

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 01 of 2012

Date of order: 10th September, 2018

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

**B. Santosh Kumar Rao,
Son of B. Krishna Rao,
Aged about 28 years,
Working as Bungalow Peon,
Under Dy. CVO(E)/GRC,
Residing at Vill. Zhakarpara,
P.O. – Dhankauda,
Dist. – Sambalpur,
State – Orissa,
Pin – 768 004.**

.. Applicant

- VERSUS -

1. Union of India through the
General Manager,
S.E. Railway,
Garden Reach,
Kolkata – 700 043.
2. The Dy. Chief Vigilance Officer (E),
Vigilance Branch, S.E. Railway,
Garden Reach,
Kolkata – 700 043.
3. The Assistant Personnel Officer (R),
S.E. Railway, Garden Reach,
Kolkata – 700 043.

.. Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has been filed under Section 19 of the
Administrative Tribunals Act, 1985 seeking the following relief:-

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"(a) The Office Order dated 14.3.2011 issued by Assistant Personnel Officer (R)/S.E. Railway, GRC cannot be tenable in the eye of law and therefore the same may be quashed.

(b) An order do issued directing the respondents to allow the applicant to perform his duties as a Bungalow Peon."

2. Heard Ld. Counsel, perused pleadings and documents on record.

3. The case of the applicant, as submitted by his Ld. Counsel, in brief, is that the applicant was initially appointed as a Substitute Bungalow Peon w.e.f. 9.8.2010 and was attached to the Dy. CVO, Engineering of S.E. Railway, Garden Reach.

After completion of four months of continuous service, the applicant had received the benefit of temporary status and that there were no allegations raised by Dy. CVO (Engg.) against his performance.

The applicant further contends that as per rule, without initiating any proceedings under the RS & DA Rules, penalty could not be imposed on him.

Nevertheless, the services of the applicant were terminated in violation of the said rules and the applicant has been debarred from joining his duties on the ground that he was unauthorisedly residing in an official accommodation, and hence being aggrieved, the applicant has approached the Tribunal.

4. Per contra, the respondents have argued that the applicant was appointed as a Substitute Bungalow Peon w.e.f. 09.08.2010 in S.E. Railway vide Office Order No. 33/2010 dated 09.08.2010 and was attached to Dy. CVO (Engg.). It was categorically indicated in the said appointment order that he would be treated on probation for 1 (one) year as Substitute Bungalow Peon during which period, his service may be terminated without assigning any cause. That, due to untrustworthiness and disobedience, which amounted to unsatisfactory performance, he was given 14 days' notice pay on 14.3.2011 and his service was terminated w.e.f. 14.3.2011 vide Office Order No. P/H/Termination/C1.IV/11 dated 14.3.2011. The termination order was issued as per extant policy as

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circulated vide Chief Personnel Officer/S.E. Railway's policy circular N.P./R&R/C1.IV/Bungalow Peon/Policy/Loose dated 9.6.2010.

That, para 5 of CPO/GRC's policy circular (supra), states that the Bungalow Peons will be treated as on probation for a period of one year 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 to the incumbent. That, such condition was clearly indicated in the appointment letter.

That, the blatant disobedience shown by the petitioner by defying instructions issued by his officer was taken into consideration to treat his service as unsatisfactory. Respondents further argued that the applicant's services even as a temporary employee could be terminated without initiating proceedings under RS & DA Rules if his services were not found satisfactory as per IREM Vol. - I (Para 1502) and provisions contained in Clause (2b) of Article 311 of the Constitution of India. Furthermore, Central Civil Services (Temporary Services) Rule, 1965 also states that in case of persons appointed on probation, if in the appointment letter, a specific condition regarding termination of service without any notice during or at the end of the period of probation has been made specifically, it would be desirable to terminate the services of a person appointed on probation in terms of letter of appointment and not under Rule 5(1) of Temporary service rules. The respondents have stated that such decision taken by the Railway Administration not being bad in the eye of law, the original application deserves to be dismissed.

5. The point of determination in this matter is whether the Office Order dated 14.3.2011 issued by Assistant Personnel Officer (R)/S.E. Railway, GRC is untenable in the eye of law and whether the same is liable to be set aside.

