

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4066 of 2014

This the 30th Day of January, 2019

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

Tumpa Das
W/o Ujjwal Mandal
r/o 1/3427, Ram Nagar Ext, Post of TADK
Mandoli Road,
Shahdra, Delhi-110032.

....Applicant

(By Advocate : Ms. Roopa Paul)

VERSUS

1. Secretary,
Railway Board,
Ministry of Railway,
Rail Bhawan, New Delhi-110001.
2. General Manager (P)
Northern Railway,
Baroda House, New Delhi-110001.
3. Sh. Debasis Majumdar
Director Estt. (Welfare)
Railway Board,
Ministry of Railway,
Rail Bhawan,
New Delhi-110001
Also
R/o 338, (RPS) DDA Flats,
Mansarovar Park, Shahdara, Delhi-32.

.....Respondents

(By Advocate : Shri Malaya Chand for R-1 and R-2 and Shri
S.P. Mitra for R-3)

O R D E R (Oral)

Ms. Nita Chowdhury, Member (A):

By filing this OA, the applicant is seeking the following
reliefs:-

- “(a) Set aside/quash the impugned office order dated 9.7.2014 passed by respondent no.2 in the light of facts and circumstances and grounds mentioned above.
- (b) direct the respondents to reinstate the present applicant on the post of TADK in the light of facts and circumstances of the case abovementioned;
- (c) direct the respondents to reinstate the present applicant from the date of earlier appointment i.e. 26.9.2012 with no financial injuries to the innocent and helpless applicant;
- (d) may pass any other order or direction as this Hon’ble Tribunal deem fit and proper in the light of the facts and circumstances of the case.”

2. The applicant is aggrieved by the order dated 9.7.2014, the contents of which are reproduced as under:-

“NORTHERN RAILWAY

HEAD OFFICE BARODA HOUSE, NEW DELHI

NO.220e/60/TADK/E-III C/230

DATED : 9.7.2014

SMT. Tumpa Das
D/o Sh. Patitapaban Das,
TADK, Director Estt. (Welfare), Railway,
338 (RPS) DDA Flats,
Mansarovar Park, Sahahdra,
Delhi-110032.

Subject : Alternative for not working on the post of TADK

Reference : Request dated 01.7.2014

as per your non willing for working at post of TADK under Director-Estt (Welfare) Railway Board, Sh. Debasis Majumar, vide your letter dated 1.7.2014 you are being terminated from your services at the post of TADK with immediate effect.

Sd/-
(Gursharan Singh)
for General Manager (P)”

3. Brief relevant facts of the case as stated in the OA are that the applicant was appointed as Telephone Attendant-cum-Dak Khalasi (TADK) on 26.9.2012 in Northern Railway, on temporary basis and was posted with respondent no.3, namely, Shri Debasis Majumdar, Director Estt. (Welfare), Railway Board, at his residence and thereafter on 22.3.2013 after completion of a period of 120 days, the applicant was granted status of temporary employee of the Northern Railway.

3.1 It is alleged by the applicant that respondent no.3 from the very beginning starting misbehaving with the present applicant and tried to exploit even by doing illegal, unlawful, un-procedural and unwanted acts to suit him best and used his all out efforts. Aggrieved the applicant had lodged an FIR vide No.551 dated 22.9.2014 Police Station Shahdara, Delhi. According to the applicant, so much so, even the said respondent no.3 forced the applicant to withdraw the amount of her monthly salary and out of which he used to pay only Rs.3,000/- PM and rest of the amount of salary i.e. about Rs.11,000/- used to keep and enjoy the same for his own use and this continued for a period of 2 years approximately and thus the said respondent no.3 made out lakhs of rupees so extorted from the pocket of the applicant illegally and unlawfully. Applicant has also alleged that the respondent

no.3 repeatedly harassed the present applicant mentally, sexually and economically as well and threatened and warned of dire consequences if she even made any attempt to disclose the said facts to any person and the helpless applicant kept her lips tight under the fear of lose of her job and other serious threats of dire consequences extended by the said respondent. It is further alleged that the said respondent no.3 also took the signatures of the applicant on the blank papers at several occasions under the cover of the various threats even extended projecting his vast influence and status he carried in the Railways and Society as a whole.

