

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH  
KOLKATA

Original Application No. 1445 of 2010

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member  
Hon'ble Ms Jaya Das Gupta, Administrative Member

Sri Sumit Mondal  
Son of Sri Naren Chandra Mondal  
Aged about 31 years  
Ex Bungalow Peon under Dy. CEE(Con)  
E.Rly. Howrah, presently residing at Village  
Subhas Nagar, Post Andal,  
District Burdwan, West Bengal

.....Applicant

-Vs-

1. Union of India  
Through General Manager,  
Eastern Railway, Fairly Place,  
Kolkata.
2. Divisional Railway Manager,  
Eastern Railway, Howrah,
3. Dy. Chief Engineer (Cons-II)  
Eastern Railway, Howrah.
4. Sr. Divisional Personnel Officer,  
Eastern Railway, Howrah.

.....Respondents

For the petitioner : Mr C. Sinha , Counsel

For the respondents : Mr M. K. Bandopadhyay, Counsel

Date of Hearing : 21.09.2016

Date of Order : 29.9.2016

**ORDER (ORAL)**

**MS JAYA DAS GUPTA, AM:**

The applicant Shri Sumit Mondal has approached the Tribunal under  
Section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

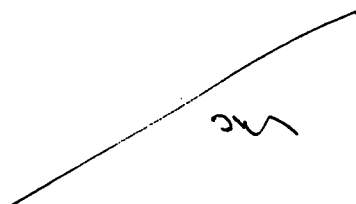
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- "a) To set aside and quash impugned letter dated 5.2.07 & 14.2.07 issued by Dy. CE/Con/II/HWH/E.Rly.
- b) To set aside and quash impugned speaking order dated 8.3.2010 issued by Dr. Chief Engineer/Con/II/Howrah/Eastern Railway.
- c) To direct the respondent to take your applicant back to duty in his former post and status forthwith with all consequential benefits."

2. The contention of the applicant is that he was working as Bunglow Peon. Though he rendered good service to the employer he was discharged from service without holding any departmental proceedings as required under Article 311 of the Constitution of India. His grievances are two fold (i) his order of discharge from service is stigmatic as it alleges that he was found to be absenting from work place without any reason, was not very punctual; frequently left residence of the employer without any intimation which shows lack of devotion to duty. (ii) The second grievance is according to him since he is a civil servant before being discharged from service proper enquiry should have been held.

3. Per contra, it is the contention of the respondent authorities that substitute Bunglow Peon is not a civil servant and he has not attained the temporary status, therefore he could be discharged as per the terms of his appointment letter. No departmental enquiry enjoined in Article 311 of the Constitution is required to be held. Hence the O.A should be dismissed as the case of the applicant does not have any merit.

4. Heard both, consulted the records. Shri Sumit Mondal was appointed by order dated 19.10.2006 as a Substitute Bunglow Peon and being found medically



fit he was placed against the regular pay scale. His appointment letter annexed as R-1 is set out below :

"Eastern Railway  
(Construction Department)

Office Order No. 2006/49                      HWH. Dt. The 19<sup>th</sup> Oct./06  
The following order is issued with immediate effect :-

Sri Sumit Mondal whose date of birth is 1-09-1979 son of Sri Naren Chandra Mondal, on being found medically fit in cey one (C-I) without glass category vide medical fit certificate No.616322 dt. 18.10.2006 issued by Sr.D.M.O/E.Rly/Howrah Sri Mondal is hereby engaged as substitute Bunglow Peon for Sri Rajesh Prasad, Dy. Chief Engineer/Con/II/E.Rly./Howrah at pay Rs.2550/- in scale Rs.2550-3200/-(RSRP) w.e.f. 19.10.2006.

He will be guided by rules as found in the case of substitute Bunglow Peon. However, the above engagement as substitute Bunglow Peon is purely temporary pending decision of CPO/E.Rly/Kolkata.

(Authority:-CAO/Con/E/.Rly/Kolkata's Order No. CAO/Con/E/18A/CL/B.Peon dtd. 25.8.06).

( Rajesh Prasad )  
Dy. Chief Engineer/Con-II,  
E.Railway/Howrah."

