

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. OA 350/401/2015

Present : Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

PRASENJIT DAS
S/o Shyamal Das
Working as Substitute Bungalow Peon,
Under Dy. Chief Mechanical Engineer (Freight)
S.E. Railway,
Garden Reach,
R/o Kamarthuba, Adhikary Ghosh Road,
Badamtala,
PO & PS - Habra,
Dist. - 24 Parganas (N)
Pin - 743263.

...APPLICANT
VERSUS

1. Union of India, through
The General Manager,
South Eastern Railway,
Garden Reach
Kolkata - 700043.
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Kolkata - 700043.
3. Deputy Chief Mechanical Engineer (Freight)
South Eastern Railway,
Garden Reach,
Kolkata - 700043.
4. Deputy Chief Personnel Officer (WS)
South Eastern Railway,
Kharagpur - 721301.

...RESPONDENTS.

For the applicant : Mr. C. Sinha, counsel

For the respondents : Mr. M. K. Bandyopadhyay, counsel

Heard on 7.11.2017

Order on : 14.2.2018

O R D E R

Per Ms. Manjula Das, Judicial Member

Mr. C. Sinha, ld. Counsel appeared for the applicant and
M. K. Bandyopadhyay, ld. Counsel appeared for the respondents.

2. In this instant OA the applicant has challenged the validity, legality and propriety of order dated 29.8.2014 issued by Chief Personnel Officer, S.E. Railway, pursuant to the direction of this Tribunal dated 30.5.2014 in OA 690/2014 and has prayed for the following reliefs :

- a) to set aside and quash the impugned letter No. SER/P-HQ/EM/565/14/PD dated 29.8.2014 issued by Chief Personnel Officer, South Easter Railway, Garden Reach, Kolkata - 43.
- b) to direct the respondents to allow the applicant to proceed on to transfer to South Central Railway with the officer with whom is attached or alternatively to direct the respondents to post the applicant as Substitute against Group 'D' vacancies in field units with General Manager's personal approval in terms of policy decision dated 9.6.2010.
- c) Any other order or order(s) as the Hon'ble Tribunal deems fit and proper.

3. The brief fact of the case is that the applicant on being declared medically fit has been appointed as Substitute Bungalow Peon attached to Dy. CME(WW)/KGP, Sri Amitava Bandopadhyay vide memo No.450/2/BP/Dy.CME(WW)/3914 dated 2.9.2014 and joined the said post as Bunglow Peon w.e.f. 4.9.2012. While the applicant was working as Substitute Bungalow Peon, Amitava Bandyopadhyay was transferred to South Central Railway, Secunderabad and relieved w.e.f. 25.6.2013. The applicant performed his duty upto 31.7.2013 and thereafter availed pre-sanctioned leave with average pay w.e.f. 1.8.2013 to 22.8.2013 and thereafter due to severe illness the applicant was unable to attend duty since 23.8./2013 and on being declared fit went to resume his duty by PMC dated 20.9.2013 and as such the applicant submitted a representation dated 25.9.2013 with a payer to allow him to resume duty. It is the case of the applicant that he was paid his salary regularly till September 2013 which transpires from the pay slips and the bank statement as had been attached with the OA at Annexure A/6 and Annexure R/1 to the rejoinder respectively.

4. We have heard both the ld. Counsels and perused the papers on record and materials placed before us.

5. Mr.Sinha, ld. Counsel for the applicant has drawn our attention to letter dated 9.6.2010 (Annexure A/7 to the OA) wherein it is stated as follows :



"3(a) On completion of 3 years of continuous/aggregate and satisfactory service, the Bungalow Peon will be screened and given paper lien against permanent cadre of Group 'D' vacancies in field units including safety categories like Gangman, Gatekeeper, Porters, Helpers etc. but shall continue to work as Bungalow Peon. In case the Bungalow Peon has completed more than 1 year of continuous and satisfactory service but less than 3 years of continuous and satisfactory service, he/she will be posted as a 'Substitute' against Group 'D' vacancies, in field units with G's prior personal approval. He will be screened and given paper lien after completion of 3 years of continuous/aggregate and satisfactory service only. Those Bungalow peons who had less than a year's service shall be discharged.

