

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00330/2014

ORDER RESERVED ON 02.08.2016

DATE OF ORDER: 04.08.2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Rakesh Kumar Yadav S/o Shyam Narayan Yadav, a/a 25 years,
R/o Subhash Nagar, Flat No. 420, Kamla Nehru Nagar,
Hasanpura (C), near N.B.C., Jaipur.

....Applicant
Mr. S. Shrivastava, counsel for applicant.

VERSUS

1. Union of India through General Manager, N.W.R., H.Q. Office, Jagatpura, Jaipur.
2. General Manager (P), NWR, H.Q. Office, Jawahar Circle, Jagatpura, Jaipur.
3. Controller of Store (C.O.S./NWR), N.W.R., H.Q. Office, Jaipur.
4. Chief Personnel Officer, West Central Railway, H.Q. Office, Indra Market, Jabalpur, M.P.

....Respondents
Mr. Anupam Agarwal, counsel for respondents.

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order dated 24.04.2014 (Annexure A/1) issued by the respondents and seeking the following reliefs: -

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"(A) That this Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order dated 24.04.14 (A/1) to the O.A. and also be pleased to struck down Clause (II) of Para 12 of the policy dated

21.04.11 (A/1(A)) to the extent it has adversely affected to the petitioner.

- (B) That the respondents may further be directed to reinstate the petitioner to his post of "Bungalow Khalasi in continuation with effect from the date petitioner was prevented to discharge his duties.
- (C) Respondents may further be directed grant all consequential benefits likely to be accrued in favour of the petitioner.
- (D) Any other order which, this Hon'ble Tribunal may deem fit and proper may also be passed in favour of the petitioner.
- (E) Award the cost of the petition."

2. When the matter came up for consideration and hearing, learned counsel for the applicant Shri S. Shrivastava, submitted that the applicant who was appointed as Substitute Bungalow Khalasi / TADK in the Railways vide order dated 30.04.2013 (Annexure A/2), was terminated from service vide order dated 24.04.2014 (Annexure A/1) only on the ground that he did not go with the officer Shri Ramesh Chandra, Controller of Stores, North Western Railway (NWR), who had engaged him, on his transfer to Jabalpur as General Manager, West Central Railway (WCR) and as the applicant violated this condition of his engagement / appointment he was terminated from service. Counsel for the applicant drew attention to the guidelines regarding engagement of Bungalow Khalasi at Annexure A/1 (a) dated 21.04.2011 and specially referred to paras 8, 9, 11 & 12 and contended that the termination order is not in accordance



with the guidelines and para 12 (ii) itself is arbitrary. Counsel for the applicant then referred to letter of the WCR dated 21.04.2014 addressed to NWR (at page 26) in which it has been mentioned that "Further Shri Rakesh Yadav was asked to come to JBP by the officer which he refused: Therefore the officer has planned for an alternative". In this context, counsel for the applicant clarified that the applicant was engaged by Shri Ramesh Chandra vide order dated 30.04.2013 (Annex. A/2) when he was working as Controller of Stores in North Western Railway, Jaipur and thereafter the officer Shri Ramesh Chandra was transferred on promotion as General Manager, West Central Railway, Jabalpur. He further contended that though it has been said in letter dated 21.04.2014 that the applicant refused to go to Jabalpur with the officer but it may be seen from Annexure A/6 which is R.T.I. information dated 10.05.2014 given by the North Western Railway (in response to his application dated 30.04.2014) that they do not have any letter on record by which the applicant refused to go with Shri Ramesh Chandra from Jaipur to Jabalpur. Counsel for applicant further submitted that there is also no letter on record given to the Personnel section by which Shri Ramesh Chandra desired to take the applicant to Jabalpur. He further submitted that as it may be seen from para 4 of the RTI information dated 16.05.2014 given in response to his application dated 01.05.2014 (page 25) that after the transfer of Shri Ramesh Chandra, the applicant was continued in the office of Controller of Stores till further orders by the personnel department. Counsel for the applicant contended that though in the letter dated 21.04.2014, it has been mentioned that the applicant refused to go with the officer and that the



same is also the basis of his termination as per Annexure A/1, the fact remains that the applicant never refused or denied to go with the officer and there is nothing on record in writing and further submitted that as per normal practice whenever an officer who has engaged the Bungalow Khalasi, is transferred, orders for the Bungalow Khalasi are also issued by the concerned department. Counsel for applicant gave copies of such orders issued with regard to other such Bungalow Khalasi/TADK. Counsel for applicant thus contended that actually the applicant never refused to go with the officer on his transfer to Jabalpur and there is no such record in writing. In fact the applicant who was engaged on 30.04.2013, completed 120 days and was given temporary status w.e.f. 28.08.2013 vide order dated 17.09.2013 (Annex. A/3), and just about 5-6 days prior to completing one year, he was disengaged from service on 24.04.2014 vide Annexure A/1. The applicant thereby without any fault on his part was deprived of his employment and moreover after completion of one year, as per the policy of engagement of Bungalow Khalasi (Annex. A/1 (a)) he could have been adjusted on the post of Trackman as per 12 (i) of the policy and he has been deprived of the same also. Referring to Annexure R/1 filed with the reply of respondent no. 4 i.e. the Chief Personnel Officer, West Central Railway, H.Q. Officer, Jabalpur, M.P. (impleaded as party vide order dated 21.07.2015), counsel for applicant submitted that even the refusal alluded to the applicant has only been verbal and there is no proof of the same and submitted that in public and Govt. organizations, there is no justification for proceeding simply on the basis of verbal refusal / communication and as mentioned earlier no orders were issued

