



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01194/2016

Date of order : ^{1st} July, 2018

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

Narahari Gouda,
Aged about 37 years,
Son of Shri Dukhishyam Gouda,
Residing at Block No. 74/1/18, Unit-V,
South Eastern Railway Colony, Garden Reach,
Kolkata – 700 043 and working to the post of
Bungalow Peon against a sanctioned post
Under Chief Engineer / TP, South Eastern Railway
Under the control and authority of the
General Manager, South Eastern Railway,
Garden Reach, Kolkata – 700 043;

---Applicants

-Versus-

1. Union of India,
Service through the General Manager,
South Eastern Railway,
11, Garden Reach Road,
Kolkata – 700 043.
2. The Chief Personnel Officer,
South Eastern Railway,
11, Garden Reach Road,
Kolkata – 700 043.
3. The Chief Engineer /TP,
South Eastern Railway,
11, Garden Reach Road,
Kolkata – 700 043.
4. The Senior Personnel Officer (Engineering),
South Eastern Railway,
11, Garden Reach Road,
Kolkata – 700 043.

---Respondents

[Signature]

For the Applicant : Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel

For the Respondents : Mr. B.P. Manna, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with his termination order, the applicant has approached the Tribunal in the instant Original Application, praying for the following relief:-

"(a) To quash and/or set aside the impugned speaking order dated 04.07.2016 issued by the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata by which the order of termination issued by the Chief Engineer / TP, South Eastern Railway, Garden Reach, Kolkata – 700 043 has been upheld and the appeal preferred by the applicant before the General Manager, South Eastern Railway has been rejected being Annexure A-9 of this original application in view of the identical order passed by this Hon'ble Tribunal in O.A. No. 1808 of 2010.

(b) To quash and/or set aside the impugned office letter of notice of termination of service dated 21.4.2015 issued by the Chief Engineer / TP, South Eastern Railway, Garden Reach, Kolkata – 700 043 against the applicant being Annexure A-5 of this original application.

(c) To quash and/or set aside the impugned office letter of notice of termination of service dated 24.4.2015 issued by the Senior Personnel Officer (Engineering), South Eastern Railway, Garden Reach, Kolkata – 700 043 against the applicant without initiation of any disciplinary proceeding being Annexure A-6 of this original application.

(d) To declare that the action taken by the respondents in respect of issuing such termination orders dated 21.4.2015 and 24.4.2015 against the applicant without any due process of law and without initiation of any disciplinary proceeding is otherwise bad in law and illegal which may be liable to be quashed and/or set aside and your applicant should be reinstated in service with effect from the date of termination along with all consequential benefits."

2. Heard Ld. Counsel, examined pleadings, documents on record as well as the judicial pronouncements advanced by Ld. Counsel in support of their arguments.

3. The case of the applicant, as canvassed by his Ld. Counsel, is that the applicant had been appointed to the post of Bungalow Peon as per approval of the General Manager, South Eastern Railway vide orders dated 1.8.2014 in the pay scale of Rs. 5200-20200/- against a sanctioned post.

[Signature]

That, the applicant was attached with the Chief Engineer / TP, S.E. Railway and was discharging his duties and responsibilities as per directed assignments.

That, despite such diligent discharge of duties and responsibilities, the officer concerned, namely, Chief Engineer / TP, S.E. Railway issued an warning for negligence of official duties vide Office Order dated 9.3.2015. Without waiting for a reply from the applicant, the said official again issued a show-cause notice dated 18.3.2015.

That, the applicant replied against the warning and the show-cause notice vide his representation dated 24.3.2015 stating that he had been admitted in the Central Hospital at Garden Reach w.e.f. 10.3.2015 and, hence, on account of his serious illness, was not able to reply to the said warning.

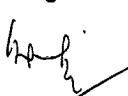
That, the Chief Engineer / TP, S.E. Railway, despite the sickness certificates furnished by the applicant and in total violation of service conduct rules and without initiating any disciplinary proceedings, straightway issued a termination order dated 21.4.2015 against the applicant.

