CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

29.11.2013

OA No. 572/2012

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 29th day of November, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 570/2012**

Vijay Pal son of Shri Shiv Charan aged about 40 years, resident of Village & Post Jakholi, District Sonepat/Rohatak (Haryana) and presently working as Part Time Rest House Attendant, R.M.S. Rest House Delhi (RMS Rajasthan) JP Division, Jaipur.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi.
2. Principal Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Railway Mail Service, JP Divison, Jaipur.
4. Inspector RMS, JP-II Sub Division, Jaipur.
5. Head Record Officer, Railway Mail Service, JP Division, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

2. **ORIGINAL APPLICATION NO. 572/2012**

Jugal Kishore Sain son of Shri Mool Chand Sain, aged about 46 years, resident of Infront of Government Hostel, Jobner Road, Phulera and presently working as Part time Waterman, Station Branch, Jalpur Division, Jaipur.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi.

2. Principal Chief Post Master General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Railway Mail Service, JP Divison, Jaipur.
4. Head Record Officer, Railway Mail Service, JP Division, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

Since the controversy involved in both these OA is the same, therefore, they are being disposed of by a common order. For the sake of convenience, the facts of OA No. 570/2012 (Vijay Pal vs. Union of India & Others) are taken as a lead case. The applicant has filed the present OA claiming for the following reliefs:-

"(i) That respondents may be directed to allow the applicant pay & allowances as per his duties and further revised from time to time by quashing letter dated 21.04.2012 (Annexure A/1) with all consequential benefits.
(ii) That the respondents be further directed to treat period from 02.12.2010 to 06.02.2012 as spent on duty by modifying memo dated 09.02.2012 (Annexure A/2) with all consequential benefits.
(iii) That the respondents be further directed to regularize services of the applicant with all consequential benefits.
(iv) Any other order/direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts & circumstances of the case.
(v) That the cost of this application may be awarded."

2. Heard the learned counsel for the parties and perused the documents on record. With regard to relief claimed by the applicant in Clause 8(iii) for regularization of the services of the applicant, the learned counsel for the respondents submitted

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that the services of the applicant in OA No. 570/2012 (Vijay Pal Vs. Union of India & Others) and the applicant in OA No. 572/2012 (Jugal Kishore Sain vs. Union of India & Others) has been regularized by the respondents vide their order dated 21.11.2012 (Annexure R/2). The learned counsel for the applicants admitted this position. Since the services of the applicants in OA No. 570/2012 and 570/2012 have been regularized, therefore, this prayer of the applicants has already been granted by the respondents.

3. With regard to relief claimed by the applicant regarding pay & allowances as per his duty and further revised from time to time by quashing letter dated 21.04.2012 (Annexure A/1) with all consequential benefits, the learned counsel for the respondents submitted that the respondent department has not received any instructions with regard to HRA allowance. Similarly, they have not received any instructions with regard to increased DA. Prior to regularization, the applicants were part time casual labouers and hence they are not entitled either for increased HRA allowance or the increased DA. The increased HRA and increased DA would be admissible to the applicants only when the respondent department received the instructions in this regard. He further submitted that in the 6th Pay Commission, there is no provision to enhance the allowance of casual labourers, therefore, the applicants cannot claim revision of allowances in view of the 6th Pay Commission's recommendations. However, he submitted that in case they are any instructions in future with regard to the

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enhancement of any of the allowances as claimed by the applicants, then the respondent department would certainly consider the claim of the applicants in this regard. The learned counsel for the applicant agreed with the submissions made by the learned counsel for the respondents on this issue.

4. The learned counsel for the applicant submitted that respondents be directed to treated the period from 02.12.2010 to 06.02.2012 as spent on duty by modifying memo dated 09.02.2012 (Annexure A/2) with all consequential benefits like payment of pay etc. In this regard he drew my attention to the common order passed by this Tribunal in OA No. 15/2011 (Jugal Kishore Sain vs. Union of India & Others) and OA No. 26/2011 (Vijay Pal vs. Union of India & Others) decided on 08.12.2011 (Annexure A/3). In this order, the Tribunal in Para No. 20 had categorically stated that ".....if any engagement has been terminated that may be restored immediately. In this instant case, services of the applicants were orally terminated, as such, same should be restored immediately." The learned counsel for the applicants submitted that since the Tribunal has directed the respondents to restore the services of the applicants immediately, therefore the period between 02.12.2010 to 06.02.2012 be treated as duty period and the applicants should be paid salary for that period also. The learned counsel for the applicants argued that the respondents have regularized the services of the applicants vide order dated 21.11.2012 (Annexure R/2) counting the services of the

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applicants between 02.12.2010 and 06.02.2012 and, therefore, this period be treated as spent on duty.

5. On the contrary, the learned counsel for the respondents submitted that the Hon'ble Tribunal had directed the respondents to restore the services of the applicants immediately. Therefore, in compliance of this order, the respondents have restored the services of Shri Vijay Pal (applicant in OA No. 570/2012) and Shri Jugal Kishore Sain (applicant in OA No. 572/2012) vide order dated 09.02.2012 (Annexure A/2). Thus the order of the Tribunal has been fully complied with. Since both the applicants were part time casual labourers, therefore, the period from 02.12.2010 to 06.02.2012 cannot be treated as period spent on duty. Similarly they have not worked during this period, therefore, as per law, they cannot be given wages for the period for which they have not worked.

6. Having heard the rival submissions of the parties on this point, I am inclined to agree with the averments made by the learned counsel for the respondents with regard to non payment of salary/wages for the period between 02.12.2010 and 06.02.2012. Since both the applicants (Vijay Pal in OA No. 570/2012 and Jugal Kishore Sain in OA No. 572/2012) were working as part time casual labourers and since they did not work between 02.12.2010 and 06.02.2012, therefore, the applicants are not entitled for the salary/wages for this period.

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7. However, with regard to treating the period between 02.12.2010 and 06.02.2012 as spent on duty, I am inclined to agree with the averments made by the learned counsel for the applicants. This Tribunal vide its order dated 08.12.2011 in OA No. 15/2011 and 26/2011 (Annexure A/3) had directed the respondents to restore the services of the applicants immediately. This order clearly shows that this Tribunal did not order for the fresh appointment of the applicants but directed the respondents to restore the services of the applicants. In compliance of these directions, the respondents have restored the services of the applicants vide order dated 09.02.2012 (Annexure A/2). Subsequently the respondents have also regularized the services of the applicants vide order dated 21.11.2012 (Annexure R/2). Therefore, I am of the view that the period between 02.12.2010 and 06.02.2012 be treated as spent on duty with all consequential benefits, if any, except pay & allowances/salary for this period.

8. With these observations and directions, the OA is disposed of with no order as to costs.

9. A copy of this order be placed in File of OA No. 572/2012 (Jugal Kishore Sain vs. Union of India & Others).

(Anil Kumar)
Member (A)

AHQ

copy given vide
No 957-7960
2/12/13