

19

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 2668/2003

New Delhi this the 17th day of January, 2005

Hon'ble Mrs. Meera Chhibber, Member (J).

Shri Baijnath Mandal,
S/o Shri Raman Mandal,
Presently residing
SC 4/B, Basant Lane,
Near Karnail Singh Stadium,
New Delhi.

.... Applicant.

(By Advocate Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chairman,
Railway Recruitment Board,
Chandigarh.
3. Sh. Rakesh Arora,
Dy. C.M.O.,
Northern Railway,
Baroda House,
New Delhi.
4. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.
5. The Assistant Secretary,
Railway Recruitment Board,
Chandigarh.

.... Respondents.

(By Advocate Shri R.L. Dhawan)



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— 2 —
O R D E R (ORAL)

By this O.A., applicant has sought quashing of the notice dated 30.4.2002 (page 14) whereby his services were terminated by giving him one month's salary in lieu of notice. He has further sought a direction to the respondents to reinstate him, with all consequential benefits, including back wages.

2. The brief facts, as submitted by applicant, are that he was appointed as Bungalow Khalasi with Shri Rakesh Aron, who was working as Dy. Chief Vigilance Officer, Northern Railway, Baroda House, New Delhi vide letter dated 27.1.2000 (page 18). He was conferred with temporary status in terms of notice dated 7.6.2000 w.e.f. 27.5.2000 (page 19). He was working to the entire satisfaction of Shri Aron which is evident from the fact that when Shri Aron was posted as Chairman, Railway Recruitment Board, Chandigarh, applicant was also got transferred from Delhi to Chandigarh and was posted as Bungalow Khalasi with Chairman, Railway Recruitment Board, Chandigarh vide notice dated 31.7.2001 (page 21).

3. According to the applicant, the whole problem arose when he was transferred to Chandigarh because he could not take his family to Chandigarh due to education of his children whereas wife of the Chairman, Railway Recruitment Board wanted to utilize the services of applicant's wife also at the house. She, therefore, insisted that applicant should bring his wife also to Chandigarh. He was given the ultimatum to bring the family by April, 2002 when the school session at Delhi comes to an end, otherwise his services will be terminated. However, since the applicant could not bring his family, his services were terminated w.e.f. 30.4.2002, on the ground of misbehaviour, disobedience and for unsatisfactory work (page 14).

4. Applicant submitted that he never misbehaved nor had ever disobeyed the order of either Chairman, Railway Recruitment Board or of Mrs. Aron who was utilizing the applicant, like a private servant from 6 A.M. to 11 P.M. He was doing the duties only in the hope that one day he would become a full fledged regular employee. However,



2

— 3 —

he was thrown out of service without any fault on his part simply because he could not bring his wife as per the wishes of Mrs. Aron. He gave representation to the Chairman, Railway Recruitment Board requesting him to reinstate him and in case he does not want the applicant to at least transfer him to some other place and also gave simultaneous representation to the General Manager, Northern Railway, Baroda House, New Delhi, on 17.05.2002 but neither the General Manager gave any reply to him nor the Chairman, Railway Recruitment Board gave any reply. Therefore, he had to file O.A. 2795/2002. The O.A. was disposed of vide order dated 15.11.2002 by giving direction to the respondents to dispose of applicant's appeal dated 17.05.2002 by passing a speaking order within two months from the date of receipt of copy of the order.

5. It is submitted by the applicant that even though his representation was addressed to the General Manager yet the representation was disposed of at the level of Divisional Railway Manager, Northern Railway, Ambala Cantt, that too, as per the consideration made by the Chairman, Railway Recruitment Board, Chandigarh himself.

6. It is this order which has been challenged by the applicant in the present O.A. on number of grounds, including the one that DRM had no power to dispose of the representation.