That, the Chief Engineer / TP, who is the complainant against the applicant could not himself act as a judge in the proceedings and terminate the services of the applicant which was approved by the General Manager, S.E. Railway.

That, after issuance of the notice of termination of service on 21.4.2015 by the Chief Engineer / TP and without approval of the General Manager of the concerned Railway and without issuing any disciplinary proceedings against the applicant, the applicant was terminated.

That, being aggrieved with such illegal order of termination, the applicant had filed an Original Application bearing No. 1235 of 2015 which was disposed of by the Tribunal on 10.5.2016 stating as follows:-

"Hence, we are of the view that the representation made to the General Manager, S.E. Railway may be sent to the CPO, S.E. Railway concerned for taking a decision within three months from the date of production of a certified copy of this order giving a reasoned and speaking order under intimation to the applicant."



As directed by the Tribunal, the Chief Personnel Officer, S.E. Railway passed a speaking order on 4.7.2016 rejecting the appeal.

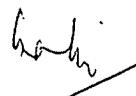
That an identical issue had been decided by the Tribunal in O.A. No. 1808 of 2010 in the case of **Deo Kumar Singh – vs. – Union of India & ors.** wherein the Tribunal had held that no person shall be a judge in his own cause and that the said order of the Tribunal in O.A. No. 1808 of 2010 had been upheld by the Hon'ble High Court of Calcutta in WPCT No. 330 of 2010 vide its order dated 20.1.2011.

Presently, the applicant, being aggrieved by the speaking order dated 4.7.2016, since impugned, has approached the Tribunal with the instant Original Application.

The main grounds on which, relief has been sought are as under:-

- (a) That, the applicant had been appointed with the approval of the General Manager and could be terminated only by the competent authority.
- (b) That, the complainant, namely, the Chief Engineer / TP of the concerned Railways cannot be a judge in his own cause and, hence, was not the appropriate authority to issue the termination order.
- (c) That, natural justice was denied to the applicant as he was not in a position to provide written explanation to the letter of warning dated 9.3.2015 and also that the termination order was finalised on 24.4.2015 without initiating any disciplinary proceedings against the applicant.

4. Per contra, the respondents have argued that the respondents, had, after issue of the warning notice dated 9.3.2015, issued him a second show-cause notice on 18.3.2015 and that the petitioner's reply dated 24.3.2015 not being satisfactory, the officer concerned, namely, the Chief Engineer / TP had submitted his complaint in writing to the Chief Personnel Officer about the alleged misbehaviour of the applicant. The respondents went on to argue that the Chief Personnel Officer, South Eastern Railway issued a reasoned order on



4.7.2016 in compliance with the Tribunal's order dated 10.5.2016 and, hence, it cannot be alleged that it was the complainant officer, who was responsible for all the decisions against the applicant.

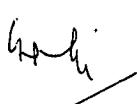
The respondents have further argued that the applicant was terminated from service as per rules and that the provisions of the service conduct rules/disciplinary proceedings are not applicable to the case of the Bungalow Peons and only 14 days' notice is required to be issued in lieu of 14 days salary in case of termination of service of Bungalow Peon who had less than one year of service. That the revised policy for appointment of Bungalow Peon as annexed as Annexure "R-2" to the reply states that the Bungalow Peon will be treated as on probation for a period of three years from the date of engagement during which their services may be terminated if his/her services are not found satisfactory, after giving required notice and that the services of Bungalow Peon who have not completed one year continued/aggregate service should be terminated as per rules.

That the applicant's termination order was issued with the approval of the Chief Personnel Officer, S.E. Railway, who was the HOD of the appointing authority as per extant rules within the probation period and that the rules do not provide for disciplinary proceedings in the case of Bungalow Peons whose services are essentially temporary in nature.

The respondents have cited the orders of Hon'ble High Court of Jharkhand at Ranchi dated 19.5.2015 WP (S) No. 5761 of 2003 in support of their contentions.

ISSUES

5. In order to adjudicate the relief claimed in the instant Original Application, it is required to decide as to whether the termination order of the applicant was issued as per rules.



