

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 516/1998

199

T.A. No.

(38)

DATE OF DECISION 28.11.2000

Smt. Bimla

....Petitioner

Sh. Yogesh Sharma

....Advocate for the
Petitioner(s)

VERSUS

WOI through the GM(NR) and Ors

....Respondent

Shri R.L. Dhawan

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri

1. To be referred to the Reporter or not? YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)

Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
OA 516/1998

(39)

New Delhi this the 28th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Smt. Bimla w/o Sh. Naval Singh
Vill. & P.O. Jatola, Distt. Gurgaon
(Haryana)

.. Applicant

(By Advocate Shri Yogesh Sharma)

versus

1. Union of India through the
General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Bikaner Dn.
Bikaner (Rajasthan)
3. The Station Master,
Northern Railway Station,
Jatola Jodi Sampaka,
Distt. Gurgaon (Haryana)

.. Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The main claims of the applicant in the present case, as seen from the amended OA are, firstly, for quashing the verbal termination order passed by the respondents dated 1.3.1998 and for ¹³ reinstatement in services as Part Time Sweeper/Safaiwali, and secondly, ^{for 13} directing the respondents to enhance her wages from Rs. 75/- to Rs. 500/-PM with consequential benefits.

2. The brief relevant facts of the case are that the applicant was admittedly engaged as ^{a 13} part-time Safaiwali by the respondents on 17.11.1996 at Northern Railway Station, Jatola Jodi Sampaka, Distt. Gurgaon (Haryana). The applicant had originally filed the O.A. on 9.12.1997 along with PT 249/97

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on which notice was issued on 19.12.1997, returnable on 13.2.98. The Transfer application along with the application under Rule 6 of the CAT(Procedure) Rules, 1987, was allowed by the then Hon'ble Chairman by order dated 13.2.1998. Shri Yogesh Sharma learned counsel has submitted that on receipt of the Tribunal's notice on PT by the respondents, they have terminated the services of the applicant w.e.f. 1.3.1998 and in her place engaged Smt. Birno Devi as ^{a b} part time Sweeper/Safaiwali on the same work at the same place. This averment has been clearly stated in Paragraph 4.5 of the amended OA.

3. The second main ground taken by Shri Yogesh Sharma, learned counsel, is that the respondents had issued letter dated 8.11.1996 on the subject of enhancement of wages for part-time Safaiwalias engaged over the Bikaner division under Commercial Branch from Rs.75/-per month to Rs.500/-per month. The applicant has claimed that in terms of this letter, she should be paid Rs.500/-PM as part-time Sweeper for the period of her services from 17.11.1996 till her termination on 1.3.1998. According to the respondents, they have withdrawn this letter dated 8.11.1996 by the letter dated 16.1.1997. In the later communication, it has been stated that the letter dated 8.11.1996 should not be implemented till the decision is received from the Head Quarters Office.

4. Both the learned counsel rely on the Tribunal's order in Mohan Lal Vs. UOI & Ors (OA 298/99) decided on 25.7.2000 in

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which certain directions have been given to the respondents with regard to the letter dated 8.11.1996 read with the order dated is, 16.1.1997. Learned counsel for the respondents, however, unable to place on record what decision has been taken by the competent authority, namely, the Head Quarters Office, on this matter. However, Shri R.L.Dhawan, learned counsel submits that this claim of the applicant will depend on the decision taken by the competent authority which would be applicable in the case of Mohan Lal (supra) as well as ⁱⁿ the present case. In the facts and circumstances of the case, therefore, the claim of the applicant in the present case for granting wages of Rs.500/-PM as part-time Sweeper for her services rendered from 17.11.1997 to 1.3.1998 would apply in the same ~~terms~~ ^{way¹³} as will be considered in terms of the decisions of the competent authority and the directions given in Mohan Lal's case (supra).

5. With regard to the averments made by the applicant in Paragraph 4.5. of the amended OA, the respondents have stated as follows:-

"The contents of this para are not admitted as stated. It is submitted that the letter for enhancement of payment for part-time worker has been withdrawn vide letter dated 16.1.97 (Ann.R-2), hence the question for enhanced payment does not arise. It is further submitted that the applicant was disengaged as part-time Safaiwali when her services were no longer required in accordance with the terms and conditions of her appointment."

