

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

**ORDERS OF THE BENCH**

**Date of Order: 04.09.2012**

OA No. 25/2011

Mr. S.K. Jain, counsel for applicant.

Mr. Anupam Agarwal, counsel for respondents.

At the request of learned counsel for the respondents, put up the matter on 05.09.2012 for hearing.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*K.S. Rathore*  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

05/09/2012

OA No. 25/2011

Mr. S.K. Jain, Counsel for applicant.  
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O.A. is disposed of by a  
Separate order on the separate-  
sheets for the reasons recorded  
therein.

*Anil Kumar*  
[Anil Kumar]  
Member (A)

*K.S. Rathore*  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 5th day of September, 2012

ORIGINAL APPLICATION No.25/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Manish Sharma  
s/o Shri Paras Ram Sharma  
r/o H.No.A-43, Kamal Sadan,  
Akshar Dham, Kota, now a says  
at Ambala Cantt. Ex TADK, Kota.

.. Applicant

(By Advocate: Shri S.K.Jain)

Versus

1. Union of India  
through the General Manager,  
North Railway,  
New Delhi.
2. The Assistant Personnel Officer,  
Ambala Division,  
Ambala, Shri Manoj Ojha
3. Shri Ravindra Singh,  
Sr. WLI, Northern Railway,  
Ambala Cantt. Ambala.
4. Shri Y.P. Singh,  
Ex. DRM Ambala Cantt.  
Now a days Chief Engineer (S&C)  
(East), Northern Railway,  
Delhi.
5. Divisional Personal Officer,  
Ambala Cantt.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

**ORDER (ORAL)**

The case of the applicant is that he was engaged as Substitute Bungalow Lascar vide order dated 28.7.2008 (Ann.A/3) issued by the Assistant Personnel Officer (APO) for and on behalf of Senior Divisional Personnel Officer (DPO), Southern Railway, Palghat. Thereafter the applicant was posted with Shri Y.P.Singh (respondent No.4), DRM, Palghat. The respondent No.4 was transferred to Ambala and hence the applicant also accompanied respondent No.4 to Ambala. Thereafter respondent No.4 was again transferred from Ambala Cantt. to Delhi, but the applicant refused to go to Delhi with respondent No.4 and vide letter dated 12.7.2010 shown his unwillingness to go to Delhi and requested that he be absorbed and posted at Ambala in other post.

2. On account of refusal given by the applicant, respondent No.4 submitted complaint against the applicant. On his complaint, the Chief Office Superintendent, DRM Office, Ambala issued show-cause notice to the applicant to explain why he remained absent from duty since 5.7.2010. The applicant also filed complaint to the Chief Vigilance Officer/ SDGM, Northern Railway, New Delhi and the Advisor (Vigilance), Railway Board, New Delhi (Ann.A/10) mentioning atrocities and high handed action of respondent No.4. Thereafter, the applicant was issued charge sheet and the applicant also replied to the charge sheet vide letter dated 28.8.2010 (Ann.A/11). The Disciplinary Authority having considered



the reply submitted by the applicant initiated proceedings for major penalty. Thereafter having considered the conduct of the applicant and considering enquiry report as well reply submitted by the applicant to the show-cause, the Disciplinary Authority awarded the punishment of termination with immediate effect and consequently the applicant was terminated from service vide order dated 16.9.2010.

3. Aggrieved and dis-satisfied with the termination order, the applicant preferred this OA claiming following reliefs:-

- (a) That by an order or direction the impugned charge sheet Ann.A1 be quashed and set aside along with whole of the enquiry proceedings.
- (b) That by an appropriate order or direction the impugned punishment order dated 16.9.2010 (Ann.A2) be quashed and set aside along with the appellate order dated 16.12.2010 Ann.A/2A and the applicant be granted all the consequential reliefs regarding seniority pay and arrears of salary and he be deemed to be continued on the post with any break.
- (c) Any other relief this Hon'ble Tribunal deems fit may also be granted.

