

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

O.A. No.1570/2013

Date .02.2016

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Present : Hon'ble Mr Justice V. C. Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

D Maheswar RaoApplicant

-Vs -

Union of India & ors. (S.E. Railway)
.....Respondents

For the petitioner : Mr C. Sinha, Counsel

For the respondents : Mr M.K. Bandyopadhyay, Counsel

Date of hearing : 18.02.2016 Date of Order : 26.2.2016

ORDER (ORAL)

JAYA DASGUPTA, AM:

This O.A. has been filed by Shri D. Maheswar Rao, the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "8.(a) To set aside and quash the impugned office order No. E/S&T/Admn/Termination/BP/DNR, dated 6.11.12 issued by Sr. Divisional Personnel Officer, S.E. Railway, Kharagpur.
- (b) To set aside and quash the impugned letter no. E/Griev/CA/199 dated 30.11.2012 issued by DPO/Sr. Divisional Personnel Officer, S.E. Railway, Kharagpur.
- (c) To set aside and quash the impugned letter no. P/DCPO(W)/EDPG/Nodal/2012/DMR dated 10.12.2012 issued by Chief Personnel Officer (Welfare).
- (d) To direct the respondents to regularize the period from 15.03.2011 to 07.06.2011 as period spent on duty with full salary and allowances.
- (e) To direct the respondents to consider the case of your applicant to be posted as substitute against Gr. 'D' vacancies in field units with GM's prior personal approval.
- (f) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

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2. The applicant was appointed as a substitute Bunglow Peon w.e.f. 14.12.2010 attached to Shri Manoj Gurumukhi, Sr. DSTE (co-ord.)/CKP. As the officer proceed on transfer to KGP, applicant was also transferred to KGP on expressing his willingness but could not join immediately because the post of Substitute Bunglow Peon was not vacant in Kharagpur. He joined subsequently. Shri Manoj Gurumukhi was again transferred as Dy. CSTE (Con) Rourkella. Applicant expressed his willingness to proceed on transfer to Rourkella but could not join immediately as the post at Rourkella was not vacant. He was allowed to draw his pay from Kharagpur. When subsequently Manoj Gurumukhi was transferred to Bhopal the applicant declined to join there. As he declined to join at Bhopal he was terminated from service from a retrospective date. Against such order of termination the applicant has filed this O.A.

3. The Respondents have filed their counter in which it has been stated that the service of the applicant was terminated strictly in accordance with the rules and the condition stipulated in his order of appointment warranting no interference by this Tribunal. Accordingly, they have prayed for dismissal of this OA.

4. The issue that arises for our consideration is as to whether the applicant who is a substitute Bunglow peon has any right to continue in service in the circumstances of his case.

5. The order of appointment of the applicant dated 14.12.2010 is placed at Annexure-A/1 which reads as under:

"South Eastern Railway

Office of the
Sr. Divl. Personnel Officer
Chakradharpur
O.O.No.E/Rectt/Gr. 'D'/Subs/B. Peon/200/10 Dtd. 14.12.2010

With the approval of the competent authority communicated vide CPO/GRC's letter No.-P/Rectt/Cl.IV/B. Peon/CKP/293/632 Dtd.24.11.2010, Sri D.Maheshwar Rao S/o Late D. Nageshwar is engaged as Substitute Bunglow Peon

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in Pay Band of Rs.4440-7440/- with Grade Pay – Rs.1300/- under Sri Manoj Gurumukhi, Sr.DSTE(Co.ord)/Chakradharpur with immediate effect against an existing vacancy.

His engagement is subject to the following conditions:-

- 1) The appointment of Bunglow Peon is co-terminus alongwith the officer to whom he has been attached/posted.
- 2) The service of Bunglow Peon can be terminated at any time without assigning any reason as per CPO/GRC's Policy Circular No – P/R&R/Cl.IV/Bunglow Peon/Policy/Loose Dated-09.06.2010.

N.B. :-

- 3) Sri D. Maheswar Rao has passed medical examination in A2 & below category vide Sr. DMO/CKP's fit certificate No. – 603109 Dtd. 10.12.10.
- 4) His date of birth is 10.01.1984 (Tenth January Nineteen Eighty Four) and educational qualification is I.Com. Passed.
- 5) He belongs to UR category.

Asstt. Personnel Officer
For Sr. Divl. Personnel Officer
Chakradharpur"

6. It is also necessary to extract relevant portion of CPO's letter dated 9.6.2010 referred above.

2. ENGAGEMENT:

(b) Officers entitled to Bunglow Peons may propose for engagement of persons of their choice as Bunglow Peon provided the Bunglow Peon post is vacant. Engagement will be made after obtaining GM's personal approval. The person proposed for engagement should be within the prescribed age limit, having prescribed minimum educational qualification (Class-VIII pass) and should pass the requisite medical examination.

(c) Fresh faces would be engaged as Substitute Bunglow Peon with the personal approval of G.M., in scale Rs. 4440-7440/- with Grade Pay Rs. 1300/- at stage Rs. 4440/- on probation basis, for one year and only after completion of satisfactory service their tenure shall be extended.