3.2 Applicant has further stated that on 1.7.2014, she received a letter dated 1.7.2014 from her employer – respondent no.3, who himself delivered the same to the applicant, for acceptance of alleged resignation letter of applicant, despite the fact that she never submitted or sent any such alleged resignation letter to the said employer or any other concerned authority. The contents of letter dated 1.7.2014 are reproduced as under:-

“Sub: Resignation from the post of TADK

Vide Northern Railway’ letter No.220E/60/E-III-C/230 dated 26.09.2012 (copy enclosed), I was appointed on the post of Telephone Attendant-cum-Dak Khalasi (TADK). Subsequent to my appointment, I was posted with Shri Debasis Mazumdar, Director Estt. (Welfare), Railway Board.

Sir I wish to state that on account of my ill health, I am not willing to work any more as TADK. This letter

may be treated as my resignation from the post of TADK.

Thanking you,

DA : As above.

Yours sincerely

Sd/-

(Tumpa Das)

Telephone Attendant-cum-Dak Khalasi

c/o Shri Debasis Mazumdar,

Director Estt. (Welfare),

Railway Board

Res Address :338 (RPS), DDA Flats,

Mansarovar Park, Shahdara

Delhi – 110032.”

3.3 Thereafter the applicant submitted a representation dated 21.7.2014 for withdrawal of alleged resignation letter.

The contents of this letter are reproduced as under:-

“(Attn: Shri Gursharan Singh, APO)

Sir,

Sub: Refusal of work in the post of TADK.

With due respect, I would like to state that Please find enclosed copy of letter from Northern Railway dated 09.07.2014 issued by Shri Gursharan Singh, GM(P) stating that I had expressed unwillingness to work with DE (W) Railway Board as TADK. Sir, I would like to clarify that I had not given any such letter mentioning that I am not interested to work as TADK as mentioned in your letter No.220 E/60/TADK/E-III/C/230 dated 09.07.2014. As I was suffering from fever and stomach-ache (Medical Certificate from doctor is enclosed), I had given an application dated 28.6.2014 (copy enclosed) regarding my illness and for leave. In that letter I had mentioned that as soon as I recover from illness I will join my duty. So, I had remained on leave from 28.6.2014 to 09.07.2014 with proper intimation. On 10.07.2014, DE (W) came to my house and told that my CR is received and same he has handed over to me which was GM(P)'s letter instead of CR.

Sir, I would like to state that as I belong to the SC community and I am in dire need of this job to help my family and I have always done my duties to the utmost satisfaction of my officer Director, E(Welfare) which he had mentioned in the letter after completion of 120 days. Sir, there may be some misunderstanding, as I never showed any disinterest for doing my job.

Sir, I request you to kindly look in to the matter as I need this job and without it I cannot survive. This is the source of income for my poor family.

Yours faithfully,
Sd/-
21/7/2014
(Tumpa Das)
TADK/Dir (W), Railway Board"

3.4 Thereafter, the applicant also submitted an application/representation dated 8.8.2014 (Page 37 of the paperbook) requesting for withdrawal of resignation from the post of TADK. The contents of the case are as under:-

"Sub: Request for withdrawal of resignation from the post of TADK.

In terms of your letter No.220-E/60/E-III/C/230 dated 26.09.2012. I was appointed as TADK with Shri Debasis Mazumar, Director Estt. (Welfare) Railway Board and I joined on 26.9.2012. I performed my duties for 21 months. I fell ill on 17.6.2014 and could not attend to my duties. I was also suffering from depression and thus submitted my resignation on 1.7.2014 which was accepted by you on 9.7.2014. Sir I now realize that it was a hasty decision to submit my resignation. Now I am fully fit and am keen to resume duties. I shall be grateful to your good self if you kindly consider my withdrawal of resignation and reinstate me as TADK. I may add here that neither me nor my husband Shri Ujjal Mondal have any complaint against Shri Debasis Mazumdar, Director Estt. (Welfare) or any of his family members.

Thanking you

Yours sincerely,
Sd/-

(Tumpa Das)”

3.5 Thereafter on 18.9.2014, the applicant filed a complaint with the Shahdara Police Station against the respondent no.3 and on 22.9.2014, the aforesaid FIR was registered in the said Police Station.

3.6 Being aggrieved by the impugned order dated 9.7.2014, the applicant has filed this OA on 12.11.2014 seeking the reliefs, as quoted above.

