

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3727 of 2018

- Krushna Chandra Tripathy, S/o Late Shri Ramakant Tripathy, Aged About 23 Years Presently working as Substitute Telephone Attendant and Dak Khalasi (Fresh Face) A.K.A. TADK, South Eastern Central Railway, O/o Chief Security Commissioner, Railway Protection Force, South Eastern Central Railway, District Bilaspur Chhattisgarh Pin Code 495004. R/o Village Dhaunchat, Post Gamundi, Police Station Bhanjananagar, Tehsil Ghumusar, District Ganjam (Odisha) Pin Code -462039.

---- Petitioner

Versus

1. Union Of India Through General Manager, South East Central Railway, SECR, Zonal Headquarters, Bilaspur District Bilaspur (Chhattisgarh), Pin Code -495 004.
2. Chief Personnel Officer, Personnel Department, 1st Floor, South East Central Railway, Headquarters Office, Bilaspur District Bilaspur (Chhattisgarh) Pin Code -495 004.
3. Chief Security Commissioner, Railway Protection Force, South East Central Railway, Zonal Headquarters, Bilaspur District Bilaspur (Chhattisgarh). Pin Code -495 004.
4. Shri Munawar Khursheed, S/o Shri M.K. Alam, Aged About 45 Years Deputy Inspector General/ RPF, Ex Chief Security Commissioner, Currently on Study Leave, C/o Chief Security Commissioner, Railway Protection Force, South East Central Railway Zonal Headquarters, Bilaspur, District -Bilaspur, Chhattisgarh Pin Code -495 004.

---- Respondents

For Petitioner : Ms. Naushina Afrin Ali, Advocate
For Respondents No. 1 to 3 : Shri H.S. Ahluwalia, Advocate

**Hon'ble Shri Prashant Kumar Mishra, Actg CJ &
Hon'ble Shri Justice Parth Prateem Sahu**

Order on Board by Prashant Kumar Mishra, Actg CJ.

30.04.2019

- 1) Petitioner is aggrieved by dismissal of his Original Application by the Central Administrative Tribunal, Jabalpur Bench Circuit Sitting at Bilaspur, rejecting his prayer for quashment of show-cause-notice dated 09.09.2015, Annexure P/11 by which the petitioner was directed to show cause as to why his services shall not be terminated with one month

notice, to be counted with effect from the date of relieving by the CSC's Office ie 24.08.2015.

2) Brief facts necessary for disposal of this writ application are that upon recommendation by respondent No.4, the respondent No.2- Chief Personnel Officer, South East Central Railway (SECR) appointed the petitioner on the post of Substitute Telephone Attendant and Dak Khalasi (Fresh Face) (in short, TADK) and was attached with respondent No.4. The appointment was made under Establishment Rule 250/2010. While the petitioner was still employed and was attached to respondent No.4, the said officer proceeded on study leave for one year with effect from 15.06.2015 relinquishing his charge as CSC/RPF/SECR in the forenoon of 04.08.2015 as mentioned in the document Annexure P/7 dated 10.08.2015. It is also mentioned in the said document that as per CPO/SECR Establishment Rule No.250/2010 dated 31.12.2010, para 10.2, the petitioner is to report to the OS(In-charge) of CSC/RPF/SECR for further duty immediately.

3) Thereafter, vide communication dated 24.08.2015, the previous letter dated 10.08.2015 was withdrawn on the ground that the petitioner having not completed one year continuous service on the date of relinquishment of charge by Shri Munawar Khursheed, respondent No.4 as CSC/RPF/SECR on 04.08.2015, the previous order directing petitioner to report to the OS is withdrawn. Pursuant to this order, the show cause notice impugned before the Tribunal was issued on 09.09.2015.

4) The Tribunal has dismissed the Original Application after considering the provisions of para- 7(i) and para- 10.2 of the Establishment Rule No.250/2010.

5) We have heard learned counsel for the parties and perused the record.

6) The bone of contention between the parties is whether petitioner's case would be governed under the provisions of para- 7(i) or para- 10.2 of the Establishment Rule No.250/2010.

7) Para 7 of Establishment Rule starts with the heading '**Transfer of Officers**', whereas para 10 refers to '**Miscellaneous provisions**'. It is provided under para- 7 that an Officer of SECR who is permitted to engage a TADK has to continue the same TADK even on his transfer from one unit to another unit within SECR till the TADK's regular absorption but if the TADK has not completed minimum continuous service of one year on the date the officer relinquishes his charge in SECR, the services of TADK would be terminated. The other provision contained in para 10.2 provides that the officer proceeding on a long leave/training for more than a month's duration should direct the TADK to report to the concerned supervisor and his services should be utilized in the office till such time the officer comes back from training/leave.

8) Admittedly, respondent- 4 has not been transferred from SECR. He has been sanctioned one year study leave with effect from 04.08.2015. Reading both the provisions together, we are of considered view that petitioner's case was rightly treated to be governed under para 10.2 in the

SECR letter dated 10.08.2015 for the simple reason that respondent No.4 has not been transferred from SECR.

9) Shri HS Ahluwalia, learned counsel for respondents No.1 to 3 refers to condition-iii of appointment order to argue that the petitioner having not completed minimum one year continuous service on the date the officer relinquishes his charge in SECR his proposed termination was valid in view of para- 7 of Establishment Rule, however we are not convinced with the submission for the simple reason that the said para relates to and deals with a situation where the officer is transferred and not in a case where the officer proceeds on long leave/training.

10) Learned counsel Shri HS Ahluwalia would make yet another attempt to defend the action on submission that study leave is not a normal leave, therefore, petitioner's case is not governed under Establishment Rule para 10.2. To consider the submission, we have again perused para- 10.2 of the Establishment Rule. However, we could not find any indication in the said rule which would differentiate study leave from long leave.

11) In ordinary service jurisprudence, any leave sanctioned by the competent authority, which is not a normal leave, but stretches for a longer period would always be a long leave. Therefore, an officer who has gone on a study leave for about a year's period, can always be treated to have availed long leave. Thus para- 10.2 of Establishment Rule 250/2010 would apply in the case at hand.

12) The Tribunal has not taken the correct view in the matter. If Establishment Rule para- 10.2 would apply to the petitioner for the reason

that the officer has not gone on transfer but has gone on study leave/long leave, the notice dated 09.09.2015 is not in accordance with law, therefore, while setting aside the impugned order of the Tribunal, we quash the notices dated 09.09.2015 and the communication dated 24.08.2015. If the petitioner was out of service during any period pursuant to communication dated 24.08.2015 and 09.09.2015, the said period shall be regularized by treating him to be in service.

13) The Writ Petition stands allowed, in the above stated terms.

Sd/-
Actg Chief Justice
(Prashant Kumar Mishra)

Sd/-
Judge
(Parth Prateem Sahu)