As he was not punctual in his duties and he was found frequently absenting from his work place of the employer, namely, Deputy Chief Engineer (Construction) he was issued a show cause for making representation. The show cause dated 5.2.2007 is reproduced herein below :

"Eastern Railway  
(Construction Department)

No.DCE/Con/II/E/13/3665  
Dt. 05.02.07.

Whereas Shri Sumit MOnal was engaged as Substitute Bungalow Peon under Dy Chief Engineer(Con)/H/Howrah vide Order No.2006/49 dated 19.10.2006 and whereas Shri Sumit Mondal, Substitute Bungalow Peon was required to discharge the duties from the post of Bunglow Peon faithfully.

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And whereas it was noted that Shri Mondal Substitute Bungalow Peon was not punctual in his duties and he was frequently found to be absenting from his work place of De.CE(Con)/II/HWH at Flat No.7/IB at New Alipore, Kolkata.

Further it was seen that Shri Mondal, Substitute Bungalow Peon failed to receive telephone calls at the residence and also misplaced one important official file which could be located by him later. As such he adversely affected the performance of duties of Dy.Chief Engineer(Con)/II/Howrah.

Further, Shri Mondal Substitute Bungalow Peon frequently left the residence of Dy. Chief Engineer(Con)/II/Howrah and he is also unauthorizedly absent from 01.02.07 to 05.02.07 without any intimation which showed lack of duty and devotion on the part of Shri Mondal, Substitute Bungalow Peon.

Thus it is seen that Shri Mondal, Substitute Bungalow Peon was not faithful and sincere to this duty and showed lack of devotion to duty.

Now therefore, it is proposed to discharge Shri Sumit Mondal Substitute Bungalow Peon on the ground of dereliction of duties as mentioned above.

Shri Sumit Mondal, Substitute Bungalow Peon of Dy.Chief Engineer(Con)/II/Howrah can make a representation within a period of 7 days failing which it will be deemed that nothing has been said and will be discharged from service.

( Rajesh Prasad )  
Dy. CE/Con-II/HWH"

As Shri Mondal did not bother to make any representation he was ultimately discharged from service vide order dated 14.2.2007. The said order set out below :

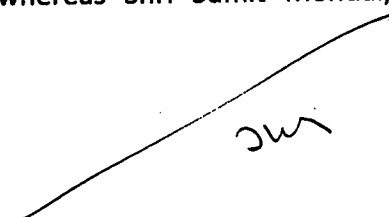
"Eastern Railway  
Office of Dy.CE(Con.)/II/Howrah

Order

No.DCE/Con/II/E/13/3715

Dt. 14.02.07.

Whereas Shri Sumit Mondal was engaged as Substitute Bungalow Peon under Dy Chief Engineer(Con)/H/Howrah vide Order No.2006/49 dated 19.10.2006 and whereas Shri Sumit Mondal, Substitute



Bungalow Peon was required to discharge the duties from the post of Bungalow Peon faithfully.

And whereas it was noted that Shri Mondal Substitute Bungalow Peon was not very punctual in his duties and he was frequently found to be absenting from his work place of De.CE(Con)/II/HWH at Flat No.7/IB at New Alipore, Kolkata. He did not perform any duty from 01.02.07 to 14.02.07.

Further it was seen that Shri Mondal, Substitute Bungalow Peon failed to receive telephone calls at the residence and also misplaced one file and thus adversely affected the performance of duties of Dy.Chief Engineer(Con)/Howrah.

Further, Shri Mondal Substitute Bungalow Peon frequently left the residence of Dy. Chief Engineer(Con)/II/Howrah without any intimation which showed lack of duty and devotion on the part of Shri Mondal, Substitute Bungalow Peon.

Therefore, Shri Sumit Mondal Substitute Bungalow Peon under Dy.Chief Engineer(Con)/II/Howrah was issued with a show cause notice No.DCE/Con/II/E/13/3665 dated 05.02.07. Sri Sumit Mondal failed to submit written explanation for his misconduct within a period of 7 days.

