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**Central Administrative Tribunal
Jabalpur Bench**

OA No.188/06

Jabalpur this the 28th day of April 2006

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Smt.Meera Chhibber, Judicial Member

1. Ms.R.Thenmozhi
Ticket Collector
D/o Shri Ramamurthy
R/o 36/16 Howbagh Railway Colony
Jabalpur.
2. Ms.B.Geeta
Ticket Collector
D/o Shri E.Babu
R/o 327/16 Howbagh Railway Colony
Jabalpur.
3. Ms.V.Kalpana
Ticket Collector
D/o Sheri R.Venkatesh
R/o 307/16 Howbagh Railway Colony
Jabalpur.
4. Ms.L.Similal Singh
Ticket Collector
D/o Shri Lal Singh
R/o 327/6 Howbagh Railway Colony
Jabalpur.
5. Ms.Shifali Varma
Ticket Collector
D/o Shri Jagdish Varma
R/o Opp.Commissioner's Office
South Civil Lines
Jabalpur.
6. Ms.Stuti Pandey
Ticket Collector
D/o Shri Dinesh Kumar Pandey
R/o Opp.Commissioner's Office
South Civil Lines
Jabalpur.

Applicants



(By advocate Sheri S.C.Sharma)

Versus

1. Union of India
Ministry of Railways
New Delhi.
2. General Manager
WCRSA&CMM/WCR
Jabalpur.
3. General Secretary
WCRSA & CMM/WCR
Jabalpur.
4. Divisional Commercial Manager
WCRSA & CMM/WCR
Jabalpur.
5. Asstt. Sports Officer
WCRSA & CMM/WCR
Jabalpur.

Respondents

(By advocate Shri N.S.Ruprah)

ORDER

By Smt.Meera Chhibber, Judicial Member

This OA has been filed by the applicants challenging the order-dated 17.3.2006 (Annexure A1) whereby the services of the applicants were terminated with immediate effect by waiving the notice period (page 12 of the OA).

2. It is stated by the applicants that they were initially appointed on 26.10.2004 under the Sports Quota as Clerk-cum-Typist in the scale of Rs.3050-4500 (Page 19). In the appointment letter, it was clearly mentioned that they would be on probation for two years. Subsequently vide letter dated 3.11.2004 they were posted as Pro-Ticket Collectors in the same grade on "Special Lady Ticket Checking Squad" at Jabalpur instead of Clerk-cum-Typist, thus their category was changed on administrative ground (Page 25). They were



sent for training and all the applicants secured 80% to 93% marks in the examination and were declared successful.

3. It is stated by the applicants that even though they were selected under the Sports Quota of Volleyball, yet vide order dated 12.9.2005 they were directed to participate and represent WCR Basketball Team in the 29th All India Railway Basketball (Women) Championship 2005 to be held at Gorakhpur from 19.10.2005 to 27.10.2005 (page 28). They participated in the Championship at Gorakhpur and successfully won the tournament also. Immediately thereafter, vide order dated 30.9.2005, 9 players, one Manager and one Coach were directed to represent the WCR Volleyball Team in the 29th All India Railway Volleyball (Women) Championship 2005 to be held at Chennai from 4.11.2005 to 8.11.2005. Coaching camp was also arranged at Jabalpur from 10.10.2005 to 30.10.2005. Accordingly they were granted special casual leave from 10.10.2005 till they returned to HQs. (page.27). On 31.9.2005 when the applicants were scheduled to depart for Chennai, they learnt that only 6 players were to attend the Championship at Chennai. The Manager and the Coach of the team did not turn up at Chennai. With great difficulty, the applicants managed to reach the venue on 4.10.05, but on account of heavy rain they could not reach the venue on time resulting in a walk over. They participated in the match the next day on 5.10.2005 but in spite of their best efforts, they lost the match. They have also stated that one of the reasons for the walk over was, that they could not recognize the new coach, who came to Chennai from Bhopal to represent the applicants.

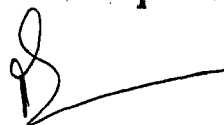
4. After the applicants came back from Chennai, they received a show cause notice dated 27.12.05 calling upon them to explain as to why they did not attend the match on 4.10.05 and the reasons for the poor performance at Chennai. They immediately gave reply to the show cause notice (page 34 -48 respectively). The applicants explained the reasons but without considering their reply, the



Respondents terminated the services of the applicant in an arbitrary manner by waiving the notice period vide order dated 17.3.2006.