to him asking him to proceed to Jabalpur along with the officer Shri Ramesh Chandra and had the applicant been properly apprised then such a situation would not have occurred. Thus, on all these grounds, counsel for applicant contended that the applicant has a genuine case, his termination is illegal and arbitrary and, therefore, the Original Application deserves to be allowed and reliefs sought for granted.

3. Per contra, learned counsel for the respondents Shri Anupam Agarwal submitted that as clearly brought out from Annexure R/1 dated 17th April, 2014 filed along with reply of respondent no. 4, it is absolutely clear that the applicant had refused verbally to come to Jabalpur with the officer on his transfer and as such services of the applicant are not required anymore and engagement of other alternative has been planned by him. Thus, counsel for the respondents argued that when the officer who has been transferred, and who had engaged the applicant has himself categorically stated that the applicant flatly refused to come with him when he was transferred to Jabalpur as General Manager, the question of giving the applicant anything in writing does not arise. The West Central Railway, on the basis of letter dated 17th April, 2014, had no option but to issue letter dated 21.04.2014 asking the North Western Railways to take appropriate necessary action and on the basis of which the applicant's engagement has been correctly terminated vide order dated 24.04.2014 (Annexure A/1). Counsel for the respondents also submitted that as brought out in the reply of respondent no. 4 that the applicant after knowing the consequences changed his stand by filing this O.A. because perhaps he thought that if he

completes one year in service then his cadre can be changed to Trackman as per para 12 (i) of the policy. Counsel for respondents however clarified that change of cadre from Bungalow Khalasi to Trackman is only possible in certain special conditions like the new place of transfer of the officer does not have a post of Bungalow Khalasi or the officer has retired and these are not applicable in the case of the applicant. The applicant clearly did not comply with the main condition of his engagement that he would go along with the officer on transfer, which is more than clear from the letter of the officer himself in this regard. He further contended that the applicant has not filed any rejoinder challenging or controverting the reply of respondent no. 4 and the document Annexure R/1 attached with it. The applicant therefore has no case and Annexure A/1 is legally valid and he, therefore, prayed for the dismissal of the O.A.

4. Considered the aforesaid contentions and perused the record. It is noted from the pleadings that the applicant was engaged as Bungalow Khalasi/TADK under Shri Ramesh Chandra, Controller of Stores / NWR, Jaipur on 30.04.2013 (Annexure A/2) and after he completed 120 days, he was given temporary status from 28.08.2013 as per Annexure A/3. The officer Shri Ramesh Chandra was transferred on promotion as General Manager, WCR, Jabalpur where he joined his duties on 30.12.2013. Counsel for the applicant has tried to make out a case that the applicant never refused or denied to go with the officer to Jabalpur nor was he given any written orders in this regard nor did the officer give any communication to the personnel



department of the concerned Railways and, therefore, without there being an order or refusal in writing it cannot be said that the applicant actually refused to go with the officer to Jabalpur and merely a statement as at Annexure R/1 dated 17th April, 2014 by the officer that the applicant verbally refused to go with him is not enough and, therefore, the termination of the applicant vide Annexure A/1 being illegal needs to be set aside, even more so because the services of the applicant have been terminated just 5-6 days prior to completion of one year of his service. However, it is noted that as also brought out by the counsel for the respondents that Annexure R/1 filed with the reply of respondent no. 4 is a categorical statement of the officer Shri Ramesh Chandra that the applicant engaged as Bungalow Khalasi / TADK by him flatly refused to come to Jabalpur with him on his transfer as General Manager, Jabalpur. This letter has not been controverted by the applicant nor any rejoinder filed against it. Even the argument of the counsel for the applicant that he has been deprived of any other alternative job by terminating him just 5-6 days before completion of one year, does not hold water because only certain in conditions like retirement of the officer or where no post of Bungalow Khalasi is available, alternative post is provided after one year as per para 12 (i) of the policy. It is also very clear from the appointment order itself as at Annexure A/2 that the Bungalow Khalasi has to go with the officer who has engaged him on the transfer of the officer and the officer Shri Ramesh Chandra himself has stated that the applicant refused to come with him to Jabalpur; had there been any doubts about this, the applicant would have controverted this letter by way of rejoinder/affidavit. In the

absence of the same, the contention of the counsel for the applicant that the applicant did not refuse or did not go with the officer in the absence of any written orders has no force. In fact the applicant has violated the condition of his engagement as Bungalow Khalasi and now cannot claim any relief and there is nothing wrong or illegal about the order dated 24.04.2014 (Annexure A/1).

In view of the above analysis, there appears no ground or justified reason to set aside the Annexure A/1 order dated 24.04.2014. Accordingly, the Original Application is dismissed with no order as to costs.


(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

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