Shri Sumit Mondal, Substitute Bungalow Peon of Dy.Chief Engineer(Con)/II/Howrah received the notice on 05.02.07 and copy of the acknowledgement was sent to DyCPO/Con on 05.02.07. Shri Sumit Mondal failed to submit any written representation for his misconduct till date. Therefore, it is presumed that Shri Sumit Mondal Substitute Bungalow Peon has nothing to say regarding his lack of devotion to duty.

Shri Sumit Mondal, Substitute Bungalow Peon of Dy Chief Engineer(Con)/II/Howrah is therefore discharged from service with immediate effect.

Shri Sumit Mondal, Substitute Bungalow Peon of Dy Chief Engineer(Con)/II/Howrah should acknowledge receipt of this order on this letter.

|               |             |                    |
|---------------|-------------|--------------------|
| Date 14.02.07 | Name :      | Rajesh Prasad      |
|               | Designation | Dy. CE/Con-II/HWH" |

5. The service conditions of substitutes are given in RBE 137/2010, relevant portion quoted below:

**"2. Definition:**

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"Substitutes" refer to persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to post falling vacant and the process of filling up is delayed and the post cannot be kept vacant due to exigencies of work otherwise railway service may be adversely affected.

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#### 6. Date of Appointment

The date of appointment of a substitute to be recorded in the service book against the column 'Date of Appointment' should be the date on which he/she attains temporary status after a continuous service of four months, if the same is followed by his/her regular absorption. Otherwise, it should be the date on which he/she is regularly appointed/absorbed.

#### 7. Break in Service

The following cases of absence will not be considered as "break in service" for determining the four months continuous service for the purpose of absorption in regular employment:

- (a) the periods of absence of a substitute who is under medical treatment with injury sustained on duty covered by the provision of Workman Compensation Act;
- (b) authorized absence not exceeding 20 days during the preceding six months.

#### NOTE:

- (i) The term "authorized absence" for this purpose covers permission granted by the Supervisory official in-charge to be away from the work for the period specified.
- (ii) Unauthorized absence or stoppage of work will be treated as a break in continuity of employment.
- (iii) Days of rest even under HOER or under the statutory enactments and the days on which establishment employing the substitutes remains closed will not be counted against the limit of 20 days authorized absence; and"

6. The terms of his appointment letter dated 19.10.2000 shows that he will be guided by rules as found in Substitute Bunglow Peon. His engagement as substitute Bunglow Peon is purely temporary pending decision of the Chief Personnel Officer, Eastern Railway, Kolkata. It is well settled that a substitute Bunglow Peon is not a regular Government servant and is not amenable to be given a chance of enquiry before being removed or discharged under Article 311 of the Constitution of India. Such view has been held by the Larger Bench of CAT

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Calcutta in O.A.595/2012 on 6.8.2015. Relevant portion of which are set out below :

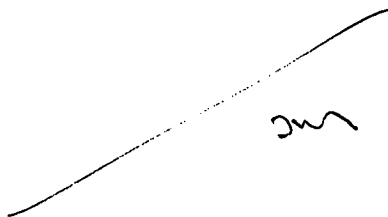
"The applicant even though was appointed under the nomenclature of Telephone Attendant cum Dak Khalasi, in fact he was made to work as Bungalow Peon. The communication dated 13.5.2008 of the Deputy Chief Personnel Officer, Office of the Chief Personnel Officer is referred to in his appointment order as well as termination order. However, the said communication dated 13.5.2008 cannot over ride the statutory provision. The relevant portion of the provision governing of Bungalow Peons, is extracted hereunder for ready reference.

"Bungalow Peons : Bungalow Peons are engaged as substitutes and as such they are entitled to temporary status on completion of 120 days of continuous service and with the temporary status they are to be provided with all the facilities as are applicable to other temporary status holders. They are to be considered for absorption against Grade D vacancies on completion of three years of service. The G.M. has given directions to the Railways that all the Bungalow Khalasis/Peons who have completed three years of service after attaining temporary status should be screened and regularised (G.M.N.Rly Letter No.803-E/1/Pt.X/EIV dated 31.12.1997) (N.R.S.N.11506)."