4. Pursuant to notice issued to the respondents, they filed their respective replies. In the reply filed by official respondents no.1 and 2, (reply to the amended OA), in which, before giving reply to the said amended OA, they have raised preliminary objection that no cause of action has accrued to the applicant to file the OA under reply as the impugned order has been passed by the GM (P), Baroda House, Northern Railway in accordance with the rules and instructions on the subject, as the same has been passed in accordance with the instruction contained in Para 2 (Service Condition) of PS No.10960/95 (Annexure-1) through which the applicant has been discharged from her duties as per her request application dated 01.07.2014 in which applicant had expressed her unwillingness to serve the department. So the impugned order dated 09.07.2014 is not a termination order but it is an order for discharge from service.

4.1 They further stated that the prayer of the applicant is against the finding of the Full Bench of this Tribunal in OA No.896/1995 (***Shyam Sundar vs. Union of India***) and other OAs which were decided on 12.2.1999 wherein it was held by the Full Bench that services of Bungalow Khalasi could be terminated, without notice, even after he had acquired temporary status. The official respondents also placed reliance on the decision of this Tribunal in OA 1833/2010 and of Hon'ble Supreme Court in the cases of ***Oil and Natural Gas Commission vs. Md. Iskender Ali***, (1980) 3 SCC 428; ***State of Maharashtra vs. Veerappa R. Saboji***, AIR 1980 SC 42; and ***State of U.P. vs. Kaushal Kishore Shukla***, JT 1991 (1) SC 108 and contended that a temporary Govt. servant has no right to hold the post and his services can be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary Govt. servants.

4.2 The official respondents also relied upon the decision of the Apex Court in the case of ***M.R. Prabhakar vs. Canara Bank and others***, 2012 9 SCC 671 wherein a distinction between 'resignation' and 'retirement' has been made by the Apex Court, the relevant portion of the same reads as under:-

“We may point out that in Sheelkumar Jain this Court was dealing with an insurance scheme and not the

pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulations are not in pari materia. In Sheelkumar Jain case, while referring to Para 5, this Court came to the conclusion that the same does not make distinction between "resignation" and "voluntary retirement" and it only provides that an employee who wants to leave or discontinue his service amounts to "resignation" or "voluntary retirement". Whereas, Regulation 20(2) of the Canara Bank (Officers') Service Regulations, 1979 applicable to banks, had specifically referred to the words "resignation", unlike Para 5 of the Insurance Rules. Further, it is also to be noted that, in that judgment, this Court in para 30 held that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement."

4.3 The official respondents have also stated that applicant was engaged as TADK with respondent no.3 by the office of respondent no.2 on temporary basis. An engagement letter dated 26.9.2012 was issued by Northern Railway and applicant joined her duties as TADK on the same day. On completion of 120 days from 26.9.12 to 23.1.2013, the applicant was granted temporary status w.e.f. 24.1.2013 by the office of Northern Railway vide letter dated 22.3.2013 as a substitute TADK under the respondent no.3 clearly stating therein that her engagement was absolutely on temporary basis till the screening as per rule.

4.4 The applicant submitted her resignation vide an application dated 1.7.2014 to the respondent no.2. The applicant's resignation was processed by the office of respondent no.2, thereafter an order for discharge from

service was issued on 9.7.2014 by the GM (P), Baroda House, Northern Railway. The said order dated 9.7.2014 was sent at the residential address of the respondent no.3 to be served on the applicant, which was duly served on her on 10.7.2014.

4.5 The applicant submitted an application to the respondent no.3 requesting for withdrawal of her resignation by stating that her application for resignation dated 1.7.2014 was submitted in haste and under a spell of depression. The applicant requested for reinstatement as TADK by categorically stating that neither she nor her husband have any complaint against the respondent no.3 or his family members. As this application was addressed to respondent no.2, the same was forwarded to the office of respondent no.2 by Railway Board Administration vide letter dated 2.9.14.

4.6 The Office of respondent no.2 considered her request and rejected the same stating that as per rules, the applicant cannot be reinstated as TADK once the resignation has been accepted by the competent authority vide their letter dated 1.12.2014, the contents of which reads as under:-

“With reference to Railway Board’s letters cited above, it is stated that the resignation tendered by Smt. Tumpa Das, TADK attached with Director Establishment (Welfare), Railway Board vide her application dated 01.07.2014 which was received from Railway Board vide their letter No.2014/ERB-5/23(3)/1/Pt.2 dated 04.07.2014, has been accepted by the competent authority on 08.07.2014 from the post of TADK in Railways and orders to this effect has been issued vide this office letter of even number dated 09.07.2014. She cannot be re-instated as TADK once her resignation is accepted by the competent authority.

