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O. A. 350/1777/2018

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 350/00/1777 of 2018

IN THE MATTER OF:

NARAHARI GOUDA, aged about 37 years, son of Shri. Dukhishyam Gouda, residing at Block No. 74/1/18, Unit-V, South Eastern Railway Colony, Garden Reach, Kolkata-700043 and working to the post of Bungalow Peon against a sanctioned post under chief Engineer/TP, South Eastern Railway under the control and authority of the General Manager, South Eastern Railway, Garden Reach, Kolkata-700043;

...Applicant

-Versus-

1. UNION OF INDIA service through the General Manager, South Eastern Railway, 11, Garden Reach Road, Kolkata- 700043.
2. THE CHIEF PERSONNEL OFFICER, South Eastern Railway, 11, Garden Reach Road, Kolkata- 700043.

3. THE CHIEF ENGINEER/TP, South Eastern Railway, 11, Garden Reach Road, Kolkata-700043.

4. THE SENIOR PERSONNEL OFFICER (ENGINEERING), South Eastern Railway, 11, Garden Reach Road, Kolkata- 700043.

...Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1777/2018

Date of order : 11.7.19

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

NARAHARI GOUDA
VS.
UNION OF INDIA & ORS.

For the applicant

Mr. P.C.Das, counsel
Ms. T. Maity, counsel

For the respondents

Mr. Gargi Roy, counsel

Bidisha Banerjee, Judicial Member

The applicant, a terminated Bungalow Peon has sought for the following reliefs:-

"a) To quash and/or set aside the impugned speaking order dated 10.10.2018 passed by the General Manager, South Eastern Railway, Garden Reach, Kolkata which was communicated to the applicant vide office letter dated 11.10.2018 by the Assistant Chief Personnel Officer, Headquarters by which the termination order issued by an incompetent authority has been upheld and which has not been considered by the General Manager, South-Eastern Railway as per the rules of the Railway Board and as per the decision of the Division Bench of the Hon'ble High Court at Calcutta that without any proceeding, the applicant has not been terminated from service being Annexure A-13 of this original application;

b) To quash and/or set aside the impugned speaking order dated 04.07.2016 issued by the Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata by which the order of termination issued by the Chief Engineer/TP, South Eastern Railway, Garden Reach, Kolkata-700043 has been upheld and the appeal preferred by the applicant before the General Manager, South Eastern Railway has been rejected being Annexure A-9 of this original application in view of the identical order passed by this Hon'ble Tribunal in O.A.No.1808 of 2010;

c) To quash and/or set aside the impugned office letter of notice of termination of service dated 21.04.2015 issued by the Chief Engineer/TP,

South Eastern Railway, Garden Reach, Kolkata-700043 against the applicant being Annexure A-5 of this original application;

d) To quash and/or set aside the impugned office letter of notice of termination of service dated 24.04.2015 issued by the Senior Personnel Officer(Engineering), South Eastern Railway, Garden Reach, Kolkata -700043 against the applicant without initiation of any disciplinary proceeding being Annexure A-6 of this original application;

e) To declare that the action taken by the respondents in respect of issuing such termination orders dated 21.04.2015 and 24.04.2015 against the applicant without any due process of law and without initiation of any disciplinary proceeding is otherwise bad in law and illegal which may be liable to be quashed and/or set aside and your applicant should be reinstated in service with effect from the date of termination along with all consequential benefits."

2. The order impugned in the present O.A. being order dated 10.10.2018 has been issued by the General Manager pursuant to the directions of this Tribunal in O.A.No.350/1194/2016. The impugned order is set out hereunder with supplied emphasis for clarity:-

"SOUTH EASTERN RAILWAY

General Manager's Office
Garden Reach/Kolkata-43

No.SER/P-HQ/EE/565/NG

To

Narahari Gouda,
S/o Sri Dukhisyam Gouda,
Block No. 74/1/18, Unit-V,
South Eastern Railway Colony,
Garden Reach, Kolkata-700043.

Sub:- Hon'ble CAT/CAL's Order dt. 06.07.2018 in OA No.
350/01194/2016- Shri Narahari Gouda-Vs-UOI & Ors.

By order dt. 06.07.2018, the Hon'ble Tribunal has been pleased to dispose of the OA with the following directions upon the undersigned:-

..... "7. Accordingly, we hereby set aside the termination notice dated 21.04.2015 of the Chief Engineer/TP followed by

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the final termination order dated 24.04.2015 of the Chief Personnel Officer (Engg) and we direct the General Manager concerned who is respondent No. 1 in the instant original application, to examine the records, and, if necessary, give an opportunity to the applicant to be heard. Thereafter, having gone through the version of the applicant as well as the complaint of Chief Engineer(TP), to issue the final order in this regard as per rule within a period of six weeks from the date of receipt of a copy of this order.

8. The status of the applicant in the interim period namely between 21.04.2015/24.04.2015 and the date of the order of the Respondent No. 1 will be decided by the General Manager, respondent No. 1 in his final order."

In obedience to the aforesaid direction of the Hon'ble Tribunal, I, the Respondent No.1, General Manager, South Eastern Railway, have examined the records and I have given a personal hearing to you as per Hon. Tribunal's directives.

As per records, you had made an application dated 10.06.2014 to the then Chief Engineer/General (now CE/TP/GRC), whereby, you presented yourself as a candidate for the post of Bungalow Peon with an undertaking to perform your duty diligently and honestly to the entire satisfaction of your superior by enclosing your Bio-data. Your appeal was forwarded along with your undertaking to Personnel Department and the then General Manager approved the proposal for your engagement as Bungalow Peon under Chief Engineer(G)/ GRC(now CE/TP/GRC).