3. REGULARISATION:

(a) On completion of 3 years of continuous/aggregate and satisfactory service, the Bunglow Peon will be screened and given paper lien against permanent cadre of Group 'D' vacancies in field units including safety categories like Gangman, Gatekeeper, Porters, Helpers etc. but shall continue to work as Bunglow peon. In case the Bunglow Peon has completed more than 1 year of continuous and satisfactory service but less than 3 years of continuous and satisfactory service, he/she will be posted as a "Substitute" against Group 'D' vacancies, in field units with GM's prior personal approval. He will be screened and given paper lien after completion of 3 years of continuous/aggregate and

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satisfactory service only. Those Bungalow peon who had less than a year's service shall be discharged."

7. The order of appointment clearly reveals that his appointment as Bunglow Peon is co-terminus along with the officer he attached/posted and that the service of Bunglow Peon can be terminated at any time without assigning any reason.

8. Shri Manoj Gurumukhi with whom the substitute Bunglow Peon is attached was initially in Chakradharpur Division of South Eastern Railway and he was transferred to Kharagpur Division of South Eastern Railway under whom the engagement of the applicant was considered following the policy guidelines. As per the policy circular further continuance in service of the substitute Bunglow Peon on subsequent transfer of the officer depends upon the existence of vacant post at the new place of posting of the officer. At the relevant time when Shri Manoj Gurumukhi, Dy.DSTE (Co-Ordination), Chakradharpur was transferred to Kharagpur, there was already one substitute Bunglow Peon, namely Sri Praful Karketta who was working and was attached to the erstwhile Dy. DSTE(Co-Ord)/KGP.

Only after Sri Karketta was absorbed on regular measure the applicant's posting order for his engagement as substitute Bunglow Peon was issued on 29.6.2011 with the benefit of drawal of salary with effect from 8.6.2011 when the post in question became vacant. Earlier on 15.3.2011 the authorities agreed to the willingness expressed by the applicant to join at Kharagpur. Since the post of substitute Bunglow Peon was not vacant for the intervening period from 15.3.2011 to 7.6.2011 the said period was treated as break in service of the applicant on the principle of no work no pay and this order was not challenged by the applicant at the appropriate time.

9. Shri Gurumukhi, Dy. DSTE (Co-Ord) was again transferred to Rourkella and the applicant expressed his willingness for transfer and engagement at Rourkella but at this time the existing substitute Bunglow Peon attached to erstwhile Dy.CSTE (Con) at

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Rourkella was awaiting for absorption in regular measure at Chakradharpur. However, the applicant drew his salary from Kharagpur upto April, 2012 i.e. he continued his service.

10. In the meantime Shri Gurumukhi, Dy.CSTE was again transferred to Bhopal and the applicant at this instance expressed his un-willingness for joining Bhopal stating his domestic problem. As the applicant had refused to accept on 5.5.2012, the posting at Bhopal vide his letter dated 5.5.2012 his service was terminated from 6.5.2012 issued vide letter dated 6.11.2012. The termination letter at Annexure A-8 is extracted below :

"South Eastern Railway

Office of the DRM(P) KGP

OfficeOrder No.E/S&T/Admn/Termination/BP/DMR Dtd. 06.11.2012

To

Sri D.Maheswar Rao

S/o Late D/ Nageshwar Rao

Village & P.O. Chakradharpur

District West Singhbhum (Jharkhand)

Pin-833102

Sub : Termination of service of Sri D.Maheshwar Rao,
Substitute Bungalow Peon.

In pursuance of Rule -301 of Indian Railways Establishment Code Vol-I(1985 Edition) the service of Sri D.Maheshwar Rao, S/o Late D. Nageshwar Rao, Substitute Bungalow Peon in Pay Band Rs.4440-7440/- with Grade Pay Rs.1300/- attached to the post of Sr.DSTE(Co-Ord) KGP is hereby terminated w.e.f. 05.05.2012..

The amount of 14 days pay plus allowances in lieu of Notice at the same rate at which he was drawing immediately before the termination of his service is to be drawn and paid.

Note:-

- (1) The Service of Sri D.Maheshwar Rao is terminated due to submission of his unwillingness to move with his Officer while on transfer to BPL/W.C.Rly.
- (2) This is issued in terms of Sr. DSTE/Co-Ord) KGP's letter No.ST/E/Bunglow Peon/Termination dtd. 26.10.2012.
- (3) Sri D.Maheshwar Rao is eligible for Notice pay equivalent to 14 days pay plus admissible allowances in lieu of Notice at the rate at which he was drawing pay immediately before termination of his service.

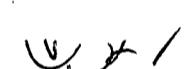
Sd/-illegible

Divl. Personnel Officer,
S.E. Railway, Kharagpur"

11. The order of appointment and relevant portion of CPO's letter dated 9.6.2010 cited above would clearly reveal that the applicant did not perform continuous one year service from the day he joined at Kharagpur on 8.6.2011 till 5.5.2012 when he declined to be transferred to Bhopal. He drew salary from Kharagpur upto April, 2012 after which he did not turn up in Kharagpur. His earlier period of service at Chakradharpur will not count as his service did not extend continuously from Chakradharpur to Khagarpur. It is well known that a substitute Bungalow Peon does not have any right under Article 311 of Constitution of India and until he attains at least a temporary status, no right accrue.

12. Accordingly the case of the applicant deserves to be dismissed and is hereby dismissed. No costs.

(Jaya Das Gupta)
Administrative Member


(Justice V.C. Gupta)
Judicial Member