This is for the information and taking further action at yours.”

5. Respondent no.3 has also filed reply to unamended OA and has not filed any reply to the amended OA. In the said reply, it is stated that the respondent no.3 is presently working as Director (Estt.). As per policy of respondent nos. 1 and 2, respondent no.3 is entitled for a TADK. On his recommendation, the applicant was posted as TADK w.e.f. 26.9.2012. But due to her unwillingness to work with the respondent no.3, her resignation dated 1.7.2014 was accepted and accordingly the services of the applicant were terminated as per letter dated 9.7.2014. After acknowledgement of letter dated 9.7.2014, the applicant cooked up the story and to succeed in her nefarious design, she even levelled false and frivolous allegations against respondent no.3, which are ex-facie contrary to the facts and are afterthought.

5.1 The respondent no.3 specifically denied that he started misbehaving with the present applicant and tried to exploit even by doing illegal, unlawful, unprocedural and unwanted acts.

6. Applicant has filed rejoinders to the replies filed by the official respondents as well as respondent no.3 wherein reiterating the contents of the amended OA and denying the averments made in the replies filed by the respondents.

7. We have heard learned counsel for the parties and perused the material placed on record.

8. Counsel for the applicant submitted that the alleged letter dated 1.7.2014 sent by the applicant for resignation from the post of TADK was never signed or sent by the applicant.

9. On the other hand, learned counsel for the official respondents submitted that in the OA, the applicant has herself admitted that she has submitted an application dated 8.8.2014, in which she has stated that she fell ill on 17.6.2014 and could not attend to her duties as she was also suffering from depression and thus submitted her resignation on 1.7.2014 which was accepted by the respondents on 9.7.2014 and she realized that it was a hasty decision to submit resignation and now she is fully fit and is keen to resume duties and requested for consideration of her case for withdrawal of resignation and reinstate her as TADK. She has also stated in the said letter that neither the applicant nor her husband have any complaint against respondent no.3 or any of his family members. As such the contention of the applicant that she has not submitted the said resignation letter dated 1.7.2014 is not sustainable in the eyes of law. It is also noticed that the allegation of misbehaving with the applicant and sexual harassment being extended by the respondent no.3, as alleged by the applicant, stands falsified

from her own admission made in the letter dated 8.8.2014 admittedly submitted by her for withdrawal of her resignation, wherein it has been categorically stated that neither the applicant nor her husband has any complaint against the respondent no.3.

10. To the aforesaid issue, this Court accepts the contentions of the learned counsel for the respondents.

11. Counsel for the applicant further submitted that a per CCS (CCA) Rules, the appointment authority may permit a person to withdraw his resignation in the public interest. To the said contention, learned counsel for the official respondents has submitted that although the said provisions are not applicable in the case of the applicant, but even if it is presumed to be correct even then it is trite law that after acceptance of resignation, the same cannot be permitted to be withdrawn and in this case the applicant being temporary status employee tendered her resignation on 1.7.2014 and the same was accepted on 9.7.2014 and it is admitted fact that the applicant has not tendered any such application before acceptance of her resignation. This Court accepts the contentions of learned counsel for the respondents on this issue, as the Hon'ble Supreme Court in the case of ***Union of India vs. Hitender Kumar Soni*** in Civil Appeal No.1064/2010 decided on 21.7.2014 observed as under:-

9. A perusal of the relevant clauses of the O.M. dated 11.2.1988 discloses that resignation is required to be

intimated in writing disclosing the intention to resign the office/post either immediately or from a future date. In the latter case, such future date should be specified. The resignation has to be clear and unconditional. The Respondent did not specify any future date but submitted his resignation in writing giving reasons and his intention to resign is clear and unconditional. Clause (2) contains circumstances under which resignation should be accepted. This is for the guidance of the concerned officials and does not create any right in the concerned employee to resist acceptance of resignation. Clause (3) specifies that a resignation becomes effective when it is accepted and the Government servant is relieved of his duties. A careful reading of this clause throws some light as to why the requirement of relieving a Government servant has been indicated in this Office Memorandum. The second sentence of this clause states the normal rule that a Government servant can withdraw his letter of resignation before its acceptance by the appointing authority. The next following sentence spells out that in case the resignation had been accepted by the appointing authority and the employee is to be relieved from a future date, if a request for withdrawal of resignation is received from the employee, the normal rule should be to allow the request to withdraw the resignation. But, even in such a case, the request for withdrawal may be refused but the grounds for the rejection should be recorded and intimated to the Government servant concerned. In continuity, clause (4) considers the case of a temporary Government servant who has a right to opt out of Government service by giving a notice of termination of service as per applicable service rules of 1965. In such a case the Office Memorandum in question relating to acceptance of resignation will not be applicable. The subsequent provision of clause (4) has been held applicable to the Respondent because instead of notice of termination he had tendered a letter of resignation. In such a case as per clause (4), "...he can relinquish the charge of a post only after resignation is duly accepted by the appointing authority and he is relieved of his duties and not after the expiry of the notice period laid down in the Temporary Service Rules".