4. The main challenge to the impugned order is on the ground that the zonal railway administration could not have transferred the applicant from Southern Railway to Northern Railway as the inter railway transfer could be ordered by the Railway Board and not by the subordinate authority than the Railway Board and therefore, the



applicant being employee of the Southern Railway, no DAR action could be taken by the respondent at Ambala Division and hence whole of the proceedings are liable to be quashed and set aside being without jurisdiction.

5. It is also stated that the enquiry has been initiated against the applicant only on the complaint of respondent No.4 to various authorities. The charge sheet has been issued by respondent No.2 without asking for any explanation from the applicant and without holding preliminary enquiry before issuing the chargesheet. The memorandum of charge sheet has been assailed on the ground that under the Disciplinary and Appeal Rules, the Disciplinary Authority and the Enquiry Officer should not be biased and the enquiry should be fair. The rules further envisages that the charge sheet should be issued after due application of mind on the facts and has referred the Railway Board Circular dated 2.6.1970.

6. Further challenged the action of the respondent on the ground that the principles of fair enquiry have been grossly violated by the respondents in this case, inasmuch as, the complaint had been lodged by the DRM, Ambala who was much higher than the one who initiated enquiry by giving charge sheet and hence he was not in a position to come to a different and independent conclusion in the inquiry. It is also stated that the applicant has also filed objections regarding conducting enquiry by respondent No.2 but the Enquiry Officer continued to conduct the enquiry and after conclusion submitted enquiry report on 31.8.2010 to the Disciplinary Authority. It is not disputed that the Disciplinary Authority after



receipt of the enquiry report issued show-cause notice to show cause against the enquiry report within 10 days i.e. by 10.9.2010 and having considered the reply to show-cause, imposed penalty of termination of service vide order dated 16.9.2010 (Ann.A/2).

7. The applicant also preferred OA No.459/2010 challenging termination order. This Tribunal decided the OA by giving direction to the Appellate Authority to treat the OA as appeal on behalf of the applicant and shall decide the same by passing a speaking order. The Appellate Authority considered appeal of the applicant and passed the speaking order dated 16.12.2010.

8. Per contra, the learned counsel appearing for the respondents has strongly controverted the facts mentioned by the applicant and submitted that this OA is not maintainable as the applicant has not availed the statutory remedy of revision and further that the OA is also not maintainable as the declaration made in para 6 of the OA is false. The applicant has alternative statutory remedy of revision as per rules and without availing the statutory remedy, the OA filed by the applicant deserves to be dismissed. Further denied that the applicant was appointed by the DRM/Sr. DPO while the order of termination of his service has been passed by the APO and it is stated that as per Schedule of Powers (SOP) for employees appointed in the pay scale of Rs. 2550-3200/ Pay Band I, Grade Pay Rs. 1800 in Sixth Pay Commission, Assistant Personnel Office is the appointing authority of the applicant and also referred Schedule of Power enclosed along with reply as Ann.R/1.



9. It is also contended that since the applicant was engaged as Substitute Bunglow Lascar in the pay scale of Rs. 2550-3200, which is Group-D post, the Assistant Personnel Officer is his appointing authority as per SOP and has rightly signed his appointment letter dated 28.7.2008. The appointment of the applicant has the approval/sanction of competent authority in terms of Clause 4 of Delegation of Powers/Non-Grazeetted detailed vide Ann.A to SOP on Estt. Matters. The APO, who happens to be appointing authority of the applicant as per SOP, has also attested all the entries in the service record maintained in Palghat Division and the same was received by the Ambala Division.

10. Further stated that as per Schedule-II of 1985 under D&A Rules, the penalty of removal, Dismissal and Compulsory retirement can be ordered only by the appointing authority or equivalent or higher to it. Thus, the charge sheet and subsequent termination order of the applicant were rightly issued by the APO, who is the appointing and disciplinary authority of the applicant.

