

I/G

In the Central Administrative Tribunal
Jodhpur Bench

Original Application No.300/2003
Jodhpur :This the 27th day of April, 2004

Hon'ble Mr. J.K.Kaushik, Judicial Member
Hon'ble Mr. M.K.Misra, Administrative Member

Sumitra Widow of Shri Hanuman Nath,
Aged 34 years, Mazdoor in the office of
Garrison Engineer (Airforce) Suratgarh,
District Sriganganagar R/o C/o Sh.Prabhu Nath
Village Raghunathpura, District Sriganganagar

.....Applicant

[By Advocate Mr. Vijay Mehta, for applicant]

versus

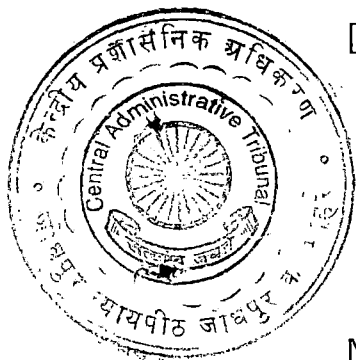
1. Union of India through the Secretary,
Government of India, Ministry of Defence,
Raksha Bhawan, New Delhi.
2. Commander Works Engineer (Airforce),
MES, Bikaner.
3. Garrison Engineer (Airforce),
MES, Suratgarh, Distt. Sriganganagar.

.....Respondents.

[By Advocate Mr. B.R.Mehta, for respondents]

Order

[By J.K.Kaushik, Judicial Member]



This OA has been filed by the widow of late Shri Hanuman Nath, wherein, the following reliefs have been prayed :-

"The applicant prays that the verbal order dated 29.11.2003 terminating her services may kindly be quashed and the applicant be reinstated with full salary and all consequential benefits. The respondent No. 3 be directed to pay her salary of the period she discharged her

[Signature]

duties. Any other order, giving relief to the applicant may also be awarded to the applicant with costs."

2. The O.A. was listed today for admission. Keeping in view the urgency of the matter, we proposed to decide the same at the stage of admission.

3. We have heard the learned counsel for the parties at length and given anxious thought to the submissions and perused the pleadings and the records of this case.

4. The factual matrix of the case is at a very narrow compass. The applicant is the widow of late Shri Hanuman Nath who was working as Charpoy Stringer in the office of Garrison Engineer, Nal, Bikaner. Shri Hanuman Nath expired while in active service on 31.1.1988. The applicant applied for appointment on compassionate ground but, the respondents did not pay any heed to the same and, therefore, she had to undertake the journey to this Tribunal by filing O.A. and during the pendency of that O.A. respondents produced appointment order by which she was offered appointment and ultimately, the said O.A. was dismissed as infructuous. Applicant was appointed as Mazdoor vide order dated 21.10.2003 and she was posted to work in the office of respondent No. 3 i.e. the Garrison Engineer, Air force, MES, Suratgarh. She was also issued with a temporary pass with the validity date of 30.11.2003.



5. The further facts of the case are that the applicant immediately joined her duties and she was given the duty of Peon. She continued to discharge her duties up to 29.11.2003. But, thereafter, she was not allowed to join her duties and the date of pass was not extended. Nothing was given to her in writing and she approached the authorities through some Union leaders who were unable to persuade the respondents No. 2 and 3. Hence, this application.

2

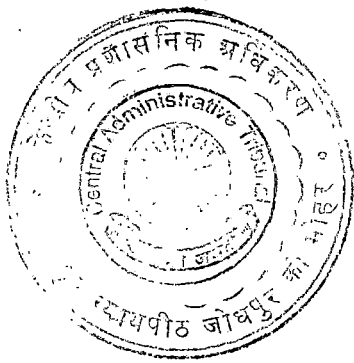
6. This application has been filed on diverse grounds mentioned in para 5 and its sub paras which we shall deal a little later in this order.

7. The respondents have resisted the claim of the applicant and have filed a counter reply to the O.A. It has been averred that in the appointment letter which was given to the applicant a declaration was to be made in the following terms :

"If any declaration given or information furnished by you proves to be false or if you are found to have willingly fully suppressed any material information, you will be liable to be removed from service and such other actions as deemed fit by the competent authority."

The applicant submitted a school certificate for verification of her age and educational qualification but it was found that the same is false and it was never issued by the school authorities. The matter was reported to the higher authorities and a decision was taken that she is not entitled to be continued in service vide letter dated 22.11.2003 (Annex.R/3) and therefore, the pass was not renewed. She has lost the right to continue in service and therefore not entitled to any relief.