"16. On balance, the reference is answered to the effect that neither of the decisions in Ram Bilas Paswan vrs. Union of India & Ors (1991) 16 ATC 18 nor in O.A.866/07 is relevant for adjudication of this OA and, that the applicant was not entitled to any regular departmental enquiry before termination of his appointment."

7. We also noted the speaking order given as per orders of CAT in an earlier case moved by the applicant in O.A.676/2009, Sumit Mondal vs. Union of India & Ors. As per direction of CAT speaking order was given on 8.3.2010, which is set out below :

"Sub : Speaking order to O.A.No.676 of 2009  
Sumit Mondal -Vs- U.O.I & Others before  
Hon'ble CAT/Calcutta.



Hon'ble CAT/Calcutta vide their Judgment date 12.6.2009 directed Respondent No.04 (i.e. Sr.DPO/ER/Howrah) or any other competent Authority to consider the representation of the applicant and dispose of them within four months from the date of receipt of the copy of this order.

Pursuant to the Order of Hon'ble CAT/Calcutta, I, being the Respondent No.3 have gone his representation at Annexure A5 to the above O.A and have also taken into consideration all the relevant records and other aspects of the matter, I find that Sri Sumit Mondal moved before Hon'ble CAT/Calcutta basically for the following reliefs in O.A.No. 676 of 2009.

1. To direct the respondents to take back to duty in his former post and status forthwith.
2. To direct the respondent to grant all consequential benefits.

In view of the above reliefs as claimed by Sri Sumit Mondal, I have carefully gone through the relevant records and orders on the subject matter and find that Sri Sumit Mondal was engaged on 19.10.2006 as Substitute Bungalow Peon as per his application to the then Dy.CE/C/HWH-II and Dy.CE/Con/HWH-II's acceptance of the same on 11.7.2006. Moreover, he failed to discharge his duties satisfactorily even for four months. As per COP/ER's Confidential letter No.E.891/4/C1.IV/Policy/99 dated 27.5.1999 "no Bungalow Peon who has completed more than 4 months for continuous service is liable to be discharged from service without observance of prescribed D&A Rules". However on sympathetic ground Sri Mondal was given an opportunity to show cause as to why his service will not be discharged vide No. No.DCE/Con/II/E/13/3665 dated 05.02.07.

Sri Mondal failed to give any reply at all and assuming he had accepted the charge he was finally discharged from service on 14.02.2007 vide order No.DCE/Con/II/E/13/3715 dated 14.02.2007.

Considering the above fact I am of the view that relief as sought in this O.A No.676 of 2009 under item 1 & 2 above is not acceptable and tenable under Railway rules.

Thus, the representation of Sri Sumit Mondal is disposed off.

(Sanjib Kumar)  
Dy.Chief Engineer/Con/II  
Howrah, Eastern Railway"

It is very clear from the order that as per CPOs/E.Railway confidential letter that no Bungalow Peon who has completed more than 4 months of continuous service is liable to be discharged from service without observing of prescribed D&A Rules. However, on sympathetic view Shri Mondal was given a liberty to show cause as to why his services should not be discharged by the

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communication dated 5.6.2007. But Shri Mondal failed to give any reply. We note that applicant was appointed on 19.10.2006 (Annexure R-1) and he was discharged from service since he was unauthorisedly absent from 01.02.2007 to 05.02.2007 (Annexure R-2) i.e. he did not complete 4 months when show cause was served on him. When the show cause notice was issued to him and as he did not bother to make a representation against the show cause he was discharged on 14.02.2007. Therefore, the period of his service fall short of the four months period required for being considered for acquiring temporary status. As such the Bungalow Peon does not have the status of a civil servant before acquiring the temporary status and there is nothing wrong in discharging him without holding a departmental enquiry as enjoined in Article 311 of Constitution of India which applies to regular government servant. The allegation of stigma is also not correct as the reasons for his discharge has been mentioned in the discharge letter.

In view of the above discussion the O.A is accordingly dismissed. There shall be no order as to costs.

( Jaya Das Gupta )  
Administrative Member

( Justice V.C. Gupta )  
Judicial Member

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