11. The learned counsel appearing for the respondents further submitted that the allegation made by the applicant in the OA against respondent No.4 and his controlling officer are false, fabricated and an after thought with an intent to save him from termination of his services. In fact, the applicant indulged in grave misconduct by absenting himself unauthorisely from duty from 5.7.2010 and onwards and that too during the time when his controlling officer was facing natural disaster by way of heavy rains leading to floods from the night of 5/6 July, 2010 till 8/9 July, 2010.



12. The applicant vide his letter dated 12.7.2010 expressed his unwillingness to accompany his controlling officer (respondent No.4) consequent upon his transfer to New Delhi, while according to terms and conditions of the appointment letter dated 28.7.2008 he was required to accompany and be in service of respondent No.4 for a minimum period of three years from his appointment till 27.7.2011. His refusal to accompany respondent No.4 was also viewed as a grave misconduct on the part of the applicant and accordingly, appropriate disciplinary proceedings were initiated against him.

13. We have heard the rival submissions of the respective parties and carefully perused the material available on record, relevant rules as well as the judgments referred to by the respective parties. By way of this OA, the applicant has challenged action of the respondents not only with regard to initiating enquiry proceeding but also with regard of the memorandum of chargesheet and termination order passed by the Disciplinary Authority and also regarding the competence of the authorities.

14. We have also perused the Estt. Rule No.197/2005 circulated vide letter dated 5.8.2005, which is regarding Bungalow Peons - terms and condition of their engagement, absorption and discharge. According to this Rule Bungalow Peons are attached to the post and officers occupying such posts are entitled to Bungalow Peons. They may propose for engagement of persons of their choice provided the Bungalow Peon's post is vacant. It is not disputed that the applicant was given appointment as Bungalow Peon being





person of choice by the DRM initially at Palghat where respondent No.4 was posted at the relevant point of time. At the time of appointment, the applicant never raised objections with regard to terms and conditions as stipulated in the offer of appointment. Further, we have examined the appointment letter and as per the rules referred by the respondents, we are fully satisfied with the submissions that the APO is the appointing authority and issued appointment order of the applicant with the approval of competent authority in accordance with the provisions of law and we are not satisfied with the submissions made on behalf of the applicant that APO is not appointing authority of the applicant.

15. Further, we have also perused the provisions of Estt.Rules No. 197/2005 with regard to absorption of Bungalow Peon and under sub-clause (iii) it is provided that in case there is no post of Bungalow Peon at the new place of posting of the officer, or the officer concerned is not willing to take the Bungalow Peon to his new place of posting, or the Bungalow Peon is not willing to go to the new place including outside zone, the following action may be taken:-

- a) If he has completed 3 years satisfactory service and screened, he should be absorbed against a Group-D post where his lien is maintained.
- b) If he has not completed 3 years service, he should be continued against a vacant post of Bungalow Peon subject to acceptance by successor officer to whom he will be due to be attached.



- c) If he has completed 1 years service but yet to complete 3 years service because of transfer of officer, retirement of officer, etc. he should be absorbed against Group-D vacancies as Substitute till he completes 3 years after which he becomes eligible for screening, in the event of incoming officer not willing to accept such Bungalow Peon.
- d) If he has not completed 1 year service and there is no post of Bungalow Peon for adjustment, his service should be terminated as indicated in the procedure to be followed for discharge of Bungalow Peons.

15. In view of these provisions, since the applicant has refused to accompany the officer and in such event, his services were liable to be terminated after following the due process of law.

