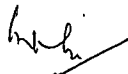
Hence, when the respondent authorities had engaged the applicant, three conditions were made absolutely clear, namely,

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- (a) That the applicant was engaged as a Substitute Bungalow Peon on probation basis for a year;
- (b) That, his services could be terminated at any time without assigning any reason and;
- (c) That, he will be treated as on probation for a period of one year from the date of his engagement during the said period his service could be terminated, if his service was not found satisfactory and after giving required notice or notice pay in lieu of notice as per existing provision before termination.

Next, we refer to the termination notice dated 13/13-5-2011 wherefrom it is gleaned that the applicant had been provided an opportunity for representing on his performance and for extension of his service vide respondents' registered letter No. RLAD B 5027 dtd. 29.4.2011. The notice referred to by the respondent authorities has not been annexed in the pleadings either by the applicant or by the respondents. The applicant, however, in his representation dated 5.11.2012 has denied any knowledge of the said notice dated 29.4.2011 and has continuously maintained that natural justice was denied to by him by not issuing him a show-cause notice to the applicant prior to the termination. If such notice was indeed received by the applicant there was nothing to prevent the applicant from submitting a representation against the said termination notice and to establish that he was not guilty of non-devotion and carelessness with regard to his duties as reportedly alleged in the said notice. The respondents are categorical in their assertion, however, that no reply was preferred by the applicant to such notice.

The applicant was terminated on 12/13-5-2011 but he chose to reply through his undated letter to the said termination order which was, however, received by the respondents only on 5.11.2012. Hence, we have a case of an applicant, who first denies having received the initial notice prior to termination and thereafter takes six months to respond to the termination order.



The order of termination is reproduced below for better understanding:-

SOUTH EASTERN RAILWAY

**(Registered by Post with A/D)
Office of the
Sr. Divl. Mech. Engineer/ADRA
Date:12/13.5.2011**

No. M/OS/Mech/ADRA/1404

To
Shri Uttam Kumar Sahoo
S/o Karnal Kumar Sahoo
Qr. No. 316 Unit 'I'
South side near main hospital – Kharagpur
Dist. – Midnapore (WB)

You were engaged as a bungalow peon vide O.O. No. 168/10 dated 21.12.2010 at Bungalow No. O/7 on probation. During your tenure of service as bungalow peon the undersigned is not satisfied with your performance. You are disobedient and not faithful to the work that was given by the undersigned.

On 18.3.2011, while the undersigned was on outstation duty keeping you to look after the Bungalow, the materials from the bungalow were stolen, which itself is proved about of your non-devotion & carelessness of your duty.

In my opinion, because of your carelessness the incident of theft in Bungalow No. o/7 took place on 18.3.2011. So, the undersigned given you an opportunity of making representation for your performance of your work of bungalow peon to extend your service vide registered letter No. RLAD B 5027 dtd. 29.4.2011.

But till date, no representation has been received from your side, thus it is presumed that you have no representation to make in this regard & as you did not complete of three years of continuous satisfactory service of bungalow peon thus your service is terminated as per Office Order 168/10 dated 21.12.2010 note of Sri No. 4.

You are to acknowledge the notice.

Sr. Divl. Mech. Engineer
S.E. Railway/ADRA"

And the response of the applicant to the said termination order issued six months later is a piece of sheer meaningless, misguided piece of literature.

The main contentions in the response is summarized below which, upon analysis shows that nowhere in the said response, the applicant had defended his performance on grounds of diligence, devotion to duty and vigilant care. A simple para-phrasing of his response is as below:-

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- (i) Although the applicant admitted that a theft was committed, he was not involved in the theft;
- (ii) That, there was a profound "tragedy of destruction" in his life forcing him and his family to starve;
- (iii) That, he did "sleep on the night of the theft" but such sleeping on duty was not a mistake but a "hamartia" that led the fortune of his family to starvation.

(It is noted here that "hamartia" refers to a fatal flaw leading to the downfall of a tragic hero, and hence the applicant had admitted his melodramatic lapse).

As little sense can be made out of such garbled malapropism, the response cannot reasonably be said to serve as an objective defence.

Thereafter, the applicant appealed to the General Manager on 8.10.2014 and the CPO of the S.E. Railway praying for reinstatement and challenging his termination on two grounds:

- (i) That it was issued by an incompetent authority, and
- (ii) The plea of non-completion of three years continuous service does not arise in his case as he was appointed on 21.12.2010 and terminated on 13.5.2011.

A speaking order was thereafter issued in compliance to the Tribunal's directions on 1.6.2015 (Annexure 'H' to the O.A.), which concluded as follows:-

" However, the termination of your services was due to carelessness and unsatisfactory performance and not due to any criminal case or arrest consequent upon the theft in the residence of the above officer. Hence, your acquittal has no relevance to the termination of your service which was on account of unsatisfactory performance as brought out in the notice dated 28.4.2011 given to you, to which you did not respond.