FINDINGS

6. The appropriate rules in this context as issued by S.E. Railway on 10.2.2016, are extracted below for better understanding of the issue at hand:

"In supersession of all orders issued on the subject earlier, the following revised instructions are issued with the approval of General Manager/SER for information, guidance and strict compliance.

Xxxxxxx

2. c) Fresh faces would be engaged as TADK (Bungalow Peon) with the personal approval of GM, in scale Rs. 5200-20200/- with Grade Pay Rs. 1800/- at stage Rs. 7,000/- on probation basis, for three years and only after completion of satisfactory service their service will be considered for regularisation subject to screening. In case the TADK (Bungalow Peon) is found not performing his/her duty satisfactorily by the officer who proposed for her/his engagement, may be terminated with due show cause notice by him or his departmental officer authorized to take action as per delegation of power during the probation period:

Xxxxxxx

2. e) Officer should take all possible steps to verify the antecedent and willingness of the candidate to work as TADK (Bungalow Peon) after making such discrete enquiries, as may be necessary before recommending the appointment. If an officer recommends for termination of the services of the TADK (B/Peon) attached to him/her within three years from the date of engagement of the TADK (B/Peon) without sufficient/valid reason, he/she will be debarred from engaging TADK (B/Peon) for the next three years. An officer recommends for termination of the services of the TADK (B/Peon) attached to him/her within three years subject to vetting of concerned Personnel branch. The TADK (Bungalow Peon) screened and granted temporary status after completion of three years continuous regular service and recommends for termination should be followed DAR proceedings.

Xxxxxxx

5. DISCHARGE

a) The TADK (Bungalow Peons) will be treated as on probation for a period of three years from the date of their engagement during which their 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. This condition shall be added as a clause in the appointment letter itself.

b) The services of TADK (Bungalow Peon) who have not completed one year continuous/aggregate services should be terminated as per rules, in the event of transfer outside S.E. Railway of the officer, who engaged him/her and if he/she does not go with the officer, to the new assignment in the new Railway. In respect of those who have completed more than one year and up to 3 years provisions as at 3 (d) will apply."

(Signature)

In this background, the appointment letter of the applicant dated 1.8.2014, as quoted below, (Annexure "A-1" to the O.A.) is examined:-

SOUTH EASTERN RAILWAY

*Office of the
Chief Personnel Officer
Garden Reach, Kolkata-45.*

Office Order No: SER/P-HQ/EE/120/6/NG/B.Peon Dated: 1.8.14

Approval of General Manager is hereby communicated towards engagement of Sub. Bungalow Peon under CE/G/GRC, S.E. Railway and the following orders are issued:-

On being declared fit in Aye Two (A-2) and below medical category vide Sr. DMO/OPD/GRC's Medical Certificate No. 572452 dated 9.7.2014, Sri Narahari Gouda, S/o. Sri Dukhisyma Gouda is hereby engaged as Substituted Bungalow Peon (fresh face) in Pay Band Rs. 5200-20200/- + G.P. Rs. 1800/- on pay Rs. 7000/- per month plus other allowances as admissible under Sri Suvomoy Mitra, CE/G/SER/GRC.

The date of birth of Sri Narahari Gouda is 1.7.1978 (1st day of July One thousand nine hundred and seventy eight) and he has passed Secondary School Examination from National Institute of Open Schooling, Government of India, enrolled from Orissa as recorded in the Mark Sheet No. 053185 dated 10.12.2013 issued by Director (Evaluation), National Institute of Open Schooling, Government of India.

NB: 1) GM has approved such engagement of the above candidate within the prescribed age limit of the appointment as OBC candidate.

2) The appointment of the above named candidate is provisional subject to production of current OBC certificate duly corrected spelling of his father's name within one month from the date of issue of this order, otherwise his service will be terminated.

3) His appointment is liable to be terminated as per extant Rules and regularizations as envisaged in para 15.02 of IREM, 1989 edition and any other rules as may be framed from time to time by the Zonal Railway Administration or Railway Board.