16. In the instant case, the respondents have followed due process of law while initiating enquiry proceedings against the applicant. The Disciplinary Authority having considered reply of the applicant and the enquiry report has imposed the penalty of termination. The respondent No.4 who was controlling officer of the applicant vide his letter dated 26.7.2010 also made complaint regarding unsatisfactory services of the applicant which was considered and it was thought proper to initiated enquiry against the applicant. With regard to absence of the applicant from duty, the letter placed by the applicant himself show that the respondents have issued letter dated 9.7.2010 to the applicant stating that he is absenting from duty since 5.7.2010 and was



informed that he should immediately join his duty otherwise they will initiate departmental enquiry against him. Since despite of the letter informing the applicant to join his duty, he did not join and also not accompanied his controlling officer, the respondents have rightly initiated enquiry against the applicant. Thus, we find no illegality so far as initiation of enquiry and issuance of memorandum of charge sheet is concerned.

17. We have also perused the order dated 11.11.2010 passed in earlier OA No.459/2010 filed by the applicant. In this OA, this Tribunal have considered the order of the Chandigarh Bench of this Tribunal in OA No.738/HR/10 and observed that the OA filed before the Chandigarh Bench of the Tribunal pertains to the stage when the inquiry proceeding was pending and the same was withdrawn when the fact regarding completion of the inquiry proceeding by the Inquiry Officer and giving copy of the inquiry report to the applicant was brought to the notice of the Bench and it was under these circumstances, the OA was permitted to be withdrawn with liberty to the applicant for making representation against the finding recorded by the Inquiry Officer. While disposing the earlier OA, the Appellate Authority was directed to treat the OA as appeal on behalf of the applicant and shall dispose of the same by passing a speaking and reasoned order, which has been complied by the respondents by issuing order dated 16.12.2010.

18. It is not disputed that the applicant has alternative remedy of revision which has not been availed by the applicant on the pretext



that memorandum of charge sheet and the enquiry initiated against the applicant is contrary to rules.

19. We have also perused the judgments referred by the learned counsel appearing for the applicant and after perusal we are of the view that these are not applicable to the facts and circumstances of the present case.

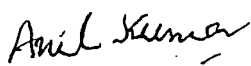
20. Facts remain that the applicant was given appointment being a choice person of respondent No.4 at Palghat and when respondent No.4 was transferred from Palghat to Ambala, he has no objection to accompany respondent No.4 in view of terms and conditions of his appointment, but on transfer from Ambala to New Delhi of respondent No.4, the applicant refused to accompany his controlling officer for which purpose the appointment was given. Further, the applicant has not completed 3 years satisfactory service and refused to accompany the officer concerned and made allegation against respondent No.4 and as per reply filed by the respondents, the allegations made by the applicant were found false and respondents stated that the same are alleged only to save his services. Not only this, the applicant remained absent from duty and looking to the overall conduct of the applicant, further action was taken by the respondents.

21. In view of Establishment Rule No.197/2005, the services of Substitute Bungalow Peon who has not completed 3 years satisfactory service can be terminated without assigning any reason and without following DAR procedure. However, one month notice or one month pay in lieu of notice may be given in such cases. In



the appointment letter also, it should clearly be mentioned that their services are liable to be terminated without assigning any reason before completion of three years satisfactory service. Upon perusal of this clause (i) under the heading 'Discharge', admittedly, the applicant has not completed 3 years service and the service which has been rendered by the applicant was found unsatisfactory, in that eventuality also, the services of the applicant can be terminated without showing any reason and without following the DAR procedure. Despite of the fact that respondents could terminate the services of the applicant after giving one month notice or one month pay in lieu of notice, but taking abundant caution, the respondents have followed DAR procedure, assigned reasons and followed the principles of natural justice providing opportunity to defend his case and then only the services of the applicant have been terminated.

22. In view of aforesaid, no interference, whatsoever, is required in the punishment dated 16.9.2010 passed by the Disciplinary Authority as well as in the order of the Appellate Authority dated 16.12.2010. Accordingly, the OA being bereft of merit fails and the same is dismissed with no order as to costs.

  
(ANIL KUMAR)  
Admv. Member

  
(JUSTICE K.S.RATHORE)  
Judl. Member

R/