

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2579/2013
MA 506/2014
MA 1956/2013

Reserved on 06.02.2019
Pronounced on 18.02.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)**

Shri Jitender Kumar,
S/o Shri Ved Prakash,
Ex. Bungalow Khalasi,
Under Sr. Div. Signal & Telecommunication
Engineer (Tele), Northern Railway,
Moradabad
R/o 16/118 Bapa Nagar, Karol Bagh,
New Delhi.

... Applicant

(By Advocate: Mrs. Meenu Mainee)

VERSUS

Union of India through:

1. General Manager (Northern Railway),
Baroda House, New Delhi.
2. Divisional Railway Manager
Moradabad.
3. Shri Yashwant Singh,
Sr. Signal & Telecommunication
Engineer (Tele) DRM Office,
Moradabad.

... Respondents

(By Advocate: Mr. Shailendra Tiwary)

O R D E R

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mrs. Meenu Mainee, counsel for applicant and Mr. Shailendra Tiwary, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:

- "8.1 That this Hon'ble Tribunal may be graciously pleased to allow this application and quash the impugned order dated 07.04.2011.
- 8.2 That this Tribunal may be pleased to direct the respondent to reinstate the applicant with all consequential benefits including back wages, regularization, promotion etc.
- 8.3 That this Hon'ble Tribunal may further be pleased to grant any other or further relief to the applicant as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- 8.4 That this Hon'ble Tribunal may also be pleased to award the cost of the proceedings to the applicant and to impose exemplary cost against Respondent No.3 who has unnecessarily, illegally and maliciously thrown the Applicant out of job."

3. The relevant facts of the case are that applicant was appointed as Bungalow Khalasi on 30.10.2007. As he absented from duty from 25.10.2010 and his conduct and reliability was suspicious and he was careless and in spite of verbal warnings he did not improve, a notice was given to him. He replied to the said notice denying all the allegations made against him. Subsequently vide order dated 07.04.2011, he was removed from service. Challenging the same, the applicant filed this present OA.

4. The counsel for the applicant vehemently contended that the applicant was conferred temporary status and as such without holding a regular departmental enquiry, he should not have been removed as such the impugned order is bad in law.

5. The respondents in their written statement categorically stated that the applicant was never granted temporary status because the report on his working and behaviour was not satisfactory, which was essential requirement for granting temporary status. They have further submitted

that he was issued with SF-5 dated 4.2.2011 but he did not reply to the said SF upto 23.02.2011. The respondents have also relied upon judgment of Full Bench of this Tribunal in para 6 and another judgment in para-7 of the written statement which are extracted below:

"6. It is submitted that this Hon'ble Tribunal dismissed the OA No.2283 of 2013 vide order dated 29.05.2015 in the matter of Manish Yadav Vs. Union of India & Ors with following observations: "It is significant to note that an identical issue had engaged the attention of the full bench of this Tribunal in Shyam Sunder Vs. Union of India (OA No.896 of 1995). The Full Bench was constituted as a Division Bench of this Tribunal that the subsequent decisions of the Tribunal in Shiv Bahadur Maurya vs. Union of India, [OA No. 2937/92, decided on 15.7.1993(Delhi)]; Ashok Kumar Limba vs. Union of India [O.A.No. 2081/93 (Delhi), decided on 27.5.1994 (Delhi)]; and Sameshwar Ram vs. Union of India, [1995(3) SLJ (CAT) 332 (Patna) were in conflict with an earlier decision of the Tribunal in F.A. Charles vs. Union of India, [1989 (10) ATC 456 (Madras) and accordingly made a reference for consideration of the following questions of law by the Full Bench:-

- (i) Whether bungalow peons in Railways are Railway employee or not;
- (ii) Whether their services are purely contractual and they can be discharged in terms of their contract;
- (iii) Whether upon putting in 120 days continuous service, they require the status of temporary employees or not and if so whether upon acquiring such status, their services could be dispensed with for unsatisfactory performance only after conducting a departmental enquiry.

The Full Bench summed up the answers to the questions framed by it which would read thus:

- (i) Question NO.(i) does not arise as stated in paragraph 3 of this order.
- (ii) This question also does not arise for similar reasons given in paragraph 3 of this order.
- (iii) (a) No. As a general principle, it cannot be laid down that after putting in 120 days continuous service, a Bungalow Peon/Khaliasi acquires temporary status. He acquires temporary status on completion of such a period of continuous service as may be prescribed by the General Manager of the Railway under which he works and which is current on the date of his

employment as a Bungalow Peon/Khali. In the absence of any such rule or instructions from the General Manager, the general instructions or rule in that regard, like one given under paragraph 1515 of the Manual, issued or framed by the Railway Board and current on the date of employment may determine the period of his continuous service for conferment of temporary status, as discussed in paragraph 10 and 11 of this order.

Yes, After acquisition of temporary status by a Bungalow Peon/Khali, his services can be terminated on the ground of unsatisfactory work without holding a departmental enquiry as discussed in paragraphs 14, 15 and 16 of this order.

(iv) No. The termination of the service of a substitute Bungalow Peon/Khali, who has acquired temporary status, is not bad or illegal for want of notice before termination. In such a case, he may be entitled to pay for the period of notice in lieu of notice, as discussed in paragraph 17 of this order. The question whether for want of retrenchment compensation under section 25-F of the Industrial Disputes Act, 1947, the termination of the service of a substitute Bungalow Peon/Khali, who has, acquired temporary status, is bad or illegal, is beyond the scope and jurisdiction of this Tribunal, as discussed in paragraph 19 and 20 of this order.

7. It is submitted that in the case of Ms. Madhuri vs. Secretary, Railway Board, (OA No. 1833/2010) on 09.10.2011, this Hon'ble Tribunal has relied upon the case of Shyam Sunder (supra) to hold that the services of Bungalow Khali whether acquired temporary status or not can be terminated on account of unsatisfactory work without holding a departmental inquiry."

6. In view of the facts that the applicant had not attained temporary status and in view of the Full Bench judgment, referred to above, in para 6 of the counter affidavit and in view of the facts and circumstances of

this case, we do not find any reason to interfere with the impugned order dated 07.04.2011.

7. Accordingly, OA dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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