8. Subsequently, an affidavit has been filed annexing the letter of fresh appointment to the applicant on 9.1.2004, joining of duties in pursuance with the said letter at Garrison Engineer, Air Force, Nal. Another enclosure Annex. R/3 has been filed



2/

which is titled as affidavit indicating that in future she will not take any action in the High Court /CAT, Jodhpur in the matter.

9. The learned counsel for the applicant has strenuously submitted that applicant has been made to move from pillar to post and post to pillar but every time found herself in a wrong box inasmuch as she was given appointment on compassionate ground after making lot of efforts and undergoing multiple formalities and she felt that she would be able to look after the legal heirs of the deceased government servant. She had hardly served for a period of a month and she was not allowed to join her duties. She filed OA before this Tribunal and the respondents have issued a very peculiar order styled as a fresh appointment order and also submitted that humiliation can very well be understood by taking a sequence of the events together. It is also contended that applicant was posted at Suratgarh initially but now she has been placed at Nal. There is no reason for doing the same but it has enhanced the agony of the applicant as she is the resident of Suratgarh and has to manage two establishments without any reason.



10. Per contra, the learned counsel for the respondents has submitted that Annexure R/1 dated 9.1.2004 had to be passed by the respondents since there was an interim order passed on 1.1.2004. He has submitted that once the applicant has submitted an affidavit that she does not intend to take up the matter before any court of law then there remains nothing for

Dr.

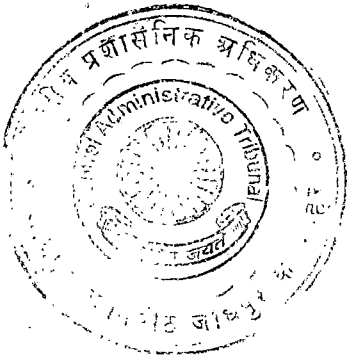
adjudication. She wanted employment which she has been given. He has also submitted that the appointment order at Nal or Suratgarh should make no difference to her and it is the prerogative of the respondents as to where one has to be employed. He has also submitted that after passing of the order at Annexure R/1, her case becomes infructuous and the challenge of Annexure R/3 does not survive. Therefore, the O.A. has no force and deserves to be dismissed.

11. We have considered the rival submissions made on behalf of both the parties. At the very outset we make it clear that the applicant was given appointment on compassionate ground and the appointment on compassionate ground is always of a permanent nature appointment. It is on regular and substantive basis as per the verdict in case of Iqbal Hussain Rizvi Vs. Assistant Director of Education [2000 (2) ATJ 136]. Once the applicant is permanent employee then she is governed by certain rules and her services could not have been terminated in the way the respondents have done. No doubt, the learned counsel for the respondents has tried to dilute the situation but the sequence of incident if taken together would show that instead of showing any sympathy to the applicant the respondents have been very harsh to her. It may not make any difference for the respondents where one is posted i.e. at Nal or at Suratgarh but, it makes lot of difference to the applicant who has to feed the family of the deceased government servant. She could better manage the dependant family members near to her hometown



2

i.e. at Suratgarh instead of her posting at a distant place. We also fail to understand as to what was the reason that occasion for giving different appointments once the fate of application is yet to be examined by this Tribunal. There is no reason as to why the applicant has been now posted at Nal in the garb of a fresh appointment letter. However, we are not at all satisfied with the action of the respondents in passing of Annexure R/3 whereby, a decision has been taken to terminate the service of the applicant. In this view of the matter, there is ample force in the contention of the learned counsel for applicant.




12. Now, looking the matter from another angle since the applicant is a permanent employee we find that the respondents have not issued any chargesheet for taking any action under Article 311 (2) of the Constitution of India and her service has been sought to be terminated by a way which is not permissible under the rules in force. Thus, looking from this angle, the defence of the respondents cannot be sustained and the O.A. has ample force.

In the premises, the O.A. merits acceptance and the same stands allowed. The termination of the applicant may be by oral order dated 22.11.2003 or 29.11.2003 at Annex. R/3 stands quashed. The applicant shall be entitled to all consequential benefits and she shall be brought back to Suratgarh at her original place of posting. This exercise shall be done within a period of one month from the date of receipt of a copy of this



order. However, it shall be scarcely necessary to mention here that this order shall not preclude the respondents to take the action in the matter as per the rules in force. No costs.


[M.K. Misra]
Adm. Member


[J.K. Kaushik]
Judl. Member

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Recd
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Received copy
Jumrah
Adw
14/5/04

Part II and III destroyed
in my presence on 24/10/13
under the supervision of
section officer () as per
order dated 18/10/13

Section officer (Record)