7. Respondents have opposed this O.A. by submitting that in Railways, Junior Administrative Grade Officers and above are entitled for services of a Bungalow peon at the residence to meet the official work arising out of railway operation at their residence also. Looking at the sensitive nature of job involved, Bungalow peons are engaged purely on contractual basis and in case he shows unwillingness to work as Bungalow Khalasi or is found to be unsuitable, his services can be terminated. The Bungalow Khalasi even has to give an undertaking/declaration to the above effect before appointment as substitute Bungalow Khalasi. Moreover, in the Full Bench judgment rendered in the case of Shyam Sunder Vs. Union of India & Ors. (OA



22

- 4 -

896/95), it has been held that services of Bungalow pens can be terminated even after acquisition of temporary status, on the ground of unsatisfactory work without holding a departmental inquiry.

8. They have explained that applicant was appointed as substitute Bungalow Khalasi vide notice dated 7.1.2000 and was posted with Shri Rakesh Aron, Deputy Chief Vigilance Officer, Northern Railway, Baroda House, New Delhi. He was transferred when Shri Aron was posted as Chairman, Railway Recruitment Board, Chandigarh in July, 2001. However, the performance of applicant was found to be unsatisfactory inasmuch as he was not able to follow the instructions and started showing absent-mindedness. His behaviour was also erratic at times and he started disobeying the instructions. He was warned verbally by Shri Aron but his performance did not improve. In April, 2002, applicant also started misbehaving. Therefore, his services were terminated due to misbehaviour and unsatisfactory working in accordance with his appointment letter by giving him one month's pay in lieu of notice. He thereafter filed O.A. and in compliance with the directions given by this Tribunal, the competent authority examined the representation and disposed of the same by a detailed and speaking order dated 16.1.2003. They have thus submitted that there is no illegality in the orders passed by the respondents. The O.A. may, therefore, be dismissed. Both the counsel had relied on number of judgments to substantiate the contentions raised by them.

9. We have heard both the counsel and perused the pleadings as well.

10. Counsel for the applicant has raised following contentions:

(1) Since applicant's services were terminated on account of misbehaviour, it amounts to a misconduct. Therefore, proper inquiry should have been held before terminating his services;



27

- 5 -

(2) Appeal had to be decided by the General Manager and not by the Chairman, Railway Recruitment Board himself because applicant's grievance itself was against the Chairman, Railway Recruitment Board, Chandigarh.

(3) Pay had to be given in advance and not on later date as was suggested by the order of termination;

(4) Bungalow peon can be appointed only after approval is taken from the General Manager. Therefore, his appointing authority was General Manager and he could not have been terminated by the Assistant Secretary to the Chairman, Railway Recruitment Board, Chandigarh.

11. Counsel for the applicant relied on judgments which shall be dealt with separately at appropriate place. Counsel for respondents relied on a Full Bench judgment in the case of Shyam Sunder and Raj Bahadur Singh dealing with substitute Bungalow Khalasis.

12. Perusal of appointment letter at page 18 shows that applicant was appointed by the A.P.O.. It has already been held by Hon'ble Supreme Court in AIR 1967 SC 459 at 480, Para 4 that simply because approval is given by the higher authority, the higher authority does not become the appointing authority. Similar view was taken by Hon'ble Supreme Court in the case of State of Punjab and Anr. Vs. ASI Balkar Singh, reported in 2003 SCC (L&S) 89 wherein appointment was given by S.P. but same was affirmed by DIG. It was held by Hon'ble Supreme Court that since S.P. issued the appointment, he could dismiss also. Same view was taken by Hon'ble Supreme Court in State of Punjab Vs. Manohar Lal, reported in 1986 (Supp.) SCC 524.

13. In view of the above settled position, the contention of applicant's counsel that applicant's appointing authority would be General Manager cannot be accepted. The same is accordingly rejected.