(d) If the officer is transferred outside S.E. Railway he/she will have the choice either to take his/her B/Peon along with him/her to his new post or leave the B/Peon behind, on S.E. Railway, either for regularisation, if he/she has completed requisite service or else his/her services will be terminated, as per Rules. In case he Bungalow Peon has completed more than 1 year of continuous satisfactory service but less than 3 year of continuous and satisfactory service, he/she will be posted as a 'Substitute" against Group 'D' vacancies, in field units only after obtaining GM's prior personal approval. He will be screened and given paper lien after completion of 3 years of continuous/aggregate and satisfactory service....."

Our attention has also been drawn to the pay slips as annexed at Annexure A/6 to the OA and the bank statement details at Annexure R/1 to the rejoinder wherefrom Id. Counsel has pointed out that the applicant has received salary from September 2012 till September 2013 continuously.

7. Having heard the Id. Counsel, perusal of the pleadings and materials placed before us, it is noted that undisputedly no termination order has been issued to the applicant and his initial appointment in the post of Substitute Bungalow Peon was issued vide order dated 2.9.2012 with due sanction of the competent authority.

8. The claim of the applicant that being completing more than one year of continuous service as Bungalow Peon he shall be posted as 'Substitute' against Group 'D' vacancies in view of the revised policy for engagement, re-engagement, absorption and discharge of Bungalow Peons dated 9.6.2010 issued by the S.E. Railway. However, the respondents denied the averments made by the applicant so far as rendering one year continuous service as a Bungalow Peon is concerned and accordingly the claim of the applicant was rejected vide impugned order dated 29.8.2014.



9. For coming to a logical conclusion, the points to be decided as to - (i) whether the applicant rendered his service as Bungalow Peon continuously for one year or more and (ii) whether the basic instruction relied upon by the applicant is applicable in the present case in the above circumstances.

10(i). Coming to the first point we have in hand the relevant documents of pay slips (Annexure A/6) and bank statement (Annexure R/1 to the rejoinder) for the period in question. It is apparent from Annexure A/6 to the OA that the bills for September 2012 to October 2012 have been paid monthly Rs.7000/- for each month (which are available at page 18-23 of OA), then September 2013 pay slip appears at page 24 of the OA.

From Annexure R/1 to the rejoinder, i.e. the bank statement of SBI available at page 5 to 15, after thorough exploration we found as hereunder :

Month	Month for salary account credited on	Amount
September 2012	27.9.2012	Rs.10,285/-
October 2012	26.12.2012	Rs.28,326/-
November 2012		
December 2012		
January 2013	30.1.2013	Rs.15,042/-
February 2013	28.2.2013	Rs.15,042/-
March 2013	2.4.2013	Rs.15,042/-
April 2013	29.4.2013	Rs.15,042/-
May 2013	30.5.2013	Rs.18,082/-
June 2013	28.6.2013	Rs.15,650/-
July 2013	30.7.2013	Rs.15,650/-
August 2013	30.8.2013	Rs.15,650/-
September 2013	28.9.2013	Rs.15,650/-

From the above bank statement it is evidently clear that the applicant was regularly paid the salary by the Railway authorities, which has been credited to the bank account of the applicant.



In view of the above, if the applicant has not served for one year continuously, the question of payment of salary in his account would not have arisen. As such we are of the view that the applicant has rendered service continuously for one year.

(ii) Now the claim of the applicant is for being appointed as a 'Substitute' against Group 'D' vacancies in view of the circular dated 9.6.2010 - The circular dated 9.6.2010 (Annexure A/7) was issued by the Dy., Chief Personnel Officer (Rectt) for General Manager (P), S.E.Railway, Garden Reach, Kolkata issued on the subject of revised policy for engagement, re-engagement, absorption and discharge of Bungalow Peon. By the said revised policy the respondent authorities by superseding the previous orders issued on the subject formulated the guidance for strict compliance. In the said circular Clause 3 provided for 'Regularisation' which reads as hereunder :

"3. REGULARISATION"

(a) On completion of 3 years of continuous/aggregate and satisfactory service, the Bungalow Peon will be screened and given paper lien against permanent cadre of Group 'D' vacancies in field units including safety categories like Gaṅgmān, Gatekeeper, Porters, Helpers etc. but shall continue to work as Bungalow Peon. In case the Bungalow Peon has completed more than 1 year of continuous and satisfactory service but less than 3 years of continuous and satisfactory service, he/she will be posted as a 'Substitute' against Group 'D' vacancies, in field units with G's prior personal approval. He will be screened and given paper lien after completion of 3 years of continuous/aggregate and satisfactory service only. Those Bungalow peons who had less than a year's service shall be discharged.