In view of the above, and upon due consideration of your application dated 08.10.2014 and the fact that you were under probation, having completed barely five months of service, the undersigned is of the opinion that there is no scope to consider your claim for re-instating you as Bungalow Peon in the office of Sr. DME/Adra or in any other claim for re-instating you as Bungalow Peon in the office of Sr. DME/Adra or in any other office. Hence the same is regretted. This disposes of your representation dated 08.10.2014."

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Being aggrieved, the applicant further approached the Tribunal and upon directions of the Tribunal, this time the appellate authority passed a speaking order on 6.4.2016, which is impugned in the instant O.A.

The orders of the appellate authority which are under challenge, is reproduced below as it deserves to be examined in detail:

SOUTH EASTERN RAILWAY

No. M/565/T/350/01833/2015

Office of the
Divl. Railway Manager
S.E. Railway – Adra
Date: 6th April, 2016

To
Sri Uttam Kumar Sahoo,
S/o Sri Kamal Kumar Sahoo,
Qr. No. 316, Unit – 1,
South Side Near Main Hospital,
Kharagpur,
Dist – Paschim Midnapur,
Pin – 721301.

Sub: ~~Compliance of orders of the Hon'ble CAT/Kolkata in~~
O.A. 350/01833/2015 – Uttam Kumar Sahoo v. UOI &
Ors. Dated 4.2.2016.

Ref: Representation of Shri Uttam Kumar Sahoo forwarded
to HQ dated 20.12.2012.

You have filed the aforesaid O.A. before the Hon'ble CAT/KOL. The matter was disposed on 4.2.2016 by the Hon'ble Tribunal of the O.A. with the directions upon the railway respondents"

" In view of the above, we do not find any material irregularity of illegality in passing of the impugned order. However, it would be appropriate while deciding this petition that the appellate authority be directed to dispose of the appeal of the applicant within a time frame and as such this petition is disposed of finally with a direction that the appellate authority shall dispose of the appeal of Shri Uttam Kumar Sahoo within a period of three months from the date of production of a certified copy of this order. The appellate authority after giving an opportunity of hearing to the petitioner will dispose of the appeal finally and communicate the decision taken to the petitioner.

The O.A. is accordingly, disposed of. No further order is required to be passed in the matter."

In obedience to the Hon'ble Tribunals above judgement/order dt. 04.02.2016, I the undersigned, being the Appellate Authority have carefully examined your representation dated Nil received by this office on

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20.11.2012 along with the full case file meticulously. Opportunity of hearing has also been extended to you to represent your side on the hearing conduct on 22.3.2016.

The engagement was on the basis of application duly recommended by Sr. DME/ADA and with the personal sanction of the GM and your commitment to abide by the rules and regulations for the post of Bungalow Peon.

You are aware that the date of incident on 18.3.2011 while Sr. DME/ADA was on outstation keeping you to look after the Bungalow,. You were remained at Out House of the bungalow and failed to discharge your duty by not remaining vigilance and cautious, which is further established from your personal hearing.

You were engaged as Bungalow Peon under Sr. DME/ADA vide office order No. 168/10 dated 21.12.2010 and took over charge on 21.12.2010. Your service of Bungalow peon was terminated vide Sr. DME/ADA's letter No. M/OS/Mech/ADA/1404 dt. 12/13.5.2011 due to unsatisfactory work in terms of para 5(a) of revised policy issued for B/Peon by CPO/GRC under letter No. P/R & R/CCI IV/Bungalow/Policy/Loose dtd. 9.6.2010 and accordingly as per office order No. 55/2011 dated 13.6.2011 was issued terminating your service.

Further it is observed that you were not completed 120 days continuous / aggregate service before termination.

The appointment of Bungalow peon is co-terminus with that of the officer with whom he/she is engaged. It is also governed by specific rules/regulations as per policy w.e.f. 9-6-2010. As contained in para 5(a) thereof, the appointment of Bungalow peon is on probation for a period of one year from the date of engagement during which services may be terminated if his/her services are not found satisfactory and after giving required notice or pay in lieu of notice as per existing provision before termination.

As already mentioned above, you were engaged on the basis of your application duly recommended by the then, Sr. DME/ADA Shri S. Bairva on 21.12.2010 and with the sanction of the General Manager and it was due to your unsatisfactory performance and carelessness on duty as bungalow Peon that the said officer terminated your services on 12/13.5.2011 i.e. prior to completion of 1 year as per rules with due notice.

The orders of the Additional Chief Judicial Magistrate, Raghunathpur, Dist. Purulia dated 08.09.2014 have also been seen in which three accused persons (which includes you) have been acquitted under Section 248/1 of the Cr. PC. It has been noted by the Hon'ble Additional Chief Judicial Magistrate that prosecution has failed to prove its case beyond reasonable doubt.