24

- 6 -

14. Counsel for the applicant vehemently argued that the termination is bad in law because no regular inquiry was held even though his services have been terminated, on the ground of misconduct and it attaches stigma. However all the judgments that he relied upon were of those persons who were either appointed on ad hoc basis against substantive vacancies or on probation. Therefore, those judgments would not be applicable in the present set of facts. In Sumati P. Shere Vs. Union of India (1989 (11) ATC 127 (SC), Mrs. Sumati was appointed as Assistant Surgeon Grade-1 against a permanent post. She was given increments and extensions, regular doctor was still not selected by UPSC yet her services were terminated, on the ground that her performance was not satisfactory. It was in those circumstances that Hon'ble Supreme Court held that at no point of time she was informed about the deficiencies. Similarly in Dipti Prakash Banerjee's case, applicant was on probation against a substantive post. In V.P. Ahuja's case also, applicant was on probation and in the case of Mrs. Uma Patil also, she was appointed as LDC on ad hoc basis whereas applicant was only a substitute Bungalow Peon, who is governed by the Railway Board's letter dated 13.01.1995 and the terms of contract. Therefore, these judgments would have no application in the present set of facts. Railway Board's letter dated 13.01.1995 for ready reference reads as under:-

- (i) In case of appointment of fresh faces as Substitute Bungalow Khallasies, GM's prior personal approval should be obtained. The initial appointment will be for a period of three months. The engagement of the Bungalow Khallasi shall be purely on contractual basis. In case of any eventuality such as his unwillingness to work as Bungalow Khallasi or he/she is found unsuitable or his/her performance is found unsatisfactory, his/her services shall be terminated.
- (ii) After the initial period of three months, the extension of the services of the Substitute Bungalow Khallasies will be approved in different spells of three months each by the nominated ADRM on the Division and Dy. GM/G in Hd. Qrs. Office on receipt of satisfactory working report from the officer concerned. This procedure will be followed upto a total period



- 7 -

of two years. After two years the person will be granted temporary status and also screened for regular absorption after conducting screening along with other class IV staff, grant of temporary status to them will not entitle them to automatic absorption against regular post.

- (iii) In cases where the appointment of a substitute Bungalow Khallasi had been approved initially for a particular officer and later on his services are required to be utilized by another officer, approval of CPO/Admn. shall be necessary for such changes.
- (iv) Any changes in the category of a Substitute Bungalow Khallasi (including) screened one) before completion of three years service shall require the prior personal approval of GM such change after completion of three years service shall require the prior approval of CPO/Admn.
- (v) Additional information as per Annexure 'A' & 'B' have to be furnished at the time of engagement of Bungalow Khallasi. Procedure of appointment of B. Peon is also enclosed".

Moreover, as per the Scheme, a Bungalow peon has the following service conditions:

"(2) Service Conditions:-

Owing to the sensitive nature of the job involving Bungalow peon's presence at the residence of the officer when he/she shall be at work place/on tours/on training, person engaged as such has to be a dependable/reliable/faithful and person in whom officer should have full trust. Every entitled officer can exercise his option for engaging person of his/her choice only once in service. The following conditions have been laid down for engagement of a Bungalow peon.

The person being engaged as Bungalow Peon gives his consent in writing i.e. he/she is willing to work as a Bungalow Peon and in case of any eventuality such as his/her unwillingness to work as Bungalow Peon or he/she is found unsuitable or his/her performance is found unsatisfactory, his/her services shall be terminated. The engagement of the Bungalow Peon is purely on contractual basis, extendable from time to time after every three months. On having completed two years of continuous service as a Bungalow Peon, the person is granted Ty. Status and become eligible to be screened for the purpose of formation of a panel....".

"Therefore, with the terms and conditions of appointment, the services of a Bungalow Peon can be terminated under any of the following conditions:

The person engaged as Bungalow Peon gives himself in writing that if he is found unwilling to work as BUNGALOW PEON or the officer

24

- 8 -

who has engaged him as Bungalow peon gives in writing that the performance of the Bungalow Peon has not been satisfactory, after every three months until he has completed two years continuous service”.

Moreover, specific questions were referred to the Full Bench in the case of Shyam Sunder, which were as follows:

- “(i) whether bungalow peons in Railways are Railway employees 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 acquire the status of temporary employees or not, and if so whether upon acquiring such status whether their services could be dispensed with for unsatisfactory performance only after conducting a departmental enquiry”.

