

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI
ORIGINAL APPLICATION No.291/2016**

Date of Decision: 14th June, 2018.

CORAM: HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Shri. Sunil Kumar Rajbhar,
23 Yrs, Ex. Bunglow Peon attached to
Sheri. R.K. Goel, Chief Engineer
(Constructions) (North), under Chief
Administrative Officer (Constructions),
Central railway, CST Mumbai.
R/o. Room No. 302, 'A' Wing, Om Sai Apartment,
Diva (East) Distt. Thane.

...Applicants.

(By Applicant Advocate: Shri.D.N. Karande)

Versus.

1) Union of India,

Through the General Manager,
Central Railway, 2nd Floor of General
Manager's Office, CST Mumbai 400001.

2) Chief Personnel Officer,

Central Railway, 1st Floor of General
Manager's Office, CST Mumbai 400001 (MS).

**3) Chief Administrative Officer
(Constructions)**

Central Railway, FA&CAO's Office Bldg., CST
Mumbai 400001.

4) Shri Ravindra Kumar Goel

Chief Engineer (Constructions),
Central Railway, FA&CAO (Accounts) Building,
CST Mumbai 400001.

5) Assistant Personnel Officer,

CAO (C)'s Office, Central Railway,
FA&CAO (Accounts) Building, CST Mumbai 400001.

... Respondents.

(Respondents by Advocate: Shri. S.C. Dhawan).

Reserved on : 07.06.2018.

Pronounced on : 14.06.2018.

ORDER**PER:- SHRI R. VIJAYKUMAR, MEMBER (A)**

1. This is an application filed on 28.03.2016 by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"8(a). That this Hon'ble Tribunal may kindly be pleased to order the production of documents, files which are in possession of the respondents and which compelled the issue of the impugned orders.

8(b). This Hon'ble Tribunal may kindly quash the order of the resignation passed by the Respondents.

8(c). This Hon'ble Tribunal may kindly please to declare the resignation of the applicants as involuntary resignation and restate him in the service with all consequential benefits arising from such restatement in service.

8(d). This Hon'ble Tribunal may also kindly direct the Respondents to treat the intervening period as duty for all purposes such salaries, pay fixation, pay arrears etc.

8(e). This Hon'ble Tribunal may kindly direct the Respondents to pay interest @ 12% on such payment.

8(f). Any other relief, this Hon'ble Tribunal may kindly deem

fit to be granted.

8(g). *Cost of this OA may kindly saddled on the respondents."*

2. The facts of the case are that the applicant was appointed as a Fresh Face Substitute Bungalow Peon attached to Shri. R.K. Goel, Chief Engineer(C) Civil North in office note No. HPB/155/E(C)/BP dated 17.09.2012 and after passing necessary medical examinations in Aye Two Category, he was appointed as Substitute Bungalow Peon with regular pay scale and grade pay in order No. HPB/155/E(C)/BP dated 31.12.2012 and was attached to Shri. R.K. Goel, Chief Engineer(C) Civil North w.e.f. 31.12.2012. In his appointment order, it was noted that his services are purely temporary and he is liable for termination at any time on transfer of the officer or if his services were not required without assigning any reasons or notice. He was also advised that he will be granted temporary status on completion of 120

days of regular service and annual increment will count from date of attaining such temporary status. Further, he was advised that he will be eligible for screening after completion of three years of continuous service after attaining temporary status. Accordingly, he was granted temporary status on 29.09.2003 in order No. HPB/155/E/C/BP dated 25.09.2013 w.e.f. 30.04.2013. On 16.11.2015, Shri. R.K. Goel, Chief Engineer(C) Civil North sent a letter to the concerned office intimating that the applicant has started behaving rudely with the officer's wife; that he had left work on 04.09.2015 and submitted his resignation on the next day; and that "on 15.11.2015, he reported late and instead of giving a satisfactory explanation, he left the place stating that he did not wish to work any longer". Therefore, Shri. R.K. Goel, forwarded his resignation letter dated 05.09.2015 for acceptance

w.e.f. 15.11.2015. The letter dated 05.09.2015 was enclosed with this forwarding letter. The respondents have issued orders No. HPB/155/Engg/C/Sub.CDMH dated 23.11.2015 accepting his resignation letter w.e.f. 15.11.2015 and asked him to complete all formalities for paying settlement dues.

3. The applicant claims no quarters were provided to him and he stayed far away from his working place and was unable to attend duties on time, for which letters of apology taken from him on 2 to 3 occasions. On one occasion (date not mentioned). Shri. R.K. Goel, asked him to file an application and to make an endorsement in Hindi that "I should remove from job". Subsequently, after 3 to 4 months, he was shocked to receive impugned letter of acceptance of his resignation. He also argues that the acceptance of resignation was signed by the Assistant Personnel Officer (APO) and