Thereafter, offer of appointment as Sub-Bungalow Peon was given to you vide letter No:SER/P/HQ/EE/120/ENG/B Peon dated 01.07.14 with certain conditions which you accepted duly putting your signature on 01.07.14. As per condition No. 09 of that appointment letter, your service as Sub. Bungalow Peon can be terminated at any time without assigning any reason by following extant rule. Thereafter you joined as Bungalow Peon w.e.f. 01.08.14 and got regular salary..

During the course of hearing, you have stated that you have worked as Bungalow Peon under Sri Suvarn Mitra, CE/TP/GRC with entire satisfaction except that during your service period you have fallen sick twice.

I have also gone through the complaint of CE/TP/GRC. According to him, you have come to duty in inebriated condition under the influence of alcohol on several occasions, and found sleeping. This is a serious allegation. He had shown caused you twice for lapses in your services, to which you did not respond.

The services of a Bungalow Peon are entirely dependant upon the satisfaction of his superior as per conditions of service accepted by you.

Hence there appears to be no plausible grounds to consider your appeal for reinstatement now. Your services are deemed to be terminated

w.e.f. 21.04.2015 & the question of regularization of period thereafter does not arise.

This disposes of Hon. Cat/Kolkta's order dated 6/7/2018.

Please acknowledge receipt.

-Sd-

*(P.S.Mishra)
General Manager"*

3. Ld. counsel for the applicant would vociferously argue that the applicant a substitute acquired temporary status upon completion of 120 days of service and that his termination/discharge was punitive in nature that attracted the provision of Article 311 of the Constitution of India, yet he was discharged without a show cause notice. He had duly replied to a notice dated 09.03.2015 received by him after his discharge from hospital on 24.03.2015; but before he could reply to it, another show cause was slapped on him. The allegation of coming to duty in inebriated condition was not there in the earlier show cause.

4. Ld. counsel would invite our attention to the 1st show cause dated 09.03.2015(Annexure A/2) which mentions:-

".....During the 7 months in service, it is noticed that you have been casual in your approach to work and absent minded in your duties. You have not been performing your duties to the satisfaction of the undersigned inspite of repeated verbal warnings. You have been suffering from several stomach ailments and not performing the duties for which you have engaged.

You are hereby given a warning to improve your working and submit a written explanation by 16.3.2015 as to why action should not be taken against you for your failure to perform the duties for which you have been engaged."

while the second show cause dated 18.03.2015 says :-

".....As you have not been performing the duties to the satisfaction of the undersigned, you were warned vide letter under reference(ii) which was received by you on 10.03.2015 and advised to submit a written explanation by 16.03.2015.

It is noticed that no written explanation has been received from you till date. On the contrary, you have been unauthorisedly absenting from your duties since 09.03.2015. During the 7 months in service, it was noticed that on several occasion you have come to duty in inebriated condition under the influence of alcohol and you have been warned several times in this regard but you have not paid heed to any warning. You have also been found sleeping during duty hours in the bungalow and not performing your duties. You have stayed away from duties on several occasions on frivolous grounds.

You are hereby served a final show cause notice and written explanation may be submitted by 26.03.2015 as to why disciplinary action should not be taken against you for failure to perform the duties for which you have been engaged."

5. The reply filed by the applicant on 24.03.15 clearly stated the reason why he was unable to attend duties. It says:.

"With due respect and humble submission, I Sri Narahari Gouda/Bungalow Peon under your control is hereby informing you that Sir, being serious illness, I was admitted in the Central Hospital/GRC for treatment on 10th March, 2015 at 07.05 p.m. and discharged from Hospital on 14.03.15 (copy enclosed). Sir, I was advised by the concerning Doctor of the Hospital to take purely 10 (ten) days rest for the result of which, I was not in a position to reply/written explanation as asked for vide letter No. under reference latest by 16.03.2015 i.e. in between the scheduled period.

Sir, I also informed madam on 14.03.15 that I am willing to join my duties in your bungalow but madam intimated me that you should join your duties after full recovery from ailment.

In view of the said circumstances, it is stated that at present I am fully fit to join my duties with full satisfaction to my officer and declare that it will not hamper my duties from any point of view in future."

The medical certificates in support are annexed.

6. The applicant who is present in the court was asked whether he was given a hearing by the General Manager. He submitted that he was, but that he was never put a question whether he had attended the duties in inebriated condition. He would submit that he has been falsely alleged of going to duty in inebriated condition and that he was

prevented from attending duties for a few days as he was hospitalised which fact was not considered sympathetically by the Chief Engineer(T.P). He also submitted that his entire family depends upon his income as Bungalow Peon and that they would perish if he is not shown some sympathy and reinstated in service.

7. We are informed that in the railways, officers are allowed to engage a person of their choice as Bungalow Peon and the officers keep on changing their choice to the prejudice of the poor people engaged as Bungalow Peon whereas a Bungalow Peon if allowed to complete service of 1 year, acquires some right.

5. Having considered the plight of the applicant and having learnt that the system of being served by a Bungalow Peon continues in the Railways, we dispose of this O.A. with a direction to the competent authority to refer the name of the applicant to any other officer for suitable engagement as a substitute Bungalow Peon or otherwise so that he is able to eke out a livelihood to maintain his family of aged parents.

Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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