4) He may be posted anywhere in S.E. Railway on his absorption against regular post.

5) He will be treated as on probation for 01 (one) year Substitute Bungalow Peon during which the period of his service may be terminated without assigning any reasons by following rules and regulation, provisions policies/guidelines in vogue.

6) He will be eligible for screening on completion of three years continuous/aggregate and satisfactory service for regular absorption in Group "D" category as per CPO's letter No. P/R&R/CI. IV/Bungalow Peon/Policy/loose dated 9.6.2010.

[Signature]

7) The acceptance of offer of appointment by Sri Narahari Gouda indicated that he has gone through the above mentioned terms and conditions and agrees to abide by the same.

8) The offer of appointment is governed by this office policy letter No. P/R&R/Class-IV/Bungalow Peon/Loose dated 09.6.2010.

(S.K. Patra)
Sr. Personnel Officer (Engg.)"

The said appointment letter makes it clear that the appointment has been issued with the approval of the General Manager and service jurisprudence requires that it is the appointing authority who will be the responsible officer for removing / terminating a candidate from service. In this case, the termination order (Annexure "A-5" to the O.A.) having been issued by an officer other than the General Manager is, therefore, not legally tenable as having been issued by an authority not competent to do so and is hereby liable to be set aside.

The applicant has raised the issue that the complainant cannot be a judge in his own cause and has cited the judgment in WPCT No. 330 of 2010 upholding the orders of the Tribunal in O.A. No. 1808 of 2010. The orders of the Hon'ble High Court in this regard is extracted below as hereinunder:-

XXXXXXXXXX

..... "Nobody could be the judge of his own cause" as prescribed in Latin maxim "Nemo debet esse judex in propria sua causa", is squarely applicable in this case. It is a basic principle of natural justice that a complainant must not be the adjudicator with reference to any cause of action, may be in the field of domestic enquiry issue or in any Court litigation. The said principle has been applied by Apex Court in several matters. Reliance is placed to the judgment passed in the case **Delhi Financial Corporation – Vs. – Rajib Anand reported in 2004 (11) SCC 625** which has been followed in the case **Crawford Bayley and Company and others – Vs. – Union of India and others reported in 2006 (6) SCC 25**. The parameters of adjudicating the said maxim are:

(i) Officer concerned should have personal bias or connection or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which may be interested in supporting."

This ratio having been laid down by the Hon'ble High Court of appropriate jurisdiction for this Tribunal, the orders issued by the Chief Engineer /TP, who himself was the complainant against the applicant is also liable to be set aside on

the grounds that the Chief Engineer /TP, being the complainant against the applicant should not have issued the notice of termination of service on 21.4.2015.

We also find from a perusal of Annexure "A-6" to the O.A. that the final termination order dated 24.4.2015 had been issued by the Sr. Personnel Officer (Engg.) and the respondents have taken a plea that the applicant's termination order was issued with the approval of the Chief Personnel Officer, who is the HOD of the appointing authority.

Service jurisprudence, however, desires that it is the appointing authority who should have issued the termination order after issue of notice thereof on the same and in this case as established from his appointment letter itself, it is the General Manager who has approved the applicant's appointment. Hence, the Chief Personnel Officer should not have issued the final termination order without the approval of the General Manager. In case the General Manager had indeed approved the termination, the respondents have failed to establish the same.

As regards the ground of the applicant that natural justice was denied to him particularly in non-consideration of his conditions of ill health which caused him to be hospitalised, Annexure "R-1" to the reply is referred to. This is a statement of misconduct of the applicant as submitted by the Chief Engineer (TP) (with whom he was attached as Bungalow Peon) as furnished to the CPO, GRC. The grounds of misconduct are that during his eight months' probation period, the applicant was casual in his work, absent minded in his duties and was found habitually inebriated under the influence of alcohol resulting in misbehaviour with the family members of the official concerned and frequently found asleep during duty hours. Further, the incumbent was disobedient, disregarded the orders of the official concerned and stayed away from his duties on several occasions on frivolous grounds.