10. In our considered view, the part of clause (4) extracted above makes a distinction between the right of a temporary Government servant to sever his connection from Government service by giving a notice of termination and that of a temporary Government

servant who chooses not to give such notice but opts to submit a letter of resignation. In the case of notice of termination the concerned employee can relinquish the charge of the post on expiry of the period of notice, but, such right will not be available to a temporary employee in case he tenders a simple resignation. The reason is obvious because a resignation requires acceptance by the appointing authority and till then his right to relinquish is impinged by the requirement, to be relieved of his duties. On a joint reading of clauses (3) and (4) it can be safely inferred that depending upon the facts and circumstances of a case and nature of request made in a resignation letter, the Government has the power to accept the resignation so as to bring about a severance of relationship of master and servant with immediate effect. But in cases where the letter of resignation itself specifies a future date for being relieved or where, as indicated in clause (2) the concerned Government servant is engaged on work of importance etc., the resignation may not be accepted straightaway. It is in such circumstances only that Government may exercise its power to accept the offer but defer the date from which resignation would become effective. The normal rule, however, remains that Government has the power to accept a resignation with immediate effect. In case the Government for some reasons wishes to defer or specify the date from which resignation would become effective, it is entitled to take work from the concerned Government servant till he is relieved in accordance with the facts and requirements of the case. The letter of Government accepting an offer of resignation itself should normally be conclusive for deciding whether the Government has opted for immediate termination of service by accepting the resignation or has deferred such termination to a future date. Only in the latter eventuality the relationship of master and servant shall continue till the concerned Government servant is relieved of his duties. In the instant case, the letter of acceptance clearly shows that termination of Respondent's service as per his offer of resignation was not deferred to any future date and hence there was no requirement to relieve him of his duties. Even the peculiar facts of this case show that the Respondent while on probation had already abandoned his temporary service for almost 8 months and had not cared to report for duty inspite of several requests. In such a situation, it would be impossible to relieve an absconding employee of his duties and if the reasoning of the High Court is accepted such employee, even if he has tendered resignation, must be continued

in service till he is actually found or till he presents himself to be relieved of his duties. Such a view would be impractical and run against larger public interest.

11. There may be cases where an employee resigning from service has gone in hiding or is in jail custody etc. The construction placed upon the relevant clauses of the O.M. dated 11.2.1988 by the High Court will render the provisions unworkable, hence such construction needs to be avoided.

12. The word, “relieving” itself must be understood in the ordinary parlance because it is not defined in the O.M. or in the relevant rules as is apparent from the judgment of the High Court. The meaning of the word “relieve” given in the Law Lexicon (2nd Edn. 1997 by P. Ramanatha Aiyar) is – “to free or clear a person from an obligation”. This result manifests itself from the order accepting the resignation because no reservation has been made by the Government that the Respondent has to continue in service till any particular time or till being relieved. Hence, in the instant case, there was no obligation on the Government to write a formal letter that the Respondent has been relieved. Even if such requirement had been there, in the case in hand it would be an empty formality. The wholesome writ jurisdiction was not required to be exercised in the facts of the present case keeping in view the conduct of the Respondent in escaping away from his duties without obtaining leave when he was only a temporary employee under probation.

13. For the aforesaid reasons, we find no option but to set aside the order and judgment of the High Court under appeal. We order accordingly. The appeal is allowed and as a result, the writ petition of the Respondent shall stand dismissed. In the facts of the case we pass no order as to costs.”

12. In view of the aforesaid observations of the Apex Court, this Court is unable to accept the other contentions as raised in the written submissions as also in the amended OA and therefore, this Court has found that the present OA bereft of

merit and the same is accordingly dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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