

Rohit Kumar Vs. The Union of India Through the General Manager South Eastern Railway and Ors

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Court : Jharkhand

Decided On : Mar-03-2016

Appellant : Rohit Kumar

Respondent : The Union of India Through the General Manager South Eastern Railway and Ors

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 6027 of 2015
Rohit Kumar Son of Sri Bhagirath Majhi, ExSubstitute Bungalow Peon attached to
ADRM/ BKSC, S.E. Railway, Bokaro, PO & PS Bokaro (Jharkhand) ... Petitioner
Versus 1. The Union of India, through the General Manager, South Eastern
Railway, Garden Reach, Kolkata43 2. Divisional Railway Manager, South Eastern
Railway, Adra Division, Adra, P.O & P.S. Adra, DistrictPurulia (West Bengal) 3.
Additional Divisional Railway Manager, Adra Division, South Eastern Railway,
Adra Division, Adra, P.O & P.S. Adra, DistrictPurulia (West Bengal) 4. Sr.
Divisional Personnel Officer, South Eastern Railway, Adra Division, Adra, P.O. &
P.S. Adra, District Purulia (West Bengal) ... Respondents For the Petitioner : Mrs.
M. M. Pal, Sr. Advocate Mrs. Ruby Pandey, Advocate For the Union of India : Mr.
Rohit Kumar, Advocate For the Respondents : Mr. Mahesh Tewari, S.C., Railways
Mr. Rahul Dev, Advocate Mr. Varun Prabhakar, Advocate CORAM: HONBLE MR.
JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE SHREE

Petitioner after being terminated as substitute Bungalow Peon vide order dated 02.01.2007 (Annexure3) moved the Central Administrative Tribunal, Circuit Bench, Ranchi in O.A. 250 of 2012 [R] seeking quashing of the termination order and for his reinstatement in service. He claimed parity with the case of one Prasanta Kumar Senapati whose termination order was quashed vide order dated 12.01.2010 in O.A. No. 128 of 2009 and also took additional ground that his services were terminated without any showcause notice to him. The case of the petitioner was considered by the learned CAT vizaviz the case of P. K. 2 Senapati whose termination order was quashed by the CAT and the learned CAT, on facts found the case of the petitioner entirely distinguishable. The other ground for rejecting the case of the petitioner as one finds from the impugned order of the learned CAT is that the termination order was slapped upon the petitioner in January, 2007 whereas, he moved the Tribunal after much delay inasmuch as, O.A. was filed after two years of the order passed in the case of P. K. Senapati whereas, the limitation for filing the application is one year, as one finds from Section 21 of the Central Administrative Tribunal Act, 1985. Aggrieved of the impugned order of the learned CAT, the petitioner is before us through the medium of the instant petition which is at admission stage in which pursuant to the notice, Mr. Mahesh Tewari appears for South Eastern Railways (the respondents herein). 2. Heard the learned counsel for both the sides and perused the records available in the writ petition. 3. If one looks at the impugned order, there appears to be no reasons spelt out in the termination order. However, the name of the petitioner was to be recorded in a Live Casual Register maintained by the Recruitment Cell of the Personnel Branch for future engagement. It is only when during the pendency of the main lis before the learned CAT, respondentRailways filed written statement in which it was stated that the services of the petitioner were terminated on account of unauthorized absence and unsatisfactory conduct, the petitioner urged that unauthorized absence and unsatisfactory conduct of the petitioner which have been made the basis for terminating the service attract vice of stigma therefore, the respondentRailways should have issued showcause notice to the petitioner before passing the termination order. The learned Senior Counsel submitted that may be the petitioner was on probation for three years and

had completed about two years after his appointment as substitute Bungalow Peon still, serving a showcause notice and a departmental 3 proceeding before termination are mandate in law. She thus submitted that on this fundamental flaw, the order of termination deserves to quashed.

4. The learned Senior Counsel further submitted that the judgment in Union of India Vs. Rupesh Kumar Gupta [W.P.(S) No. 5761 of 2003] relied upon by the learned CAT is distinguishable on facts for the reason that in the said case no reasons were assigned by the respondent authority Union of India in the order of termination and in that factual backdrop, the Division Bench of this Court was of the view that the employee (respondent therein) who was on probation was not entitled to any showcause notice whereas, in the case on hand, the case of the respondents as one finds from the written statement is that the termination order is based on unauthorized absence and unsatisfactory conduct of the petitioner. 5. We do not find any substance in the submission advanced by the learned Senior Counsel and are of the view that the petitioner cannot be put to any advantageous position on the basis of orders passed in other cases. In this regard it would be apt to refer to Comprehensive Revised Instructions dated 27.08.2001 vide Annexure 8 which deals with the engagement, regularization and discharge of Bungalow Peons. The relevant clause of the said Comprehensive Revised Instructions reads as under: (i) If a Substitute Bungalow peon who has completed one year of service but not three years of service upto the date of transfer of the Officer who engaged him, the services of such Bungalow Peon should be offered to other officers who are willing to take him. If no officer is willing to take him, the services of such Bungalow peon should be terminated and his name kept in the Live Casual Labour Register for reengagement in future provided the services of such Bungalow peon are satisfactory as certified by the officer with whom he has worked. 4 (ii) The services of Substitute Bungalow peons who have not completed even one year of continuous/aggregate service should be terminated in the event of transfer/long leave of the officer who engaged him. (iii) The bungalow peon will be treated as on probation for 3 years during which period their services may be terminated without assigning cause. 6. Subclause 3 makes it clear that Bungalow Peons are treated on probation for 3 years during which period their services may be terminated without assigning any reason. The respondent Railways while terminating the

