

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 24.01.2013

OA No. 846/2012

Mr. A.K. Bhargava, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

At the request of learned counsel for the respondents,
put up the matter on 29.01.2013. I.R. to continue till the
next date.

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

Kumawat

29/01/2013

OA No. 846/2012

Mr. A.K. Bhargava, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard.

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

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

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Tuesday, this the 29th day of January, 2013

ORIGINAL APPLICATION No.846/2012

CORAM:

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

Major Dr. Kanchan Sharma Bhatia
w/o Lt. Col. Mukul Bhatia,
Medical Officer, Poly Clinic,
Vidhyadhar Nagar ECHS
R/o Plot No.418, Rani Sati Nagar,
Ajmer Road, Jaipur

.. Applicant

(By Advocate : Shri A.K.Bhargava)

Versus

1. Union of India
through the Secretary to the Government of India,
Ministry of Defence,
New Delhi.
2. Adm. Commandant for Station Commander
Through ECHS Cell,
Chinkara Marg,
Military Station, Jaipur
3. Ex-Servicemen Contributory Scheme,
Poly Clinic Vidhyadhar Nagar,
Sector-2 through Officer-In-Charge.

.....Respondents

(By Advocate : Shri Mukesh Agarwal)

ORDER (ORAL)

Brief facts of the case are that in response to the advertisement issued by the respondents, the applicant applied for the post of Medical Officer and after succeeding in the interview conducted by the Selection Board, she was appointed as Medical Officer on contract basis on fixed salary of Rs. 25,000 per month for a period of 12 months, subject to yearly renewal depending upon performance at Ex-Servicemen Contributory Health Scheme (ECHS), Poly Clinic, Vidhyadhar Nagar, Jaipur vide order dated 9.2.2012 (Ann.A/12).

2. The applicant also signed a Memorandum of Agreement as per ECHS terms and conditions at the time of joining as Medical Officer.

3. The controversy arose when a show-cause notice was issued to the applicant vide letter dated 19.10.2012 as number of complaints were received against the applicant during the period from June, 2012 to the date of issuance of the show-cause notice and the same was served and received by the applicant on 20th October 2012 wherein endorsement was made by the applicant to provide details of all letters. Vide letter dated 21st October, 2012 i.e. on the next date of receipt of the show-

A handwritten signature in black ink, appearing to read '14'.

cause notice, the applicant replied to the show-cause notice. Having considered the reply submitted by the applicant, the impugned order dated 14.11.2012 has been passed by the official respondents whereby services of the applicant have been terminated w.e.f. 16th December, 2012 as justification/reasons submitted by the applicant were not found satisfactory. Against the termination order dated 14.11.2012, the applicant has file this OA on the ground that since the respondents have not provided copy of the complaints received by the respondents against the applicant, thus, the applicant is not given opportunity to represent her case properly before the respondents.

4. Both the learned counsel referred to clause-11 of the Agreement, which thus reads:-

"11. The ECHS shall have the right to terminate this agreement by giving one month's notice to the Engaged Person or one month's consideration as compensation in lieu there of without prejudice to the generality of the right of termination may be on any of the following grounds for which an opportunity to show cause notice will be afforded to him/her:-

- (a) Professional incompetence or misconduct of an act of moral turpitude.
- (b) Unsatisfactory performance of duty.
- (c) Arrest or conviction by a court of law for any offence.

A handwritten signature in black ink, appearing to read "RJ".

- (d) Any act prejudicial to security or interest of the organization (ECHS).
- (e) Absence of leave beyond 60 days.
- (f) Prolonged or habitual absence from duty prior permission of the competent authority including prolonged absence due to medical illness.
- (g) Inadequate work load.
- (h) Breach/violation of any provision of this agreement by the engaged person.
- (i) Any other ground warranting his/her removal from the contractual arrangement."

5. So far as the applicant is concerned, clause 11(b) is relevant as the applicant has not performed her duties satisfactorily. After referring this clause, learned counsel appearing for the applicant with regard to the allegation alleged in the complaint that she has not verified the bills of other Doctors and only verified the bills of the patients which were treated by her, submitted that applicant is not responsible to verify the bills of the other patients which were not treated by her as per the notification issued by the Indian Medical Council wherein duties of Doctor have been prescribed. Further challenged that the order Ann.A/1 dated 14.11.2012 is stigmatic and deserves to be quashed and set-aside as the termination order is contrary to the terms and conditions of the contract and her term is going to be expired on 9th February, 2013. Therefore,



the termination order being in violation of the policy and in violation of the contract agreement deserves to be quashed and set-aside.

6. Per contra, the learned counsel appearing for the respondents has submitted that this OA is not maintainable as the applicant against the same order filed Civil Suit no. 396/2011 along with application for temporary injunction under order 39 CPC before the Court of Additional Civil Judge (Junior Division), West, Jaipur City, Jaipur. The learned Civil Court after hearing both the parties on temporary injunction application and considering the facts of the case, rejected the prayer of the applicant for temporary injunction vide order dated 13.12.2012. Thereafter, the applicant moved application for withdrawal of the suit and accordingly on 14.12.2012 his suit was dismissed by the Civil Court as withdrawn and no liberty was granted to invoke jurisdiction of this Tribunal. The respondents placed ordersheets dated 6.12.12 to 14.12.2012 as Ann.R/1, R/2 and R/3 respectively for perusal of this Tribunal and after referring the above orders, it is submitted by the respondents that this OA is barred by principles of res-judicata and thus, deserves to be dismissed on this count alone.



7. I have heard the rival submissions of the respective parties and carefully perused the material available on record as well as the complaints made against the applicant and the terms and conditions of the contract agreement, as also the appointment letter issued by the respondents to the applicant as Medical Officer. As per Clause 11 of the agreement, it is not disputed that the ECHS has right to terminate agreement by giving one month's notice to the engaged person or by giving one month's consideration as compensation in lieu thereof without prejudice to the generality of the right of termination on the grounds mentioned in the contract agreement. As per respondents, since several complaints have been received against the applicant and her work was not found satisfactory, therefore, vide clause 11(b), ECHS has every right to terminate her services prior to completion of 12 months period as mentioned in the appointment order dated 9.2.2012 (Ann.A/2) and term beyond the period is renewable depending upon performance. Since the performance of the applicant is not found satisfactory and several complaints were received about his work, the respondents have rightly terminated her services.

8. I have gone through the complaints and find no illegality in the termination order which has been passed by the respondents. The respondents were legally entitled to terminate

A handwritten signature in black ink, appearing to read "B.G." or a similar initials.

the services of the applicant prior to completion of 12 months period.

9. With regard to the preliminary objections, raised by the respondents, no doubt, the applicant has filed Civil Suit and after rejection of application for temporary injunction, she has withdrawn the Suit and on the same grounds file this OA, which attract the principles of res-judicata, but in the interest of justice, I considered the matter on merit also and I find that there is no merit in this OA. The termination order which has been passed by the respondents is absolutely in accordance with the terms of contract agreement, as the respondents have received several complaints regarding work of the applicant.

10. During the course of arguments, the learned counsel appearing for the applicant submits that the order of termination is not speaking order and this termination order is stigmatic whereas on perusal of the same it reveals that termination order is not stigmatic and having considered the request made on behalf of the applicant, I deem it proper to make it clear that this termination order dated 14.11.2012 will not come in the way of the applicant for securing employment as Medical Officer in other organization.

A handwritten signature in black ink, appearing to read 'B. J. V.' followed by a stylized flourish.