

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/730/2014

Date of Reserve: 26.03.2019

Date of Order: 16.04.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Ajit Kumar Pradhan, aged about 25 years, S/o. Hrushikesh Pradhan, Substitute Bungalow Peon under Dy.CVO(T)/E.Co.Rly/Bhubaneswar, - permanent resident of Vill/PO-Kurala, Via-Odagaon, Dist-Nayagarh-752 090, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
Smt.J.Pradhan
T.K.Choudhury
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, E.Co.Rly., E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.
2. Chief Personnel Officer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.
3. Deputy Chief Vigilance Officer (T), E.Co.Rly., E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda, Odisha.
4. Mr.Niranjan Padhi, Dy.Chief Vigilance Officer (T), E.Co.Rly, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dit-Khurda, Odisha.

...Respondents

By the Advocate(s)-Mr.T.Rath

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

The short point involved for determination by this Tribunal in this O.A. is whether the services of a Substitute Bungalow Peon conferred with temporary status could be terminated without following the procedure under Railway Servants (Discipline & Appeal) Rules, 1968.

2. Facts of the matter in brief are thus: The applicant was engaged as Substitute Bungalow Peon vide order dated 07.05.2013 issued by the Railway

Administration. Subsequently, he was conferred with temporary status with effect from 09.09.2013 vide A/2 dated 31.10.2013. While working as such, he was issued with 14 days' notice vide letter dated 04.04.2014 (A/5) to submit his representation against the proposed termination of service on account of his unauthorized absence from duty. In response to this, the applicant submitted his representation dated 21.04.2014 (A/6) to the Deputy Chief Vigilance Officer (T), East Coast Railway, Bhubaneswar (Res.No.3). Vide order dated 05.05.2014 (A/7), his services were terminated with effect from 24.10.2013 before completion of probation period of one year on dereliction of duty, misconduct and unsatisfactory performance by following the procedure laid down in Para-1502 of Chapter XV of IREM, Vo.I(1989 Edition). Against this order, the applicant submitted an appeal to the General Manager, East Coast Railway(Res.No.1) on 15.05.2014 (A/8) followed by a reminder dated 25.07.2014 (A/9). The applicant was communicated the orders of the Appellate Authority vide letter dated 25.06.2014 (A/10) in which his request for reinstatement in service was not acceded to. Aggrieved with this, the applicant has filed the present O.A. in which he has prayed for the following reliefs:

- i) To quash the order of termination dated 05.05.2014, rejection dated 25.06.2014 and 01.05.2015 under Annexure-A/7, A/10 and A/11, respectively.
- ii) To direct the Respondents to reinstate the applicant in service with full back wages.

3. This O.A. came up for admission on 15.10.2014 and while directing notice, this Tribunal as an interim measure, directed the respondent No.1 to consider and dispose of the reminder/further appeal dated 25.07.2014 under Annexure-A/9. In compliance with the said order, Respondent No.1 passed an

order dated 01.05.2015 (A/11) upholding the order of termination. This order, the applicant has also challenged after carrying out the necessary amendment to the O.A. and by filing consolidated Original Application in pursuance of the direction of this Tribunal dated 15.07.2015.

4. In support of his case, the applicant has pleaded that he being a temporary status employee under the Railways, his conditions of service are guided by Railway Servants (Discipline & Appeal) Rules, 1968 and therefore, without following the due procedure of rules as stipulated therein, the order terminating his service is *non est* in the eye of law. In this connection, the applicant has placed reliance on Rule-3 of the Railway Servants (Discipline & Appeal) Rules, 1968, which reads as under:

“Application to casual labour – Casual labours are not governed by D & A R, 1968, but when such casual labourers attain temporary status, these rules will become applicable to them. Similar is the case with Substitutes”.