services of the petitioner could have assigned the reasons of unauthorized absence and unsatisfactory conduct of the petitioner in the termination order as, he had absented himself unauthorizedly and, the same would not have made any difference. The post of substitute Bungalow Peon is to the satisfaction of the Officer who is staying in that Bungalow. We are conscious of the fact that the learned CAT has not entered discussion so far as this aspect is concerned, it is very clear that the services of the petitioner could be terminated without assigning any reason. In this factual backdrop, the distinction drawn by Mrs. Pal, the learned Senior Counsel for the petitioner on facts, with Rupesh Kumar Gupta (supra) and the case on hand would not make any difference and the petitioner in our considered view will not be in a position to derive any benefit.

7. The judgments referred to and relied upon by the learned Senior Counsel in Shri Lakhi Ram Vs. Union of India & Ors. [W.P.(C) No. 6070 of 2006 of High Court of Delhi] and Nehru Yuva Kendra Sangathan Vs. Mehbub Alam Laskar 2008 (2) SCC 479 are distinguishable on facts from the case on hand. In Nehru Yuva Kendra Sangathan, the allegation against the employee was that he withdrew some amount from the 5 government fund and deposited the same in his personal bank account. An enquiry was conducted behind his back and on the basis of the enquiry report, the employee's probation was terminated. In the said case, issue before the Honble Supreme Court was whether the order of discharge of the said employee was founded on a finding of misconduct recorded in the enquiry. The present is not a case similar on facts to Nehru Yuva Kendra Sangathan case. The reliance placed by the learned Senior Counsel on the decision in Shri Lakhi Ram Vs. Union of India & Ors. in W.P.(C) No. 6070 of 2006 is also misplaced. The order of termination of the employee namely, Lakhi Ram reads as under: Subject: Substitute bungalow Khalasi Regarding termination from service. You were appointed as bungalow khalasi temporarily for 3 months to work with Sh. Sanjay Goyal, Dy. CME II in terms of this office letter No.COFMOW/IR/P172/Part II dated 10.03.2003. Thereafter your appointment extended by 3 months from 07.06.2003 to work as temporary Bungalow Khalasi with the condition that your services can be terminated earlier also if your work is not found to be satisfactory or your services are not required. Now your work and behavior as Bungalow Khalasi has not been found satisfactory. Despite oral and written warnings dated 10.05.2004,

25.08.2004 and 27.01.2005 in this regard there has been no improvement in your work and behavior. Consequently, your services as bungalow Khalasi are dispensed with effect from 14.03.2005 by giving one month's notice.

8. The specific imputation against the employee was not only in respect of his work, his behaviour was also found not satisfactory. The employee was issued oral and written warnings on three occasions whereas, in the present case, the petitioner has been found unauthorisedly absent, a fact which has not been denied by the petitioner. The petitioner who was appointed as a substitute Bungalow Peon on 26.07.2005, was disengaged from service w.e.f. 02.01.2007 on the ground that his services were no longer required. However, he was informed that his name would be recorded in a Live Casual Register for future as and when required. The petitioner claims that he made representation on 12.12.2007 for his reengagement however, he received no response and therefore, he submitted further representations on 01.10.2011 and 02.02.2012, claiming parity with one Prasanta Kumar Senapati. Five years after his disengagement, the petitioner approached the Central Administrative Tribunal in O.A. No. 250 of 2012 (R) challenging the order of termination dated 02.01.2007. The claim of the petitioner is primarily based on orders passed in OA No.149 of 2007 and OA No. 128 of 2009. The petitioner was granted casual leave from 07.09.2006 to 12.09.2006 however, he remained absent from 13.09.2006 to 10.10.2006. He again remained absent from 31.10.2006 to 01.01.2007. In the aforesaid facts, under Instructions dated 27.08.2001, petitioners probation has been terminated.

9. Delay in filing the petition, in our considered view, is also one of the grounds staring at the petitioner for the rejection of his claim. The learned CAT has observed in the impugned order as under :

5. Before delving into the merit of this O.A., it may be reflected at the outset that termination order of 2007 cannot be altered under an O.A. filed on 12.11.2012. For such inordinate delay, the applicant has to blame himself and a stale claim cannot be made a live claim merely because another Bungalow Peon got the reinstatement in 2010. Even if, the reinstatement of P.K. Senapati is taken as the proximate cause of action, still the present O.A. is barred by limitation being filed

two years after the reinstatement..... 6. In the instant case, since the termination of the Bungalow Peon was a ground necessity in view of his unauthorized absence that too before completion of three years, no right accrues to agitate such matter before this Tribunal. Had the applicant agitated this matter in 2007 itself, it could have been decided as per the prevalent circumstances and now at this fag end, no direction can be given to the 7 respondents to engage as Bungalow Peon who had himself deserted the post in 2007. That apart, since Bungalow Peon is not a sanctioned post, no right accrues. Hence Ordered. 10. We find no infirmity in the impugned order of the learned CAT either on facts or in law and thus, are not inclined to grant indulgence in the instant writ petition which merits dismissal. Ordered accordingly. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) Manish/Amit

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