

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 23.08.2012

OA No. 510/2011

Mr. Nand Kishore, counsel for applicant:
Mr. V.S. Gurjar, counsel for respondents.

At the request of learned counsel for the parties,
put up the matter on 30.08.2012 along with C.P. No.
39/2011 for hearing before the Division Bench.

K.S. Rathore
(JUSTICE K.S. RATHORE)
JUDICIAL MEMBER

Kumawat

30/08/2012
OA No. 510/2011 [OA No. 510/2011]

Mr. Nand Kishore, Counsel for applicant.
Mr. V-S Gurjar, 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 30th day of August 2012

ORIGINAL APPLICATION No. 510/2011

CORAM:

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

Mukut Bihari,
s/o Shri Ram Kishan Ji,
working as Bungalow Peon
to Shri S.K.Garg, C.F.T.M.,
North Western Railway,
G.M.'s office, Jagaputra, Jaipur
r/o H.No.27, Veer Sawarkar Nagar,
Rangbari, Kota.

... Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. The Union of India
through General Manager,
North Western Railway,
Jagatpura, Jaipur.
2. Chief Personnel Officer,
North Western Railway,
Jagatpura, Jaipur
3. Shri S.K.Garg,
Chief Freight Transportation Manager,
North Western Railway,
G.M.'s office, Jagatpura,
Jaipur.

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

The brief facts of the case are that the applicant was appointed as Substitute Bungalow Khalasi with respondent No.3 vide letter dated 24.5.2010 (Ann.A/2) under the policy circular dated 14.2.2008 issued by the General Manager for appointment of Substitute Bungalow Khalasi. The applicant was getting salary in pay scale of Rs. 5200-20200 with grade pay Rs. 1800 with other allowances from the date of appointment till April, 2011.

2. As per the respondents, since the applicant remained absent from duty w.e.f. April, 2011, therefore, his services were terminated in view of the conditions laid down in the engagement order issued by the respondents on 24.5.2010.

3. The submission of the respondents has been controverted by the learned counsel appearing for the applicant and submitted that the applicant is regularly attended the office but the applicant has not been allowed to mark his attendance and not paid salary. Therefore, the applicant by way of OA No.286/2011 assailed the action of the respondents and the same has been disposed of vide order dated 13th July, 2011. While



disposing of the OA, the Tribunal directed the respondents to consider representation of the applicant and pass appropriate order in accordance with provisions of law within a period of one month from the date of receipt of a copy of this order.

4. Pursuant to the direction issued by this Tribunal, the respondents have passed order dated 19.9.2011 (Ann.A/1), which is under challenge in this OA. Bare perusal of this order reveals that the applicant remained absent from the work place without prior permission to leave office from 15.4.2011. For this negligence and indiscipline, the respondent No.3 written letter dated 20.4.2011 to the Personnel Department that the applicant shall not be entitled to salary for the period of unauthorized absence. It is also stated that work of the applicant was not found satisfactory from March, 2011 and the applicant remained unauthorisedly absent, as such, his case was sent to the personnel department for terminating his services. Further, the applicant was not legally entitled to be retained in service and, therefore, to this effect further action is proposed.



5. We have heard the rival submissions of the respective parties and carefully perused the documents placed by the applicant as well as by the respondents. The respondents referred several documents to show misconduct of the applicant and his unsatisfactory work and also that the applicant has lodged FIR in the police station on 27.11.2011.

6. On the contrary, the learned counsel appearing for the applicant referred Ann.A/6 dated 28.3.2011 which reveals that work of the applicant was found satisfactory and he has completed 120 days. He also referred to Ann.A/3 guidelines regarding Substitute Bungalow Khalasi and more particularly, clause-7 which provides that 'they shall be granted temporary status after completion of 120 days continuous service unless report of unsatisfactory working is received from his/her controlling officer within this period; in which case, his/her service shall be terminated with payment of one month's salary in lieu of one month notice to him/her'.

7. We have asked a pertinent query to the learned counsel appearing for the respondents that when the applicant has completed 120 days continuous service, as



per guidelines temporary status should have been granted to the applicant and as per guidelines, the Bungalow Khalasis, who have been granted temporary status can be removed only after following DAR procedure. In response to this question, it is contended on behalf of the respondents that the applicant has not completed 120 days and he has not been granted temporary status as his services were not found satisfactory and, therefore, DAR procedure is not applicable in the case of the applicant.


8. Be that as it may, in our opinion, for terminating services of the applicant, the respondents have to pass a formal order. Upon perusal of Ann.A/1, it is not clear whether removal order has been passed or not but it only reveals that the applicant is not entitled to be retained in service and accordingly action will be taken, but no formal order is passed till date.

9. Although the respondents have every right of terminating the service of the applicant even when he has not acquired the temporary status in view of the guidelines with regard to Substitute Bungalow Khalasi, but a formal order of terminating services of the applicant is



required to be passed, which has not been passed. Therefore, the respondents are directed to allow the applicant to work on the post of Substitute Bungalow Khalasi and, if the respondents are not satisfied with the work of the applicant, we grant liberty to the respondents to pass formal order of termination, in accordance with provisions of law. We make it clear that the applicant shall not be entitled for any back wages in view of the principle of 'no work no pay' as he has not worked with the respondents w.e.f. 15th April, 2011 and we are not impressed with the averment of the applicant that the respondents have not allowed him to perform duty.

10. With these observations, the OA stands disposed of with no order as to costs.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S. RATHORE)
Judl. Member

R/