(b) Ordinarily an officer is to retain the B/Peon with him/her, in existing capacity till he completes 5 years of continuous service, after which an officer can propose for engagement of a fresh face. However, if an officer is transferred to a different Railway/Organization, outside the administrative control of S.E.Railway and if his existing B/Peon has completed 3 years continuous service and has been screened and given paper lien his services can be regularized with the personal approval of CPO.

(c) Officers on transfer from one place to another on S.E.Railway system will have to get their Bungalow Peon transferred to their new place of posting, if provision of a post of Bungalow Peon exists in the new assignment. In such cases, the transfer of Bungalow Peon will be considered as transfer on administrative interest. If there is no provision of B/Peon in the new assignment, regularization, re-engagement or discharge of the B/Peon shall be done as per extant rule.

(d) If the officer is transferred outside S.E. Railway he/she will have the choice either to take his/her B/Peon along with him/her to his new post or leave the B/Peon behind, on S.E. Railway, either for regularization, if he/she has completed requisite service or else his/her services will be terminated, as per Rules. In case he Bungalow Peon has completed more than 1 year of continuous satisfactory service but less than 3 year of continuous and satisfactory service, he/she will be posted



as a 'Substitute' against Group 'D' vacancies, in field units only after obtaining GM's prior personal approval. He will be screened and given paper lien after completion of 3 years of continuous/aggregate and satisfactory service. In respect of such B/Peons, who have completed 120 days of continuous and satisfactory service but less than 1 year probationary service and their services have been terminated, due to transfer, retirement, death etc. of appointing officer, their names will be maintained in a Reserve List, to be centrally maintained in CPO's Office (Recruitment Section). Similar list may be maintained by respective Sr.DPO/DPO also. In the exigencies of administrative requirement, such persons can be re-engaged from the Reserve List, with G.M.'s personal prior approval as Substitute, provided they fulfil the prescribed norms for such re-engagement. Those whose services were terminated due to unsatisfactory service/conduct/behaviour shall not be re-engaged.

(e) In the event of training/long leave/study leave of the officer, the Bungalow Peon will be temporarily attached and utilized. In the office of the officer proceeding on Training/Leave, with the clear stipulation that he/she will be posted back as Bungalow Peon under the officer, once the officer concerned joins back the post in this Railway. In the event of the officer not joining the former post on this Railway, on completion of Training/Leave, the provision indicated at 3(a) and (d) shall be applicable.

(f) In the event of retirement/death of an officer whose Bungalow Peon has completed/more than one year/120 days of service, provision at 3(d) above will also apply."

For proper conclusion we abreast take in hand the memorandum dated 2.9.2012 i.e. the appointment order. In the said appointment order against Sl. No. 1 & 2 itself contained as hereunder :

1. Sri Prasenjit Das has not conferred with any right for regular appointment. His service is liable to be terminated at any time in terms of Rule -301 of Indian Railway Establishment Code Volume-I.
2. This has the sanction of the competent authority communicated vide CPO/GRC's letter No. P/L/13/M/Cl.IV/B.Peon/Divn. dtd. 23.8.2012 followed by letter No. P/L/13/M/Cl.IV/B.Peon.Divn. dated 24.8.2012."

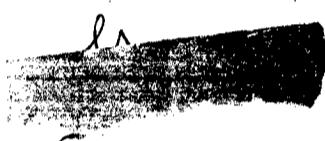
As we have noted hereinabove that admittedly the respondent authorities have not issued any termination order and the appointment order was issued by the competent authority, there is no alternative to decide further else than the posting of the applicant as a 'Substitute' against the Group 'D' vacancies subject to the approval of General Manager of the concerned Railway.

In the above backdrop and by taking into note the entire conspectus of the case, we are of the view that the benefit as provided in the policy of engagement dated 9.6.2010 (Annexure A/7) shall be extended to the applicant, more particularly in the light of Clause 3(a) & (d) in view of rendering continuous service for one year by the applicant. Accordingly we direct the



respondent authorities to carry out the exercise for posting of the applicant as 'Substitute' against Group 'D' vacancies in the field units subject to the approval of the General Manager of the concerned Railway more particularly in the light of the Clause 3 (a) & (d) of the policy decision dated 9.6.2010. The above exercise shall be carried out within a period of 4 months from the date of receipt of the order.

With the above observation and direction the OA stands disposed of. No costs.


(JAYA DAS GUPTA)
ADMINISTRATIVE MEMBER


(MANJULA DAS)
JUDICIAL MEMBER

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