5. Opposing the prayer of the applicant, respondents have filed a detailed counter. The main thrust of the counter reply is that as per Para-4.1 of the Policy governing the service conditions of Bungalow Peon, it is stipulated under the heading “discharge” that the probation period of a Bungalow Peon shall be one year from the date of his engagement during which period, his services can be terminated on dereliction of duty, misconduct, and unsatisfactory performance etc. by following procedure as laid down in Para – 1502 of Chapter XV of IREM Vo.I (1989 Edition) before completion of probation period of one year during which normal D & A Rule shall not be applicable. It is the case of the respondents that since the applicant remained unauthorized absence from duty twice within a short span of duty before completion of probation period of one year and exhibited indifferent attitude,

14 days' notice was served upon him by the Deputy C.V.O(T) vide his letter dated 4.4.2013 and in this background, order terminating the service of the applicant was issued on 5.5.2014. The appeal and the reminder appeal preferred by the applicant were duly considered and rejected and communicated to the applicant. Therefore, the respondents have submitted that the O.A. being devoid of merit is liable to be dismissed.

6. Applicant has filed a rejoinder to the counter in which he has quoted the relevant provision of Para-1501 of Chapter-XV of IREM(1989) , which reads as follows:

"1501(i). Temporary Railway Servants.

Definition – A "temporary railway servant" means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include "Casual Labour", including 'casual labour with temporary status', a 'contract' or 'part-time' employee or an 'apprentice'."

7. According to applicant, the aforementioned provision is not applicable to a railway employee conferred with temporary status. Further, the applicant has brought to our notice a similar matter in O.A.No.499 of 2011 disposed of on 22.09.2014 wherein this Tribunal had quashed the impugned order of termination and submitted that since order terminating the services of the applicant herein has been passed under the same standard and norms, an identical order may be passed in this O.A.

8. We have heard the learned counsels for both the sides in extenso and given our anxious thoughts to the arguments as advanced. We have also gone through the orders of this Tribunal dated 22.09.2014 in O.A.No.499 of 2011. It is found therefrom that services of one Deepak Kumar Behera who was working as Substitute Bungalow Peon under the Railways being conferred

with temporary status, stood terminated vide order dated 10.03.2011 on the allegation of unauthorized absence from duty from time to time. Appeal preferred against this order having not been considered, he had approached this Tribunal in that O.A. The respondents in that case took a stand that order of termination of service of Shri Behera is in adherence to Rule-1502 of IREM under which there is no need to issue notice to terminate service of a person holding temporary service. This Tribunal after taking note of Railway Servants (Discipline & Appeal) Rules, 1968, as already quoted above, observed as under:

"14. Be that as it may, from the facts placed before us, it has become clear that the applicant being a Substitute employee with Temporary Status is covered under D & A.R, 1968. Therefore, the order of termination dated 10.03.2011(A/7) without initiation of disciplinary proceedings under the relevant rules is found to be bad in law, and is liable to be quashed. Accordingly, we quash the order of termination at A/7 and direct the Respondents to reinstate the applicant in service forthwith. However, in pursuance of the principles of 'no work no pay', the applicant shall not be entitled to payment of back wages".

9. From the above, it is quite apparent that the facts of the present O.A. are quite the same and similar to the facts in O.A.No.499/2011 cited supra. This being the situation, we are not inclined to make a departure from the view already taken by this Tribunal under similar circumstances. Accordingly, we answer the point in issue by holding that the services of a Substitute Bungalow Peon conferred with temporary status could not have been terminated without following the procedure under Railway Servants (Discipline & Appeal) Rules, 1968.

10. For the discussions held in the preceding paragraphs, the order of termination dated 05.05.2014(A/7) and the consequential orders passed by the Appellate Authority dated 25.06.2014 and 01.05.2015 (A/10) and (A/11)

upholding the orders of termination are quashed and set aside. Resultantly, the respondents are directed to reinstate the applicant in service forthwith. However, the applicant shall not be entitled to any back wages on the principles of 'no work no pay'.

11. The O.A. is thus allowed, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

BKS

(GOKUL CHANDRA PATI)
MEMBER(A)