In view of the above, and upon due consideration of your application and the fact that you (Sri Uttam kumar Sahoo) were under probation, having completed only five months of services, the undersigned is of the opinion that there is no scope to consider your claim for re-instating you as Bungalow Peon in the office of Sr. DME/ADRA or in any other office, hence the same is regretted.

(Harish Chander)

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*Addl. Divl. Railway Manager
S.E. Rly. – ADRA
&
Appellate Authority"*

The following rationale has been advanced by the appellate authority, in their speaking order:-

The engagement was on the basis of application duly recommended by Sr. DME/ADA and the personal sanction of the GM as well as the applicant's commitment to abide by the rules and regulations for the post of Bungalow Peon.

The applicant was aware that the date of incident, namely, 18.3.2011, while Sr. DME/ADA was outstation after having directed the applicant to look after the Bungalow, the applicant remained at the Out House of the bungalow and failed to discharge his duties by not remaining vigilant and cautious, which was further established from his personal hearing.

The applicant's termination was on the basis of carelessness, unsatisfactory performance and non-devotion of duty to which the applicant failed to provide any satisfactory explanation at any stage. He even admitted that he remained at the Out House of the Bungalow despite instructions to look after the Bungalow of the Officer to whom he was attached. Hence, the applicant failed to defend allegations on lack of devotion to duties and vigilant caretaking.

According to the respondents, show cause notice was issued to him on 29.4.2011 to which he did not choose to reply and that the notice of his termination was issued upon non receipt of his reply. According to the respondents, they have followed their policy guidelines dated 9.6.2010 on the subject of engagement of bungalow peons and particularly para 5(a) thereof that categorically states that the appointment of Bungalow Peon is on probation for a period of one year from the date of engagement during which services may be terminated if his/her services are not found satisfactory and after giving required notice or notice pay in lieu of notice as per existing provision before termination.

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In this context, we are guided by the principle of *Simpliciter Termination*. As held in **Parshotam Lal Dhingra v. Union of India**, AIR 1958 SC 36, the transitory character of probationary appointment carries with it by necessary implication the consequence that it is terminable at any time.

Further, as held in **Om Prakash Mann v. Director of Education (Basic)**, (2006) 7 SCC 558, no opportunity of hearing is required to be given to probationer for dismissal during probationary period and, therefore, question of violation of natural justice does not arise in the given facts of a case.

At no stage the applicant has denied that he was on probation basis which was the *sine qua non* of his engagement letter. Hence, the ratio laid down in **P.L. Dhingra (supra)** and **Om Prakash Mann (supra)** applies squarely in his case.

As the Rules did not provide for initiation of Disciplinary Proceedings in the case of temporary Bungalow Peons, no rules had been violated in not initiating disciplinary proceedings against the applicant. The applicant had also accepted such terms and conditions as noted in paras 3 and 5 of his appointment letter dated 1.8.2014 (Annexure "A-1" to the O.A.) and hence cannot at this stage turn around and say that the appointment was *de hors* the rules or terms and conditions stipulated in the appointment (**Kalpataru Vidya Samasthe v. S.B. Gupta**, (2005) 7 SCC 524).

9. Accordingly, in our considered view, the applicant has not been able to prove his case. The issue of formal proceedings against him does not arise as because he was on probation and his termination was in reality a case of termination simpliciter. Further, he has nowhere been able to defend the allegation of his devotion to duties which was the main reason for termination of his services and at no stage have the policy guidelines of the respondents been violated.

The applicant has also not furnished the specific provisions of the Railways Civil Services Rules, 1965, which he has alleged to have been infringed in his case.

Although the applicant had insinuated that his recommending official was demanding money from him for continuation of his services, bereft of evidence, it is a case of unfounded accusations.

The applicant's prayer for reinstatement is based on the following rationale:

- (a) That, the office of the Sr. DPO, Adra wrote to CPO (Rectt.), S.E. Railway, Garden Reach for his reinstatement and;
- (b) That, he had actually performed duties for more than 120 days since his engagement.
- (a) The communication from the office of Sr. DPO, Adra at page 31 of the pleadings (Annexure 'D' colly.) had noted that "Shri Uttam Kumar Sahoo has not completed 120 days continuous/aggregate service before termination, his name was not kept in the reserve list in division in terms of para (d) of policy issued of Bungalow Peon vide CPO, GRC's letter dated 9.6.2010." The contents of this letter do not constitute a recommendation for his reinstatement. Rather, it clearly states that the applicant was not kept in the reserve list of the division.
- (b) The applicant was engaged on 21.12.2010 and terminated on 12/13.5.2011. The onus is on the applicant to establish that during this period he had performed his duties without any break for a period of 120 continuous days. No such attendance having been produced before us, there is no reason to disagree with the Respondents' denial of such continued service.

10. Accordingly, the original application is dismissed on merit. The M.A. also stands disposed of as directed in para 3 of this order. There will be no order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member
SP

(Bidisha Banerjee)
Judicial Member