

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 23.05.2014

OA No. 291/00051/2014 with MA No. 291/00153/2014

Mr. S.S. Hasan, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

MA No. 291/00153/2014

Heard on the M.A. No. 291/00153/2014 filed on behalf of the applicant praying for taking additional documents on record. Learned counsel for the applicants wants to withdraw the said Misc. Application.

Accordingly, the Misc. Application is dismissed as withdrawn.

OA No. 291/00051/2014

Heard learned counsel for the parties.

Order is reserved.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

24-29/5/2014

Order pronounced today in the open court by the aforesaid Bench.

Anil Kumar
29/5/14
(C-0)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/00051/2014

Order Reserved on 23.5.2014

Date of Order: 23.5.2014

CORAM

HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER

Muzaffar Ali Bohra s/o Shri Mansur Ali Bohra, aged about 42 years, Accounts Assistant, Workshop & Store Accounts, R/o 55/25, Nayi Basti, Ramganj, Ajmer-305001

.....Applicant

(By Advocate Mr.S.S.Hassan)

VERSUS

1. Union of India through General Manager, North Western Railway, Hqr. Office, Jagatpura, Jaipur.
2. Financial Advisor & Chief Accounts Officer, Headquarter, North Western Railway, Jagatpura, Jaipur.
3. Financial Advisor & Chief Accounts Officer, Chitranjan Locomotives Workshop, Chitranjan, West Bengal.
4. Dy. Financial Advisor & Chief Accounts Officer (Workshop & Stores Accounts Office), North Western Railway, Ajmer.
5. Executive Director (Accounts), Railway Board, Rail Bhawan, New Delhi.

.....Respondents

(By Advocate Mr. Anupam Agrawal)

ORDER

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

- (1) The impugned orders Annexure-A/1, Annexure A/2, Annexure A/3, Annexure A/4 and Annexure A/5 may kindly be quashed and set aside;
- (2) The respondents be directed to :-
 - (i) Allow the applicant to join in the office of the Dy. FA & CAO (Workshop & Stores Accounts), NWR, Ajmer.
 - (ii) Pay subsistence allowance to the applicant @ 75% of his salary on completion of 90 days suspension;
 - (iii) Make payment of subsistence allowance after June, 2012 immediately.
 - (iv) Revoke the prolonged suspension of the Applicant.
- (3) Cost of the Original Application be awarded in favour of the humble applicant.
- (4) Any other appropriate relief which this Hon'ble Tribunal may feel proper and just in the facts and circumstances of the case may also kindly be allowed in favour of the applicant.

2. The brief facts of the case as stated by the learned counsel for the applicant are that the applicant while working as Accounts Assistant in Senior D.F.M. office, N.W.R., Ajmer was arrested on 7.5.2011 by the CBI along with some other higher officials of Railway. There upon he was placed under suspension on the same day i.e. 7.5.2011.

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3. That the applicant was transferred under suspension from the office of the Senior D.F.M., N.W.R., Ajmer to the office of Dy. F.A. and C.A.O., N.W.R., Ajmer on 4.10.2011.

4. Subsequently, the applicant was again transferred under suspension from the office of the Dy. FA & CAO, NWR, Ajmer to Chitranjan Locomotive Works, Chitranjan, West Bengal.

5. However, he was not allowed to join there and Dy. FA & CAO, Chitranjan Locomotive Works asked the applicant to report back to the office of the Dy. FA& CAO, NWR, Ajmer. In compliance of these orders, the applicant again reported to the office of the Dy. FA & CAO, NWR, Ajmer on 23.7.2012. The applicant was again sent to the office of the Dy. FA & CAO, Chitranjan Locomotive Works but he was again sent back to report at Ajmer stating therein that the joining of the applicant is not agreed to due to certain reasons. Therefore, the applicant again came back to the office of the Dy. FA & CAO, NWR, Ajmer and reported there on 13.8.2012.

6. That on 24.12.2012 the office of the Dy. FA & CAO, Chitranjan passed an order directing the applicant to join at Chitranjan under suspension.

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7. Thereafter, the applicant filed an OA No. 42 /2013 before this Hon'ble Tribunal who directed respondents to decide the representation of the applicant in accordance with the provisions of law. His representation has been decided by the Dy. FA & CAO(W & S), NWR, Ajmer vide order dated 8.4.2013 in a very casual and routine manner.

8. The Dy. FA & CAO, Chitranjan Locomotive Works, Chitranjan has also decided another representation of the applicant vide order dated 19.4.2013 in a very casual and routine manner.

