

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET


ORDERS OF THE TRIBUNAL

26.02.2013

OA No. 605/2011 with MA 399/2012

Mr. Nand Kishore, Counsel for applicant.
Mr. Tanveer Ahmed, Counsel for respondents.

Heard learned counsel for the parties. The OA is disposed of by a separate order.


(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 605/2011
With
MISC. APPLICATION NO. 399/2012

Jaipur, the 26th day of February, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Chaturbhuj Meena son of Shri Ram Karan Meena, aged about 36 years, working as Bungalow Khalasi, under DRM North Western Railway, Ajmer. Resident of Gram Post Chakeri, Tehsil & District Sawaimadhopur (Rajasthan)

... Applicant

(By Advocate: Mr. Nand Kishore)

Versus

1. Union of India through General Manager, North Western Railway, Jagatpura, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer.
3. Shri Vijay Singh, Dy. Chief Engineer (Const.) Works, North Western Railway, Head Quarter Office, Jagatpura, Jaipur.

... Respondents

(By Advocate: Mr. Tanveer Ahmed)

ORDER (ORAL)

Brief facts of the present OA, as stated by the learned counsel for the applicant, are that the applicant was appointed on the post on the post Bungalow Khallasi by the respondents vide their letter dated 17.05.2011 (Annexure A/3). He was posted with respondent no. 3. He worked satisfactory till 31.08.2011.

2. That the applicant fallen sick from 01.09.2011 till 04.10.2011 and presented himself with the certificate from the

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medical authorities before the Railway Medical Officer, Ajmer. The Sr. Divisional Medical Officer, NWR Ajmer found the applicant fit to resume his duty vide Certificate No. 154716 dated 06.10.2011 (Annexure A/5).

3. That the applicant resumed his duties on 06.10.2011 under respondent no. 2, (Sr. DPO), NWR, Ajmer and working satisfactorily.

4. The General Manager, NWR, Jaipur transferred the respondent no. 3 from Ajmer to Jaipur and posted as Deputy Chief Engineer (Construction) Works Head Quarter Office, NWR, Jaipur vide order dated 24.08.2011 and he was relieved on 08.09.2011 (Annexure A/6).

5. That the respondent no. 3, who was transferred from Ajmer to Jaipur had no post attached to him for Bungalow Khallasi, as such the applicant was not asked to give willingness to go along with him but respondent no. 3 verbally asked the applicant to come to Jaipur along with him and work with him without any orders from the competent authority.

6. The learned counsel for the applicant submitted that during his tenure at Ajmer, there was no complaint against the applicant by respondent no. 3 but after his shifting to Jaipur, he wrote a letter dated 01.01.2011 pointing out that the work of the applicant was not satisfactory and the applicant was absent for a long period. The applicant could not have been verbally

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forced to work under him without any post. Therefore, the respondent no. 3 could not have written such a letter.

7. That the respondent no. 2 issued a show cause cum termination letter dated 21.11.2011 (Annexure A/1) stating inter-alia that after 20.12.2011, the services of the applicant would stand terminated.

8. The learned counsel for the applicant further stated that aggrieved by this order, he filed this present OA and the Tribunal passed the interim order dated 09.12.2011 maintaining the status quo as it existed on 09.12.2011. In the meantime, the respondents filed an MA No.387/2011 for seeking clarification of the interim order dated 09.12.2011. The respondents have stated in their MA that the services of the applicant were terminated on 08.12.2011 i.e. prior to the passing of the interim order dated 09.12.2011. The Tribunal after hearing the rival submissions of the parties passed the following order:-

"....."

In view of the circumstances of the case, the respondents are restrained to give effect to the order dated 08.12.2011 till the next date of hearing."

9. The learned counsel for the applicant argued that show cause cum termination order dated 21.11.2011 (Annexure A/1) and termination order dated 08.12.2011 (Annexure R/2) are against the rules. They have been passed without giving any opportunity to the applicant.

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10. That the applicant has completed near about 120 days and his work is satisfactory under the respondents, as such he should have been granted temporary status. That the respondent no.3 lost the jurisdiction of Ajmer post and transferred to Jaipur without any Bungalow Khallasi attached to his post. Therefore, the report submitted by him has no value in the eyes of law. The DRM, Ajmer should not have acted upon the advice of respondent no. 3 when he relinquished the charge of the post with effect from 08.09.2011.

11. The learned counsel for the applicant further submitted that the termination order dated 08.12.2011 was passed on the back date after the issue of the interim order dated 09.12.2011, which was received by the applicant on 16.12.2011. Therefore, the order dated 21.11.2011 (Annexure A/1) and termination order dated 08.12.2011 (Annexure R/2) be quashed and set aside.