5. Learned counsel for the applicants submitted that the termination order is absolutely wrong, arbitrary and bad in law because the order is stigmatic in nature and thus gets vitiated because it could not have been issued without holding an enquiry. To substantiate his contentions, he relied on 2005 Vol.V 52; AIR 2005 SCC 2192; 2002 Vol.I SCC 520. He also submitted that their disciplinary authority was DRM after change of their cadre. Therefore, General Secretrary, WCRSA &CMM, WCR could not have passed the termination order, as he had no authority to terminate the services of the applicants. He also submitted that the notice period of one month could not have been waived, as it is contrary to the terms of the appointment letter as well as the circular dated 5.1.1989. He also submitted that the performance of the applicants could have been judged after 2 years period and the service of the applicant could not have been terminated simply because they lost one match on 5.10.2005. In any case, the applicants lost the match because there was no coordination between the coach manager and the players. They did not know the time of the match and there was heavy rain in Chennai on account of which they could not reach the venue in time. Therefore, they cannot be punished for the lapses of the department itself.

6. OA is opposed by the respondents. They have submitted that the applicants were appointed on 26.10.2004 under sports quota. The appointments against sports quota are made as an exception to the normal procedure laid down for recruitment and appointment under the Indian Railways Establishment Manual by foregoing the selection process involving written test/interview, which is otherwise strictly applicable for all other recruitments in normal course. This is done because the paramount consideration is the proficiency of the candidate in the relevant game. Therefore, once such sports persons are appointed, they are required to participate on behalf of the



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Railways in all the sports activities and compete in the tournaments for at least three years and bring good name to the Railways where they have been appointed.


7. They have otherwise explained that immediately after their appointment, the applicants represented the 28th All India Railway Tournament held at Jabalpur on 27/28th October 2004 but they lost all the matches against Eastern Railway, Central Railway and Southern Railway by 3-2, 3-1 and 3-0 and their performance was absolutely bad. Moreover, applicants were given special causal leave for preparing for this match. Therefore, they had sufficient time for practicing before the match at All India Railway Championship held at Chennai during November 2005.

8. Respondents have further submitted that admittedly the applicants reached Chennai on 3.11.2004 but they did not reach the venue of the match on 4.11.2005 at 10 a.m. Therefore the other team got the benefit of the walk over on 4.1.05. Thus the very purpose of giving them appointment on sports quota got defeated and next day they lost the match.

9. Apart from it, in reply to the show cause notice, all the applicants had admitted their fault. Since the applicants had already admitted their fault, there was no need for holding an enquiry.

10. Respondents have also submitted that the services of the applicants were terminated on account of poor performance because the appointment letter clearly stated that their appointment would be provisional and their services could be terminated by giving one month notice, if their work was not found satisfactory or their performance in regard to sports for the period of three years was not found up to the mark. The respondents have relied on 1999 Vol.7 SCC 332; 1997 2 SCC 44; AIR 1997 SC 2725; 1977 (2) SCC 256 and AIR 1977 SC 965.

11. The respondents have also stated that since applicants had reached Chennai on 3.11.05, the reason for their not reaching the venue is absolutely unjustified. When all other teams could reach the



venue, there is no justification why applicants alone, found it difficult to reach the venue specially when they had played at this venue earlier also.

12. We have heard both the counsel. Admittedly, applicants were appointed on 26.10.2004 against Sports Quota without making them to undergo the selection process, which is mandatory in regular appointments otherwise. Obviously, this is done to encourage sportsmen to enter into Railways on the basis of their performance and for making a good name in the games. Since sports persons are appointed with an object to have a good name in the games, they are given extra benefits like special casual leave, half day off etc. so that they are able to do their practice regularly. Apart from it, camps are also organized from time to time to give them extra time exclusively for their practice. Therefore, naturally the employer expects that when the sportspersons get so many advantages, at least they should play the games whenever and wherever deputed, with full dedication and sincerity. In the instant case, as per the applicants' own case, they were informed by order dated 30.9.05 about the 29th All India Railway Volleyball (Women) Championship 2005 to be held at Chennai from 4.11.2005 to 8.11.2005 (page 95). They were also granted special casual leave from 10.10.2005 till they returned to HQs for practice and during participation in the tournament. Not only this, coaching camp was also arranged at Jabalpur from 10.10.2005 to 30.10.2005 and for this purpose also, applicants were given special casual leave from 10.10.2005 to 30.10.2005 (page 87). Even before that, vide order dated 17th August 2005, applicants were relieved from duty daily up to 10.00 hours and from 14.00 hours in connection with training and fitness sessions from 17.8.2005 to 15.11.2005. (Page 88). Even in May 2005, applicants were relieved from duty daily upto 10.00 hours and from 14.00 hours in connection with training and fitness sessions from 16.5.2005 to 15.8.2005 (page 101), meaning thereby that throughout the year the applicants were given enough time to carry out their practice for the 29th All India Railway Volleyball (Women)