9. The learned counsel for the applicant argued that the respondents be directed to post him to Ajmer instead of Chitranjan Locomotive Works, Chitranjan, West Bengal as the criminal proceedings against the applicant are pending at Ajmer and it would be very difficult for the applicant to travel from Chitranjan to Ajmer on every date. Moreover, the respondents be directed to make the payment of Subsistence allowance which has not been paid to the applicant since June, 2012. The learned counsel also prayed that his Subsistence allowance be increased @ 75 per cent of his salary and the respondents be directed to revoke the prolonged suspension of the applicant.

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10. The respondents have filed the reply. The learned counsel for the respondents submitted that the applicant was arrested by the CBI along with some other officials of the Railway and , therefore, he was placed under suspension w.e.f. 7.5.2011.

11. Subsequently he was transferred from the office of the Dy. FA & CAO (W & S), Ajmer vide order dated 19.6.2012 (Annexure A/3) to Chitranjan Locomotive Works, Chitranjan. He did not challenge this order. In fact in compliance of this order he went to Chitranjan Locomotive to join at the new place of posting therefore, now at this belated stage he can not challenge his transfer order to Chitranjan Locomotive Works. Due to some technical reasons he could not join at Chitranjan. Now all the formalities have been completed and the relevant record has been sent to the Chitranjan Locomotive Works. Therefore, the applicant can join at Chitranjan Locomotive Works without any problem.

12. With regard to the payment of subsistence allowance, the learned counsel for the respondents submitted that since the applicant has not joined at Chitranjan Locomotive Works in compliance to his transfer order dated 19.6.2012, therefore, he is not being paid subsistence allowance. He

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was relieved from Ajmer in pursuance to that transfer order but he could not join at his new place of posting. Once he joins at the Chitranjan Locomotive Works and completes certain conditions as required under the rules to get subsistence allowance then he would be paid his subsistence allowance without delay. The learned counsel for the respondents submitted that the representation have been decided in accordance with the provisions of law by a speaking order. He said that there is no bar to transfer the employee under suspension. Therefore, the OA has no merit and it should be dismissed with costs.

13. The applicant has filed a rejoinder.

14. Heard the learned counsel for the parties and perused the documents on record.

15. It is admitted that the applicant was arrested by the CBI on 7.5.2011 and thereafter he was placed under suspension w.e.f. 7.5.2011. That during the suspension the applicant was transferred from the office of the Dy. FA& CAO, Ajmer to Chittranjan Locomotive Works, Chitranjan vide order dated 19.6.2012 (Annexure A/3). In compliance of this order the applicant reported to join at Chitranjan Locomotive Works, Chitranjan, however, he was not allowed to join there and was sent back to Ajmer. According to the

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learned counsel for the respondents the applicant could not be allowed to join at Chitranjan because of certain formalities regarding his service book and other documents could not be sent by NWR, Ajmer to Chitranjan Locomotive Works. Now all such formalities have been completed and the applicant can join at Chitranjan without any problem. I am inclined to agree with the averments made by the learned counsel for the respondents that the applicant had gone to Chitranjan to join his duties in compliance to his transfer order dated 19.6.2012 (Annexure A/3). Therefore, at this stage the applicant cannot challenge his transfer order. The learned counsel for the respondents also submitted that the subsistence allowance could not ^{be} paid to him because he has been relieved from NWR but he has not joined at Chitranjan Locomotive Works. Therefore, under these circumstance the applicant is directed to immediately report to join at Chitranjan Locomotive Works, Chitranjan in compliance to his transfer order dated 19.6.2012 (Annexure A/3). After his joining at Chitranjan Locomotive Works he should complete the formalities required for payment of subsistence allowance. The respondents are directed to sanction and pay the subsistence allowance to the applicant within 30 days of his completing the formalities for payment of subsistence allowance.

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16. The learned counsel for the applicant argued that it would be very difficult for the applicant to pursue his case pending in the criminal court at Ajmer from Chitranjan Locomotive Works, Chitranjan. Therefore, he submitted that the applicant may be transferred to either to Ajmer or to any nearby place. He also submitted that the respondents be directed to enhance his subsistence allowance to 75 percent and revoke the suspension order. With regard to these prayers, it is directed that the applicant is at liberty to file the representation before the competent authority after joining at Chitranjan Locomotive Works. The respondents are directed to consider and decide the representation of the applicant, if so, filed by him within a period of three months by passing a reasoned and speaking order in accordance with provisions of law.

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

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(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/