6.(i). The appointment letter No. GM/33/10 dated 09.08.2010 which is germane to the lis is reproduced below:-

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SOUTH EASTERN RAILWAY

CPO's Office/GRC

Office Order No. GM/33/10

Dated: 09.8.2010

In compliance with the order of GM communicated vide Dy. CPO (Rectt.)/GRC's letter No. P/Rectt./Cl.IV/B.Peon/HQ/281/464 dated 2.8.2010 the following orders are issued with the approval of the Competent Authority.

On being declared fit in C-2 (Cey-two) medical category vide Sr. DMO (OPD)/GRC's Medical Certificate No. 346474 dated 09.08.2010, Sri B. Santosh Kumar Rao, Son of Sri B. Krishna Rao is hereby engaged as Substitute Bungalow Peon (a fresh face) in scale Rs. 4440-7440 + Grade Pay Rs. 1300/- at pay Rs. 5740/- per month plus other allowances as admissible, under Sri P.K. Sharma Dy. CVO (E)/S.E. Railway, Garden Reach with immediate effect.

The date of birth of Sri B. Santosh Kumar Rao is 05.07.85 (5th day of July Nineteen hundred and Eighty Five) and he passed Secondary Examination as recorded in the certificate No. M 1137866 issued by Board of Secondary Education, Orissa.

NB:

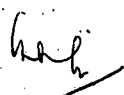
1. His appointment is liable to be terminated as per extant rules and regulations as envisaged in Para 1502 of IREM, 1989 edition and any other rules as may be framed time to time by the Zonal Railway administration or Railway Board.
2. He may be posted anywhere in S.E. Railway on his absorption against regular post.
3. He will be treated as on probation for 1 (one) year Substitute Bungalow Peon during which period his service may be terminated without assigning any cause.
4. He will be eligible for screening on completion of three years continuous/aggregate and satisfactory service for regular absorption in Gr. "D" category as per CPO's letter No. P/R&R/Cl.IV/Bungalow Peon/Policy/loose dated 09.06.2010.

(S.K. Patra)

Asstt. Personnel Officer (R)

Detailed examination of the appointment letter reveals that the applicant was engaged on probation for one year as Substitute Bungalow Peon during which his service could have been terminated without assigning any cause. Hence, when the applicant was engaged, the undermentioned conditions were clearly implied therein;

- (a) That, the applicant was engaged as a Substitute Bungalow Peon on probation basis for a year and;




(b) His service could be terminated without assigning any reason.

(ii) We, thereafter refer to the show-cause notice dated 23.2.2011 (Annexure A-2 to the O.A.) whereby the applicant had been given an opportunity to explain his conduct for unauthorised occupation of Railway quarter No. 95MD/1, Unit-I. The applicant replied to the same vide his reply dated 2.3.2011 which was not found justifiable by Respondents as communicated on 10.3.2011 (Annexure A-3 & A-4 respectively).

(iii) We find, however, that apart from preferring an intimation/request to the Dy. CVO (Engg.) of S.E. Railway, Garden Reach to request him to perform his duties as Substitute Bungalow Peon, the applicant has not preferred any representation to the competent authority with whose approval he had been engaged as a Substitute Bungalow Peon, but has directly approached the Tribunal praying for relief.

In our opinion, and as mandated by Section 20 of the Administrative Tribunals Act, 1985 etc., the applicant has to exhaust all remedies available to him prior to approaching the Tribunal. Hence, we hereby accord the applicant liberty to prefer a representation to the competent respondent authority ventilating his grievances and praying for such relief as desired within a period of three weeks from the date of receipt of a copy of this order. Once such representation is received, the competent respondent authority, after application of mind and in accordance with law, will issue a speaking and reasoned order within a period of 4 weeks thereafter and communicate the same forthwith to the applicant. Needless to say, the principle of natural justice as well as extant rules and regulations relating to the appointment of and service of Substitute Bungalow Peons are to be taken into consideration while arriving at a decision.

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


(Dr. Nandita Chatterjee)
Administrative Member
SP


(Bidisha Banerjee)
Judicial Member