Championship 2005. Under these circumstances, if the Railways expected that the applicants should have performed well in the above said event, it cannot be said to be something extra ordinary. After all, if persons who are appointed under Sports Quota are not able to perform as per the expectation of the employer, who gives them appointment by relaxing the rules, it would defeat the very object of such appointments. Therefore, the department is well within their right to call the explanations from such players, who not only lost the match in the 29th All India Railway Volleyball (Women) Championship 2005 but also disappointed the authorities by not even showing up at the venue on 4.11.2005 resulting in a walk over to the other team. To this extent, we do not find any illegality in the show cause notice issued by the respondents.

13. The question here is, whether the applicants could have been terminated the way they have been, in the instant case. Respondents had issued show cause notice to the applicants on 27.12.2005 calling upon them to explain as to why they did not report on the ground at 10.00 hrs on 4.11.2005 for the first match with Central Railway and also why the performance had been very poor and dismal in the only one match played with Western Railway, which WCR team lost in 3 straight games by 13-25, 15-25 and 20-25. They were called upon to explain as to why their services should not be terminated because of their unsatisfactory performance (page 28). All the applicants gave their reply stating that they reached Chennai on 3.11.2005 but since neither the team manager nor the coach was traceable at Chennai, they did not know the correct information and also because of heavy rain they could not reach the venue in time. Miss R. Thenmozhi who was the captain of the team has stated that she came to know on 4.11.2005 at 9.30 hours from other players that there was a match between WCR and CR at 10 00 hrs on 4.11.2005, which was informed by her to all the team members but due to heavy rainfall, they could not reach the ground by 10.30 hrs. Otherwise they are doing/completing the targets, every month, which are fixed, and they are working to the satisfaction



of their superiors; hence the show cause notice may be withdrawn. However, not being satisfied with the reply, respondents terminated their services vide order dated 17.3.2006 with immediate effect by waiving the notice period.

14. We have no doubt in our mind that the explanations given by the applicants for not reaching the venue on 4.11.05 just cannot be accepted because admittedly they had reached Chennai on 3.11.2005 in the early hours and if they were sincere, the first thing they would have done on reaching Chennai, would have been to find out, where the match was to be played and at what time, even if their coach had not reached there. No such effort seems to have been made by the applicants on 3.11.05. On the contrary, they did not even go to the stadium where they had played the games on earlier occasions. It clearly shows that no effort whatsoever was made by them to find out the time of the match to be played by them on 4.11.05. When they had already been informed that 29th All India Railway Volleyball (women) Championship 2005 would be held at Chennai on 4.11.2005 to 8.11.2005 as back as on 30th September 2005, the first thing they ought to have done on reaching Chennai, should have been, to find out the time of their match. Admittedly no such effort was made. The captain has stated in her reply that she came know on 4.11.2005 at about 9.30 a.m. that their match would start at 10.30 a.m. on 4.11.2005. She could have made some effort on 3.11.05 as well. Admittedly, the full team did not reach at the venue even till about 12 O' clock as a result of which walk over was given to the other team. Undoubtedly this is a serious matter because it clearly shows that the applicants did not take their job for which they were deputed seriously and acted in an irresponsible manner.

15. The other ground taken by the applicants that they could not reach the venue on 4.11.05 in time because of heavy rain, is also not acceptable because if the other team could reach the venue in time, there is no justification as to why the applicants could not have reached the venue. If only they had been careful and vigilant in their



approach, they would definitely have reached the venue. Not only this, the applicants lost the match the next day also meaning thereby their performance was also not at all up to the mark. Therefore, naturally the authorities were not happy with their performance. In fact, the applicants had cheated the Railways, because they did not even reach the place for which they were sent in time, thus defeating the very purpose of sending them to Chennai.