From the above reply filed by the respondents it is clear that they have not specifically denied the averments made

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by the applicant that on receipt of notice by them in the OA, they have terminated the services of the applicant w.e.f. 1.3.98 and engaged one Smt. Birmo Devi as part-time Sweeper on the same work and in the same place. Shri R.L.Dhawan, learned counsel has submitted that the termination of the applicant is as per the terms and conditions of the appointment of part-time Sweeper/Safaiwala (Annexure R-3). He also relies on the judgement of the Supreme Court in UOI & Ors Vs. Bishamber Dutt (JT 1996(10)SC 329). That case deals with the appointment of the applicants on regular basis and it was further held that the petitioners were not appointed on ~~regular~~ posts after selection according to the rule. In the present case, the applicant is not claiming any regularisation as part-time Sweeper/Safaiwali, which has been stressed by the learned counsel for the applicant. As mentioned above, from the reply filed by the respondents to the averments made by the applicant in Paragraph 4.5 of the amended OA, it cannot be stated that they have denied appointing Smt. Birmo Devi in place of the applicant, on the same station to do the same work as part-time Sweeper/Safaiwali. The judgement of the Supreme Court in Bishamber Dutt's case (supra) will not be applicable to the facts in the present case and it is accordingly distinguishable. It is also further relevant to note that this OA has been filed in December, 1997 and notice was issued on PT by the then Hon'ble Chairman on 19.12.1997, which was returnable on 13.2.1998. Shri Dhawan, learned counsel has contended that notice in OA has been issued only subsequent to the termination of the applicant's

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services on 1.3.1998 and, therefore, there is no infirmity in the termination of the applicant's services. Taking into account the facts and circumstances of the case, I am unable to agree with the contention of the learned counsel for the respondents. No doubt, the respondents had received notice issued to them along with the Transfer application under Rule 6 of the CAT (Procedure) Rules, 1987 on 19.12.1997 which had been allowed on 13.2.1998. From the reply filed by the respondents to the amended OA, it cannot also be held that they have denied the specific averments of the applicant that after terminating the applicant's services verbally on 1.3.1998 they have engaged Smt. Birno Devi as part-time Sweeper/Safaiwali on the same work in the same place. The relevant instructions relied upon by the learned counsel for the respondents for appointment of part-time Sweeper would, therefore, not assist them in the facts and circumstances of the present case, namely, where they have, apparently for no good reasons, terminated the services of the applicant as ~~part~~ ^{time} Sweeper/Safaiwali and engaged another person to do the same work at the same place. Therefore, I find no merit in the contention of Shri R.L.Dhawan, learned counsel that the action of the respondents is justified in terms of the relevant Rules and instructions.

6. Shri Yogesh Sharma, learned counsel for the applicant has submitted that after the verbal termination order dated 1-3-98, the applicant is out of job. Learned counsel has prayed that in the circumstances, a direction may be given to the

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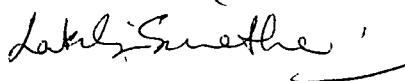


respondents to take the applicant back in service as part time Sweeper/Safaiwali in the same station, namely, Jatola Jodi Sampaka, District Gurgaon(Haryana) or/any nearest station where a vacancy is available.

7. In the result having regard to the reasons given above, the OA is allowed and disposed of with the following directions:-

- (i) The claim of the applicant for enhancement of wages from Rs 75/-PM to Rs.500/-PM for her services as part-time Sweeper/Safaiwali from 17.11.1996 to 1-3-1998 shall be considered by the respondents in terms of the orders passed in Mohan Lal's case ((Supra)) (OA 298/1999) ;
- (ii) The respondents shall re-engage the applicant as part-time Sweeper/Safaiwali in Jatola Jodi Sampaka Railway Station, Bikaner Division (Rajasthan) on the next available vacancy; and in any case also make an offer to her for such re-engagement in a vacancy at any other nearby station, to where she was working earlier, if it arises earlier.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)

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