12. In support of his averments, the learned counsel for the applicant referred to the order of this Bench of the Tribunal in OA No. 187/2008 decided on 09th June, 2009 [Balu Ram Saini vs. Union of India & Others]

13. On the contrary, the learned counsel for the respondents submitted that the applicant was appointed as Substitute Bungalow Khallasi vide order dated 17.05.2011. The applicant had not completed 120 days continuously. Therefore, he was not granted temporary status. He had worked from 24.05.2011 to

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31.08.2011 continuously which comes to only 100 days. This is the policy of the respondents that the services of substitute employee who have not been granted temporary status can be terminated on the report of unsatisfactory work by paying one month's pay in place of one month's notice. Therefore, the action of the respondents in issuing the show cause notice cum termination order dated 21.11.2011 (Annexure A/1) is according to the policy on the subject.

14. The learned counsel for the respondents further submitted that the services of the applicant has not been satisfactory and he was unauthorisedly absent from his duty with effect from 01.09.2011. During the said unauthorized period of absence from 01.09.2011 to 06.10.2011, the applicant never intimated regarding his absence from duty neither to respondent no. 3 nor to respondent no. 2.

15. The learned counsel for respondent further submitted that respondent no. 3 was relieved on transfer from Ajmer to Jaipur on 08.09.2011 whereas the applicant was unauthorisedly absent from 01.09.2011. As per the report of respondent no. 3, the work of the applicant is not satisfactory. The services of the applicant have been terminated as per provisions of Para 9 of the policy/instructions dated 21.04.2011 under which the applicant was given appointment. Therefore, the order dated 21.11.2011 and termination order dated 08.12.2011 are in accordance with the provisions of these instructions and there is no irregularity in passing these two orders. The order dated

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08.12.2011 was passed before the interim order passed by the Tribunal on 09.12.2011. Hence, the OA should be dismissed with costs.

16. Heard the rival submissions of the parties and perused the documents on record and the case referred to by the learned counsel for the applicant. From the perusal of the letter dated 17.05.2011 (Annexure A/3), it is clear that the applicant was given offer of appointment for Substitute Bungalow Khallasi. The applicant worked with respondent no. 3 till 31.08.2011. The learned counsel for the applicant could not produce any document which could show that the applicant was given temporary status. On the contrary, the learned counsel for the respondents submitted that since the applicant worked only for 100 days, therefore, he was not given temporary status and hence the rules regarding employees with temporary status would not apply on the applicant. The Rule 9 of letter dated 21.04.2011 (Annexure A/2) states that Bungalow Khallasi, who have been accorded temporary status would be entitled for facilities of temporary status. Before the employees get temporary status, the service of Bungalow Khallasi can be terminated on payment of one month's salary in lieu of one month's notice period on receipt of unsatisfactory report from the officer concerned. Moreover, the services of such employees can be terminated according to the condition of his service.

17. I have carefully perused the order of this Tribunal in OA No. 187/2008 decided on 09.06.2009 [Balu Ram Saini vs. Union

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of India & Others] (supra), as referred to by the learned counsel for the applicant. From the perusal of this order, it is clear that the applicant in that OA was a substitute Bungalow Khallasi with temporary status while in the present OA, the applicant has not been given temporary status as he had not served for 120 days continuously with satisfactory service. Therefore, the ratio decided in OA No. 187/2008 (supra) will not be applicable in the present case. Thus the action of the respondents in issuing him the show cause notice cum termination order dated 21.11.2011 (Annexure A/1) does not suffer from infirmity/illegality.

18. With regard to termination order dated 08.12.2011, it was observed by this Tribunal on 29.03.2012 that the learned counsel for the respondents was required to explain that after the issue of the show cause notice dated 21.11.2011, what was the urgency to issue the termination order dated 08.12.2012. The respondents were at liberty while issuing the show cause notice dated 21.11.2011 (Annexure A/1) that instead of giving the applicant one months notice, they could have paid one month's pay and could have terminated the applicant's services forthwith as provided in Para 9 of the instructions as contained in letter dated 21.04.2011 (Annexure A/2). But once they issued the notice and during the notice period if they were terminating the services of the applicant, they could have mentioned the urgency ^{to} ~~of~~ issue the termination order during the notice period. Even in the additional reply filed by the respondents with regard to this clarification, they have not been able to explain the cause of such a haste. But since in the order dated 08.12.2011, it has

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been specifically mentioned that the applicant would be entitled for his salary for the period from 09.12.2011 to 20.12.2011 i.e. for the balance period of notice dated 21.11.2011, I am of the opinion that this order cannot be said to be an illegal order. Therefore, I am of the considered view that the applicant is not entitled for any relief in the present OA.

19. Consequently, the OA is dismissed with no order as to costs. However, it is clarified that if the applicant has worked with the respondents in pursuance of the interim order dated 09.12.2011 and 29.03.2012; he shall be paid salary for that period as per his entitlement. However, this period will not create any equity in favour of the applicant.

20. The interim order dated 09.12.2011 and 29.03.2012 granted by this Tribunal shall stand vacated.

21. The MA No. 399/2012 for vacation of the interim order dated 09.12.2011 stands disposed of accordingly.

Anil Kumar
(Anil Kumar)
Member (A)

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