“3. At the outset, we may say that the first two questions of law do not arise in any of the cases referred, because the learned counsel for the parties conceded that the Bungalow Peons/Khallas in Railways were not Railway employees and that their service being purely contractual in nature, could be terminated at any time in terms of their contract, so long as they did not acquire temporary status. The third question of law is in two parts and may be considered accordingly after reframing the question as follows:-

- (iii) (a) whether after putting in 120 days continuous service, a Bungalow Peon/Khallas acquires the temporary status?
- (b) whether after acquisition of temporary status by a Bungalow Peon/Khallas, his services can be terminated on the ground of unsatisfactory work without holding a departmental inquiry.
- (iv) whether for want of notice or retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947, termination of service of a Bungalow Peon/Khallas after acquisition of temporary status is bad or illegal?”

The Full Bench referred to various provisions of IREM, IREC and the judgments referred to therein, including the judgments of Jagdish Mitter, Sumati P. Shere, Ram Kumar and many other judgments relied upon by the counsel for applicants and then gave their findings as follows:



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- 9 -

“...under rule 123, the Railway Board has powers to make rules of general application for all Railways; whereas under rule 124, the General Managers of various Railways have powers to make rules for exclusive or specific application to employees of their respective Railways”.

The Full Bench thereafter referred to Paras 1512, 1515, 2004, 2005, 2511, 2302, distinguished the judgments, as referred to above, overruled the judgments given by the Tribunal in the case of Chandra Kumari and Santosh Kumar Yadav and ultimately concluded that,

“.....the services of a Bungalow Peon/Khallasi, who has acquired temporary status, may be terminated on the ground of unsatisfactory work without holding a departmental enquiry as per service Rules or the contract of his employment”.

During the course of arguments counsel for applicants conceded that Bungalow Peons/Khalasi in Railways were not Railway employees and their services being purely contractual in nature could be terminated at any time in terms of their contract so long as they did not acquire temporary status. Question of reference was reframed:

- (iii) (a) whether after putting in 120 days continuous service, a Bungalow Peon/Khallasi acquires the temporary status?
- (b) whether after acquisition of temporary status by a Bungalow Peon/Khalasi, his services can be terminated on the ground of unsatisfactory work without holding a departmental inquiry?
- (v) whether for want of notice or retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947, termination of service of a Bungalow Peon/Khallasi after acquisition of temporary status is bad or illegal?”

Accordingly, reference was answered as follows:

“To sum up, our answers to the questions referred, reframed and framed by us are as follows:

- (i) Question No. (i) does not arise as stated in Paragraph 3 of this order;



24

- 10 -

(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 requires 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/Khaliasi. 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 paragraphs 10 and 11 of this order.

(b) Yes. After acquisition of temporary status by a Bungalow Peon/Khaliasi, 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/Khaliasi, 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/Khaliasi, who has acquired temporary status, is bad or illegal, is beyond the scope and jurisdiction of this Tribunal, as discussed in paragraphs 19 and 20 of this order".

15. From the perusal of above, it is clear that as far as the contention of applicant's counsel that the termination is bad for want of retrenchment compensation is beyond the scope and jurisdiction of this Tribunal and Tribunal cannot even look into it, otherwise termination letter was issued with the approval of G.M (P) dated 29.04.2002 and amount of notice period was also offered in consonance with the findings recorded in Full Bench. I am fully bound by the decision of the Full Bench. Therefore, this contention is rejected.



29

- 11 -

16. There are, however, two contentions of the counsel which require consideration. From the perusal of impugned order of termination, it is clear that applicant's services were not only terminated due to unsatisfactory work but due to misconduct as it was stated therein that applicant was found guilty of misbehaviour. In the letter dated 26.04.2002 also the Chairman gave a note to The Chief Personnel Officer (CPO) (Admn.) by stating categorically that on 26.04.2002 Shri Baijnath Mandal started misbehaving. This misbehaviour has not been explained anywhere and in case applicant had indulged in misbehaviour, that would amount to misconduct. In all fairness, in case applicant was reported to have misbehaved, it was a serious matter and at least his explanation should have been called.