not by the General Manager who, according to him, is the appointing authority. He also states that resignation is a voluntary act of relinquishment and there must be an intention to give up the job which was not available in the present case, for which, he cites various judgments. Therefore, he claims necessary two elements have not been fulfilled and therefore, it was involuntary resignation, for which he did not receive due notice before taking any action. The respondents have pointed out to the temporary nature of his employment and that he had been granted temporary status for completion of 120 days of regular service. This state that based on the resignation letter dated 05.09.2015, which was forwarded by the officer to the Competent authority, the Competent authority, thereafter, accepted his resignation based on the officer's recommendations and issued impugned acceptance letter. They deny that the

power to appoint bungalow peon is vested with the General Manager alone and that the appointing authority is a Junior Scale Officer as for all other Grade III posts like the applicant and in this case, is the Assistant Personnel Officer (APO). Only the post of bungalow peon is created with the sanction of the General Manager and not the process of filling it up or discharging the incumbent. Administrative control rests with the officer under whom the bungalow peon works. They also state that the bungalow peon is paid regular salary and has no right to staff quarters and has to make his own arrangements. They also mention that the applicant has admitted that he was coming late for duties and that he has given excuses that are not acceptable may also denied that resignation letter was dictated to the individual. In regard to the claim of the individual that he is illiterate or did not know to write, Respondents have stated

that he had passed SSC examination and can read and write. Further, that he had left the work place without permission on 04.09.2015 and submitted a resignation letter on 05.09.2015 of the next day but continued to work on persuasion of Respondent No. 4 without improvement in behavior until 15.11.2015. He again left without satisfactory explanation and stated that he did not want to continue to work any further and did not turn up for work either on the said date or even on the next date. The letter was accepted by the Competent authority w.e.f. 15.11.2015 as per the recommendations of the officer he was working with. They also point out with reference to the question of the competent authority, that his appointment letter dated 31.12.2012 was also issued by Assistant Personnel Officer (APO) and he cannot now make irrelevant unsupported pleadings. With reference to his arguments that the resignation letter was

involuntary, they state that it is not possible to force a person to do work if he was not willing. They also point out that in his resignation letter, it has not been mentioned as claimed by him in his application that he has used words "I may be removed for the service" or "I should remove from the job". Instead, the applicant has mentioned "मैं वैयक्तिक कारणों से असमर्थ हूँ और अपने गाँव वापस जाना चाहता हूँ", i.e. "for personal reasons, I am unable to work and wanted to go back to my village". They denied the relevant judgments cited by the applicant to the present case. They also assert that the resignation letter was written in detail by the applicant himself and it cannot be considered to have been written otherwise than of his own free will, voluntarily.

4. In his rejoinder, the applicant has reiterated the aspects made out in his application and said that his resignation letter was not unconditional and

voluntary. Therefore, short of such requirement, acceptance of resignation was illegal".

5. I have gone through the O.A. alongwith Annexures A-1 to A-5 and rejoinder alongwith Annexures RJ-1 filed by the applicant. I have also gone through the Reply filed by Respondents along with Annexures R-1 to R-6 and have carefully examined the various documents annexed in the case.

6. I have heard the learned counsel for the applicant and the learned counsel for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in the case.

7. During arguments, both the learned counsels were heard at length on the aspects of appointing authority and the voluntary nature of resignation. The resignation letter is addressed in four lines to the CAO/C Office CSTM with subject heading of resignation letter from

service in Hindi. The entire letter is in Hindi and below the subject, the applicant admits that he has written five lines to the effect that for personal reasons and because he wants go back to his village he requests that his resignation letter may be accepted and he may be relieved from service and ends his letter with a salutation and signature with date as 05.09.2015 and followed by his full name. Therefore, this resignation letter is entirely written by him except for the address and the subject heading by applicant's own admission and which has been agreed by the respondents during the hearing.

8. The first point for consideration is the dispute over the appointing authority as stated by the respondents, and in terms of the schedule of Powers On Establishment Matters (SOPEST), the powers for appointing and accepting the resignation are fully with a Junior scale

officers both at the head quarters of the office and of the divisional offices. Therefore, this point needs no further clarification and the applicant is wrong in making this claim.

9. On the short point of whether the resignation letter was voluntary, it is clear that except for the addressee, everything else in the letter up to the signature and full name has been written by the applicant whose hand writing and knowledge of Hindi are clearly evidence to the fact that he was not illiterate. He has also admitted in his application that he was facing problems in commuting from his residence to his place of work over the distance of 35 Kms. The only factor which can be considered is the interim period between the date of resignation, 05.09.2015, to the date on which the resignation letter was forwarded by the Chief Engineer Shri. R.K. Goel on 16.11.2015. The Chief Engineer has, in his

letter dated 16.11.2015, clearly stated that the applicant was given an opportunity to remedy his behavior but he failed to do so and finally, Respondent No. 4, the Chief Engineer, to whom he was attached had no option but to recommend the acceptance of his resignation letter and the orders accordingly followed. The applicant has now sought to raise doubts on the voluntary nature of his resignation but the detailed manner in which he has written the letter and the frank statement of the Respondent No. 4 suggests that there is no truth to the claims of the applicant and we have necessarily to come to the conclusion that the resignation letter was validly given and accepted.

10. In the circumstances, the OA fails and it is accordingly, dismissed without any order as to costs.

(R. Vijaykumar)
Member (A)

srp