

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET


ORDERS OF THE TRIBUNAL

06.03.2014

OA No. 439/2013

Mr. Amit Mathur, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard the 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.

Jaipur, the 06TH March, 2014

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 438/2013

Rajendra Kumar son of Shri Ramanand, aged around 32 years, resident of Bichoda, Harizan Basti, House No. B-14, Brahmpuri, Gatore Road, Jaipur (Rajasthan).

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through Controller and Accountant General, Office of Controller and Accountant, 9 Deen Dayal Upadhyay Marg, New Delhi.
2. The Principal Accountant General, Bhagwan Das Road, C-Scheme, Jaipur.
3. The Principal Director of Audit, North Western Railway, Jawahar Circle, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

2. ORIGINAL APPLICATION NO. 439/2013

Dilip Kumar Sharma son of Shri Murlidhar Sharma, aged about 32 years, by-caste Brahmin, resident of C-4/150, Pawan Bal Vidhyalaya, Jaipur (Rajasthan).

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through Controller and Accountant General, Office of Controller and Accountant, 9 Deen Dayal Upadhyay Marg, New Delhi.
2. The Principal Accountant General, Bhagwan Das Road, C-Scheme, Jaipur.
3. The Principal Director of Audit, North Western Railway, Jawahar Circle, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

3. ORIGINAL APPLICATION NO. 440/2013

Laxman Kumar Sain son of Shri Babu Lal Sain, aged about 39 years, by caste Sain, resident of 4548, Lala Kishori Ji Ki Bagichi, Surajpol Bazar, Jaipur (Rajasthan).

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through Controller and Accountant General, Office of Controller and Accountant, 9 Deen Dayal Upadhyay Marg, New Delhi.
2. The Principal Accountant General, Bhagwan Das Road, C-Scheme, Jaipur.
3. The Principal Director of Audit, North Western Railway, Jawahar Circle, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

4. ORIGINAL APPLICATION NO. 441/2013

Lokesh Kumar Jajotar son of Shri Gyarsi Lal Jajotar, aged around 32 years, resident of B-42, New Mount Bye-Pass Road, Brihampuri, Harijan Basti, Jaipur (Rajasthan)

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through Controller and Accountant General, Office of Controller and Accountant, 9 Deen Dayal Upadhyay Marg, New Delhi.
2. The Principal Accountant General, Bhagwan Das Road, C-Scheme, Jaipur.
3. The Principal Director of Audit, North Western Railway, Jawahar Circle, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

5. ORIGINAL APPLICATION NO. 534/2013

1. Praveen Kumar Jagotar son of Shri Mewa Ram ji Jagotar, aged about 31 years, resident of House No. 18, Chitranjan Marg, C-Scheme, Jaipur.
2. Rajesh Chauhan son of Shri Ram Singh Chauhan, aged about 34 years, resident of Behind Calgiri Hospital, Jhalana,
3. Ravi Kumar Jagotar son of Shri Gyarsi Lal aged about 28 years, resident of B-42, New Mount Road, Brahmpuri, Harijan Basti, Jaipur.
4. Rakesh Sarwan son of Shri Sannu Ram Sarwan, aged about 38 years, resident of 181, Champa Nagar, Gurjar Ki Thhadi, Jaipur.

... Applicants

(By Advocate: Ms. Shalini Sheron)

Versus

1. Union of India through Controller and Auditor General of India, New Delhi.
2. The Secretary, Principal Accountant General (Civil Audit) Rajasthan, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

Since the controversy involved in all these OA is similar, therefore, with the consent of the parties, they are being disposed of by a common order. The facts of OA No. 440/2013 (Laxman Kumar Sain vs. Union of India & Others) is being taken as a lead case.

2. The brief facts of the case are that the applicants were initially engaged on casual basis in the office of the respondents. In the year 2010, a notification was issued inviting applications for the post in pay band-1 Rs.5200-20200 Grade Pay of Rs,1800/-. The applicants submitted their candidature and after interview, offer of appointment was issued to the applicants. It

A. L. Sharma

was provided in the offer of appointment that they have to pass class 10th examination within two years period from the date of appointment from the recognized/ national open school and in case they fail to do so, their services shall be terminated.

3. The appointment of the applicant was issued on 04.04.2011 (Annexure A/4) and, therefore, as per the terms of appointment, he was to pass the 10th Class by 03.04.2013. Admittedly none of the applicants could passed the High School Examination during this period of two years from the date of their appointment. Therefore, their services were terminated by the respondents after the lapse of two years.

4. In the case of the applicant, the order of termination of service is dated 05.04.2013 (Annexure A/1). Being aggrieved by his order of termination dated 05.04.2013, the applicant has filed this OA.

5. Respondents have filed their reply.

6. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicants, Mr. Amit Mathur, submits that Shri Laxman Kumar Sain applicant in OA No. 440/2013 and Shri Lokesh Kumar applicant in OA No. 441/2013 have passed the matriculation examination but they have passed it after the expiry of time limit of two years. However, in view of the fact they have served for long years with the respondents department before being appointed as

MTS, relaxation may be given to them and they may be allowed extension of time for passing the matriculation examination. However, he submitted that two other applicants, Shri Rajendra Kumar in OA No. 438/2013 and Shri Dilip Kumar Sharma in OA No. 439/2013 have not passed the High School Examination so far. Therefore, he is not pressing any relaxation of time for passing High School Examination for these two applicants.

7. The learned counsel for the applicant, Mr. Amit Mathur, also submitted that those applicants who have not been able to pass the Class 10th Examination may be given opportunity to serve on Casual basis as they were already working with the respondent department for many years before their appointment as MTS.

