

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORDERS OF THE BENCH**

**Date of Order: 08.12.2014**


OA No. 291/00484/2014

Mr. Amit Mathur, counsel for applicant.  
Mr. Anupam Agarwal, counsel for respondents.

Arguments heard.

Order reserved.

*Anil Kumar*  
(ANIL KUMAR)  
ADMINISTRATIVE MEMBER

  
(B. V. RAO)  
JUDICIAL MEMBER

Kumawat

10/12/14.  
order  
pronounced  
today in the  
open court  
by the aforesaid  
Bench  
10/12/14.  
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION No. 291/00484/2014**

**ORDER RESERVED ON 08.12.2014**

**DATE OF ORDER : 10.12.2014**

CORAM :

**HON'BLE MR. B.V. RAO, JUDICIAL MEMBER**  
**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

Kiran Jyot Singh son of Shri Prem Jeet Singh, aged aroybd 31 years, presently working as ECRC, Jhalawar, District Jhalawar. Resident of Hotel Kiran, Bhawani Mandi Road, Jhalarapatan, District Jhalawar (Rajasthan).

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Divisional Commercial Manager, West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

**ORDER**

**PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER**

The applicant has filed the present OA praying for the following reliefs:-

- " (i) Original application filed by the applicant may kindly be allowed and communication Annexure A/1 dated 17.07.2014 may kindly be quashed and set-aside. Shri Satish Kumar Kulkshetra, retired Station Superintendent, Kota Divisin may be allowed as defence assistant (A.R.E.) of the applicant in disciplinary proceedings initiated vide memorandum dated 06.01.2012. He may be allowed all the benefits as admissible to A.R.E. (Defence Assistant).

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- (ii) any other order or direction which deem fit and proper in the facts and circumstances of the case may also be passed in favour of the applicant.
- (iii) Cost of this original application also may be awarded in favour of the applicant."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that a Memorandum has been served upon the applicant for major penalty. An inquiry has been ordered by the Disciplinary Authority. The applicant nominated one retired official, Shri S.K. Kulshreshtha, as Defence Assistant in the said disciplinary proceedings. However, the respondents vide letter dated 17.07.2014 (Annexure A/1) rejected the request of the applicant for taking assistance of Shri S.K. Kulshreshtha as defence assistant on the ground of Railway Board letter Nos. E(D&A)77RG6-33 dated 09.12.1977, E(D&A)83RG6-19 dated 13.05.1984 and WCR HQs Personnel Department letter No. WCR/PHQ/DAR/Opinion dated 26.09.2007 whereas the same person is Defence Assistant in various disciplinary proceedings in West Central Railway. Thus the applicant has been denied the best available Defence Assistant. The learned counsel for the applicant submitted that Shri S.K. Kulshreshtha retired from service in 2001 from Kota Division prior to forming of the new Railway zone. Now he is settled in Vadadora. Therefore, the decision of the respondents in not permitting him as Defence Assistant is arbitrary and unlawful.

3. On the other hand, the respondents have filed their reply. In their reply, they have stated that no-one as right to have

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Defence Assistant (ARE) of his choice contrary to the rules. As per RBE No. 177/1990 dated 08.10.1990 (Annexure R/1), one can have ARE from the same railway or from where delinquency was occurred. Shri S.K. Kulshreshtha neither belongs to the railway to which the applicant belongs nor Shri S.K. Kulshreshtha belongs to the railway where the delinquency was occurred. Therefore, the request of the applicant for appointment of Shri S.K. Kulshreshtha as Defence Assistant (ARE) was rightly rejected by the respondents. Thus Shri S.K. Kulshreshtha was not eligible as per the rules to act as ARE for the applicant. This fact was communicated to the applicant. The respondents have further submitted that letter dated 26.09.2007 is only a clarification regarding choice of ARE after formation of new zones. It did not replace the rule position as laid down by the Railway Board. Thus the action of the respondents is as per the provisions of the circular of the Railway Board and the OA has no merit and it should be dismissed with costs.

4. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant reiterated the facts as mentioned in the OA. In support of his arguments, he referred to the letter dated 30.05.2014, written by the applicant to the ADRM, Kota (Annexure A/8) in which he has mentioned that Shri S.K. Kulshreshtha has either attended/attending to assist the five employees of the West Central Railway in the cases from 2007 to 2010. Therefore, in

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not allowing the applicant the facility of Defence Assistant of his choice is discriminatory.

5. The learned counsel for the respondents reiterated all the facts as stated in the written reply. The learned counsel for the respondents also argued that since Shri S.K. Kulshreshtha cannot be allowed to work as Defence Assistant of the applicant according to the rule position, therefore, the applicant does not get any right for the appointment of Shri S.K. Kulshreshtha as Defence Assistant even if Shri S.K. Kulshreshtha may be attending in certain disciplinary matters and assisting the charged officers.

6. It is admitted that earlier Shri S.K. Kulshreshtha was working in Kota Division and he retired from Kota Division in 2001. After split of certain zones and creation of new zones in 2003, the Kota Division is now in West Central Railway where the applicant is working. According to letter dated 26.09.2007 (Annexure A/7), a railway servant who has been retired from Western Railway prior to split of new zones in 2003 and if they are retired and settled down within the jurisdiction of KTT area can act as Defence Counsel for the charged official of KTT Division. According to the applicant, Shri S.K. Kulshreshtha is drawing his pension from Kota Division. Earlier to the split of the zone, Kota Division was part of the Western Railway and now Kota Division is part of the West Central Railway, therefore, as per the provisions of letter dated 26.09.2007 (Annexure A/7), Shri S.K. Kulshreshtha can be nominated as Defence


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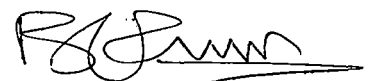
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Assistant. The learned counsel for the respondents did not deny that Shri S.K. Kulshreshtha has attended/attending to assist the certain employees of West Central Railway as per the details given by the applicant in Para No. 4-3-0 of his letter dated 30.05.2014 (Annexure A/8). Therefore, we are of the view that in case Shri S.K. Kulshreshtha can represent as Defence Assistant to the employees of the similarly situated charged employees in their disciplinary proceedings then Shri S.K. Kulshreshtha can also be Defence Assistant to the applicant in the disciplinary proceedings pending against him. The respondents cannot discriminate between one employee and another employee in the matter of appointment of Defence Assistant in disciplinary proceedings.

7. Therefore, we allow the OA and direct the respondents to accept the request of the applicant for nominating Shri S.K. Kulshreshtha as Defence Assistant (ARE) in the disciplinary proceedings initiated vide Memorandum dated 06.01.2012. Shri Kulshreshtha will also be allowed all the benefits as admissible to ARE (Defence Assistant).

8. With these directions the OA is disposed of with no order as to costs.

  
(Anil Kumar)  
Member (A)

  
(B.V. Rao)  
Member (J)

Abdul