17. From the reply filed by Chairman, Railway Recruitment Board, we find that applicant was appointed as Bungalow Khalasi in January, 2000 but was transferred to Chandigarh also in July, 2001 when Shri Aron was appointed as Chairman, Railway Recruitment Board, Chandigarh, which means that till the Chairman was posted to Chandigarh, applicant's working was satisfactory because otherwise he could not be extended or transferred to Chandigarh when Shri Aron was transferred to Chandigarh.

18. The 1st note which has been referred by the Chairman, Railway Recruitment Board is dated 18.1.2002 wherein it was mentioned that applicant is absentminded and his behaviour is also erratic sometimes. He has been warned. On 18.10.2001, the officer noted though applicant is not able to follow instructions correctly but over ^{all 12} working was stated to be satisfactory and it was specifically stated his services may continue. It was only in April, 2002 that the officer gave a report regarding misbehaviour and unsatisfactory working. If all these reports are seen in a chronological order, we find applicant's services have been terminated solely on the basis of some misbehaviour but no details of misbehaviour have been explained either in the note given by Chairman, Railway Recruitment Board nor in the counter filed by





- 12 -

official respondents as well as Chairman. This also seems to be fitting well in the allegations made by applicant that he was given time upto April, 2000 to bring his wife for house-hold work and since he could not bring the family, he has been terminated. We do not wish to give a definite finding on this aspect because we are not aware what notes were given by the officer prior to January, 2001. Since applicant was continued, they are presumed to be satisfactory. However, these are facts which need to be looked into by some responsible person. If indeed applicant had indulged in misbehaviour, then his explanation should be called and he should be given chance to rebut the allegation but in case no such misbehaviour is proved then applicant's services cannot be terminated on the whims of the officer or simply because he does not make his family available for household work.

19. We are rather surprised the way applicant's representation has been decided. Vide order dated 15.11.2002 in O.A. No. 2795/2002, this Court had directed the respondents to examine the representation dated 17.5.2002 and the grounds raised in O.A as additional grounds and dispose of the same by a speaking order in accordance with law (page 26). The representation/appeal dated 17.5.2002 was addressed to the General Manager (page 21) wherein his whole grievance was that he has been terminated because he could not bring his wife to Chandigarh as per wishes of the wife of Shri Aron. Therefore, the appeal was basically against the actions of Chairman, Railway Recruitment Board, Chandigarh yet his appeal was considered by the Chairman, Railway Recruitment Board, Chandigarh himself and it was disposed of by the office of Divisional Railway Manager. Disposal of appeal in such a position just cannot be sustained in law because it is cardinal principle of law that no one can be a judge in his own cause. This is exactly what has happened here. The opening para of order dated 16.1.2002 reads as under:



"In compliance of Hon'ble CAT/DLI orders Dt. 15.1.01, O.A. No. 2795/2002 as well as Annex. A-5 have been duly considered by the Chairman, RRB/CDG (R.No.3). After due consideration of the matter, it is disposed of as under".

This line clearly shows that appeal of applicant has not been considered by an independent person but by the same person against whom applicant had levelled allegations. Therefore, the order dated 16.1.2002 is quashed and set aside.

20. We are fully aware that misbehaviour or tendency not to work properly is not to be encouraged but at the same time, it would be seen that justice is done to a poor man. We are sure respondent No. 1 would apply his mind to all the facts and pass the orders by following due process of law. The matter is accordingly remitted back to Respondent No. 1, General Manager, Northern Railway, Baroda House, New Delhi to look into the matter personally and pass appropriate orders in accordance with law within three months from the date of receipt of a copy of the order. After examining everything and after hearing the applicant in person, if he comes to the conclusion that some injustice has been done to the applicant, appropriate orders may be passed, of course, if the officer does not want to continue with applicant, he may be utilized elsewhere. Otherwise, he shall pass a speaking order, keeping in view the observations as made above and looking into the other notes of the concerned officer.

21. With the above directions, this O.A. stands disposed of. No order as to costs.



(MRS. MEERA CHHIBBER)
MEMEBR (J)

'SRD'