It is also noted that although these allegations were detailed in the memos of warning and show cause notice, the applicant has not addressed these complaints in his reply.

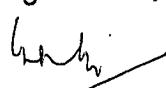
The official concerned had also commented that as the applicant got admitted in hospital immediately upon issue of the warning, the said claim of medical emergency was to be taken with a grain of salt. The medical certificates particularly Annexure "A-4" (page 34 of the O.A.) certifies upon final diagnosis that the applicant was suffering from fever and weakness and that clinically he was detected to be suffering from herpes. The hospital recommended discharge on request. He was also declared fit for duty on 25.3.2015 and the investigating doctor did not find anything out of the ordinary in the applicant's investigation report.

Hence, we cannot concur with the allegations of the applicant that he was not given an opportunity to be heard or that natural justice was denied to him or that his illness reports were ignored by the respondent authorities.

On reverting to the Respondents' policy dated 10.12.2016, it has been categorically stated that if the Bungalow Peon is found as not performing his/her duties satisfactorily by the officer who had proposed his/her engagement, the said incumbent may be terminated with due show-cause notice by the official concerned, who has proposed his engagement or his departmental officer authorised to take action as per delegation of power during the probation period. It is also clear from para 5 of such rules that there is no scope of initiation of disciplinary proceedings in the context of termination of Bungalow Peon and that the show-cause notice was issued appropriately by the official, who had proposed his engagement and we do not find violation of rules in this context.

The applicant was also given 14 day's pay in lieu of notice as per the rules of the respondent authorities.

The applicant was finally terminated by the Chief Personnel Officer, who was the HOD of the appointing authority.



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

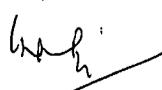
Further, as held in **Om Prakash Mann v. Director of Education (Basic), (2006) 7 SCC 558**, no opportunity of hearing is required to be given to probationer for dismissal during probationary period and, therefore, question of violation of natural justice does not arise in the given facts of a case.

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**).

Admittedly, however, there are two areas in which the respondents have erred in their procedural obligations:-

Firstly, the order of termination should have been issued under the directions of the appointing authority of that is the General Manager of concerned Railways and not by the official with whom the applicant was attached.

Secondly, the Chief Engineer (TP) had submitted his complaints to the CPO, GRC to take further action with regard to the applicant. The SPO (Engg.) issued the final termination order. The said termination order should have been approved by the General Manager himself on the recommendations of the CPO of the concerned Railways. The fact that instead of waiting for the General Manager's approval, the Chief Engineer (TP) rushed to issue the termination order is evidently a matter of procedural violation by the respondent authorities.



The orders in WP (S) 5761 of 2003 dated 19.5.2005 of the Hon'ble High Court of Jharkhand as cited by Respondents in their support relates to the applicability of rules and entitlement to show-cause notice prior to termination of the services of the applicant. The instant matter, however, is based on the issue of termination orders by the inappropriate authority as well as by an official who cannot (as held by the Hon'ble High Court of Calcutta in WPCT No. 330/2010) be a judge in his own cause. Hence the issues being distinct, we do not find that the citation furnished by the respondents reinforces their case in this regard.

7. Accordingly, we hereby set aside the termination notice dated 21.4.2015 of the Chief Engineer /TP followed by the final termination order dated 24.4.2015 of the Chief Personnel Officer (Engg.) and we direct the General Manager concerned, who is respondent No. 1, in the instant original application, to examine the records and, if necessary, give an opportunity to the applicant to be heard. Thereafter, having gone through the version of the applicant as well as the complaint of Chief Engineer (TP), to issue the final orders in this regard as per Rules within a period of six weeks from the date of receipt of a copy of this order.

8. The status of the applicant in the interim period, namely between 21.4.2015 / 24.4.2015 and the date of the order of the Respondent No. 1 will be decided by the General Manager, respondent No. 1, in his final order.

9. With this, the O.A. is disposed of with the above directions. There will be no orders on costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member