15. Not only this, when the applicants came back, they gave in writing that they had committed a mistake in not reporting at the venue on 4.11.2005 in time. They therefore, sought to be excused by assuring that in future they would not make such mistakes. Once they had admitted their mistake, there was nothing really, which required to be enquired into. Therefore, the submission made by the counsel for the applicants that the services of the applicants could not have been terminated without holding an enquiry is not at all sustainable in law. In 1999 V.7 SCC 332 in the case of Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution Vs. Educational Appellate Tribunal and another, the Hon'ble Supreme Court has held as under:

“Undisputed facts for which there was no plausible explanation and affected person could not put forth any valid defence when opportunity given by court – plea has to be rejected on the facts of the case that enquiry ought to have been conducted as provided in statutory rules.”

16. It was held that “where allegations/charges are admitted and no possible defence is likely to be placed before the authority concerned, no enquiry is necessary”.

17. Even otherwise, in a case like this, where respondents found the performance of the applicants to be unsatisfactory, the termination order cannot be said to be stigmatic or punitive in nature. At this juncture it would be relevant to quote 2003 V.3 SCC 263 Mathew V. Thomas Vs. Kerala State Civil Supplies Corporation wherein it was held that when termination is passed on unsatisfactory performance,



the order of termination is simpliciter and cannot be termed as stigmatic. Therefore, the contention of the counsel for the applicants that an enquiry should have been held before terminating the services of the applicants is unsustainable in law and the same is accordingly rejected.

18. At the time of the arguments, counsel for the applicants also submitted that General Secretary, WCRSA & CMM, WCR is not the competent authority to terminate the services of the applicants. But on a perusal of the pleadings, we find that no such averment was made by him or ground taken by him in the original application. Therefore, he cannot be allowed to raise this objection either in the rejoinder or in the arguments. It goes without saying that whatever argument or ground one wishes to rely upon must be taken in the OA, so that respondents may refute it in the counter. Therefore, this contention cannot be looked into.

19. We however find, the way respondents have terminated the services of the applicants, is not in accordance with law for the reason that the services have been terminated with immediate effect on 17.3.2006 by waiving the notice period, whereas in the appointment letter, it was clearly mentioned in Clause 1 as follows:

"Your appointment will be provisional and your services can be terminated by giving one month notice, if your work is not found satisfactory or your performance in regard to sports for the period of three years is not found up to the mark."

20. Somewhat same position is mentioned in Railway Boards' own circular dated 5.1.89 (page 99). Para 3 of the above circular clearly states "on completion of the two years probation, the performance of the sport person will be reviewed at the zonal Railway level by a Committee comprising President and Hony. General Secretary of the Zonal Railway Sports Association and the Captain/Coach of the particular discipline. If the performance of the persons recruited on sports account is considered to be unsatisfactory, he will be given a



show cause notice and if the reply is not considered satisfactory his services will be terminated by notice observing requisite procedure for such termination."

21. From, the circular as well as the appointment letter, it is clear that the performance of the applicants was to be assessed after 2 years and it is only in the eventuality that their performance is found not satisfactory, their services could have been terminated by giving them one month's notice, that too after serving a show cause notice. Therefore, it was incumbent on the part of the respondents to have complied with this procedure. Counsel for the respondents was not able to show us any rule of the Railways, under which they could have terminated the services of the applicants with immediate effect by waiving the notice period. Since there is no such rule, it is clear that the termination order has been passed in an arbitrary manner without following the due process of law. In case the respondents wanted to waive the notice period, at least they should have given one month's salary to the applicants. Even that has not been done in the present case. Therefore, the termination orders are liable to be quashed on this ground alone.

22. Apart from above, it is seen that it is not on the basis of overall performance of the applicants, that their services have been terminated but it is only because of their not attending the match on 4.11.2005 and for losing the match on 5.11.2005 that their services have been terminated. Though we are in agreement with the respondents that the applicants did not behave in a responsible manner which definitely calls for a strict view to be taken by them so that other players also take a lesson from it, they cannot behave in such an irresponsible manner in future, but nonetheless we find that the applicants alone cannot be said to be responsible for the entire episode in as much as if the respondents knew that the applicants were to play in the 29th All India Railway Volleyball (women) Championship to be held at Chennai from 4.11.05 to 8.11.05 for which coaching camp was arranged at Jabalpur from 10.10.05 to 30.10.05, they should not have



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sent the applicants to Gorakhpur for playing in the 29th All India Basketball(Women) Championship 2005 from 19.10.2005 to 27.10.2005, because this definitely prevented the applicants from attending their coaching camp at Jabalpur at least from 19.10.2005 to 27.10.05 and that is the major part of the coaching camp held at Jabalpur. Though the respondents have stated that applicants went to Gorakhpur on their own volition, but it was for the respondents to see what is more important, whether the coaching camp for 29th All India Railway Volleyball (Women) Championship 2005, to be held at Chennai or the 29th All India Basketball Championship to be held at Gorakhpur. It goes without saying that even if they were given special casual leave and off to attend their practice regularly, it is the last one month before the event which makes the team more serious and gain momentum. It also helps to have a better coordination amongst the team players. This is also necessary so that at the time, when they actually participate in the event, they are able to understand the move of each other and also to have the able guidance of the coach. In the instant case it is also to be kept in mind that the coach who was initially deputed to go to Chennai vide order dated 30.9.2005 namely Rajesh Tiwari did not accompany the applicants nor reach at Chennai. A new Coach was deputed by the respondents, with whom applicants had not practiced at all. Therefore naturally there could not have been any coordination between the coach and the team players.

23. Proper coordination definitely plays a major role, when such kind of games are played at All India level. Therefore, we would agree with the applicants' counsel that the respondents were also responsible to some extent for the flip-flop that took place on 4th November 2005 and 5th November 2005. In these circumstances, we are of the opinion that the respondents could not have terminated the services of the applicants.

24. In the counter, respondents have tried to explain that applicants' overall performance was not good at all because they lost All India Volleyball Championship held in 2005 and also lost All India Railway



Tournament held at Jabalpur on 27, 28 & 29th October 2004 but that is neither a ground in the show cause notice, nor it is reflected in the termination order. On the contrary, the only reason for terminating the services, is their failure to turn up at the match against the Central Railway on 4th November 2005 at Chennai and their performance in the match on 5.11.05. Therefore, the respondents cannot now be allowed to improve their case in the counter affidavit. We are supported in our this view by Hon'ble Supreme Court in the case of Mahindra Singh reported in 1978 V.1 SCC 405 wherein it was held that an order must be judged by the reasons mentioned therein and the reasons cannot be supplemented by way of an affidavit.

25. In view of above discussion, we find that since the only ground on which the services of the applicants were terminated could not have been made the basis, because respondents were also responsible to some extent, therefore, termination order dated 17.3.2006 has to be quashed and set aside. We, however, hasten to add here that the applicants should not take, as if by passing this order we are supporting their action or their attitude in any way, we strongly condemn their attitude and leave it open to the respondents to warn them. We also make it clear that respondents should give another opportunity to the applicants to show their worth in the next matches to be held by the Railways. In case the applicants fail to show their performance even in other matches as per expectations of the Railways, it would be open to the Railways to pass appropriate orders on the basis of their overall performance by following due process of law.

26. At this juncture, it would also be relevant to mention that initially when the applicants approached this Tribunal, this Tribunal had passed an order on 24th March 2006 that "if as on date applicants have not been removed from service and the order of termination has not been implemented, their services shall be protected". Against the said order, applicants had approached the Hon'ble High Court by filing a writ petition which was disposed of by the Hon'ble High



Court vide its order dated 3.4.06 directing the Tribunal to complete the hearing of this case within one month from 3.4.06. In the meantime, direction was also given to the respondents to allow the petitioners to retain the residential accommodation till their OA 188/06 is disposed of by this Tribunal. They have thus retained the accommodation.

27. From the above, it is clear that this Tribunal as well as the Hon'ble High Court had protected the interest of the applicants to some extent. Now that termination orders are quashed and set aside, applicants would be entitled to consequential benefits as well because once the termination order is quashed they would be deemed to be in service from 17.3.2006.

28. With the above directions, OA is partly allowed.

Smt. Meera Chhibber
(Smt. Meera Chhibber)
Judicial Member

Dr. G. C. Srivastava
Dr. G. C. Srivastava)
Vice Chairman

aa.

पुस्तक सं ओ/न्या.....जबलपुर, दि.....
प लि लि पि अ न के थि ल :-

- (1) सतिश, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जबलपुर
- (2) आदेश नं. 1/2006 के काउंसल
- (3) प्रत्यक्ष नं. 1/2006 के काउंसल
- (4) कार्यपालक, न्यायालय, जबलपुर न्यायाधीश सूचना एवं आवश्यक कार्यवाही हेतु

S. C. Sharma by *Dr. G. C. Srivastava*
M. S. R. P. Singh by *Dr. G. C. Srivastava*

S. C. Sharma
उप उपाध्यक्ष

Issued
28.4.06