8. According to the learned counsel for the applicants in OA No. 534/2013, Ms. Shalini Sharma, Shri Praveen Kumar Jagotar, Shri Rajesh Chauhan and Shri Rakesh Sarwan (applicants nos. 1, 2 and 4) have passed the Class 10th Examination whereas Shri Ravi Kumar Jagotar (applicant no. 3) has not passed the Class 10th examination so far. She also submitted that she is only pressing for relaxation with regard to applicants nos. 1, 2 and 4 who have passed the High School Examination and in respect of applicant no. 3 (Shri Ravi Kumar Jagotar), she is not pressing the claim for any relaxation.

9. The learned counsel for the applicant in OA No. 534/2013 had pointed out on 13.02.2014 that the respondents have

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allowed such relaxation in the case of Shri Sharwan Singh Chouhan. She Submitted that Shri Sharwan Singh Chouhan was initially appointed on 05.04.2011. He was also to pass the Class 10th Examination within two years from the date of his appointment. He could not pass the said examination within the prescribed period. He also passed Class 10th Examination after the period of two years. His services were also dispensed with but vide Office order No. 92 dated 28.08.2013, he was reinstated to the post of Multi Tasking Staff w.e.f. 28.08.2013 and he joined the post vide office order No. 93 dated 28.08.2013. She argued that the applicants are on the same footing as Shri Sharwan Singh Chouhan and therefore, the applicants should also be given the same relief as has been given to Shri Sharwan Singh Chouhan by the respondents. The applicants are being discriminated.

10. On 13.02.2014, the respondents were directed to produce the appointment file of Shri Sharwan Singh Chouhan alongwith office order No. 92 dated 28.08.2013.

11. The learned counsel for applicant in OA No.534/2013, Ms. Shalini Sharma, also submitted that the applicants nos. 1, 2 and 4 were given permission by the respondent department in the month of March, 2013 to appear in the Matriculation Examination and subsequently, they have passed the Class 10th Examination. Therefore, the respondents be directed to reinstate the services of the applicants on the same terms & conditions as has already been done in the case of Shri Sharwan Singh Chouhan.

12. Ms. Shalini Sheoran, learned counsel argued that persons who have been terminated should have been given one month's notice or salary in lieu thereof before terminating the services of the applicant as appointment letter itself provides that their appointment will be governed by the Central Civil Services Temporary Services Rules, 1965 until they are confirmed after the probation period of two years.

13. On the other hand, the learned counsel for the respondents admitted that the applicants were working with the Department and they were appointed by the respondents in pursuance of Notice issued in the Employment News January, 2010. The minimum required qualification for MTS is 10th Pass. However, for the Casual workers engaged in IA&AD, the minimum qualification was relaxed as 8th Pass with the condition that they will pass 10th Examination within two years, failing which their services were liable to be terminated.

14. The applicants were 8th Pass at the time of appointment and as per condition under employment notice and as per point no. 2 of offer of appointment dated 04.04.2011, the applicants had to pass 10th Class from any recognized Board of Education/National Open School within two years from the date of appointment, failing which their services were liable to be terminated.

15. He further submitted that none of the applicants could pass 10th Examination within the period of two years and therefore, the respondents have terminated the services of the applicants as per terms of appointment letter. Thus, there is no illegality in the order of termination. He further submitted that there is no provision of the relaxation in this period of two years.

16. The learned counsel for the respondents further submitted that the services of the applicants were not terminated as per Central Civil Services Temporary Service Rules, 1965 but their services were terminated as per condition no. 2 of their appointment letter. Thus giving notice of one month or salary in lieu of notice was not required.

17. The learned counsel for the respondents argued that the applicants nos. 1, 2 and 4 in OA No. 534/2013 have not passed the 10th Examination from the recognized institution/open university. These applicants have passed their examination from the Delhi Board of Secondary Education, which is not a recognized institution by the Ministry of Human Resource Development. In support of his averments, he placed a list of Boards of Secondary and Senior Secondary Education in India recognized by the Ministry of Human Resource Development (Annexure R/13 of OA No. 534/2013). In this list, the name of Delhi Board of Secondary Education does not appear. Therefore, these three applicants cannot be treated to have passed Class 10th Examination.

Anil Kumar

18. The learned counsel for the respondents also produced the file relating to appointment of Shri Sharwan Singh Chouhan, as directed by this Tribunal on 13.02.2014. He admitted that Shri Sharwan Singh Chouhan has been reinstated by the respondents vide office order NO. 92 dated 28.08.2013. However, he argued that these OAs have no merit and hence liable to be dismissed.

19. It is not disputed that the applicants were working on casual basis with the respondents. *Amul Kumar* In pursuance of the notification issued in 2010 (Annexure A/2 in OA No. 440/2013), the applicants were appointed on the post of MTS and the applicants were Class 8th pass. The minimum qualification for MTS is 10th Class Pass. Therefore, the respondents allowed the applicants two years time from the date of their appointment to pass 10th Class Examination failing which their services were to be terminated.

20. It is admitted by both the learned counsel for the applicants that Shri Rajendra Kumar (applicant in OA No. 438/2013), Shri Dilip Kumar Sharma (applicant in OA No. 439/2013) and Shri Ravi Kumar Jagotar (applicant no.3 in OA No. 534/2010) have not passed the 10th Examination. Therefore, they are not pressing for reinstatement or relaxation with respect of these applicants.

21. The learned counsel for the applicants had argued that Shri Sharwan Singh Chouhan was also appointed on the same terms & conditions but his services have been reinstated vide

order dated 28.08.2013 and this facts has not been disputed by the learned counsel for the respondents. I have perused the original file No. Admn.I/GSSA/G-11016/2013-14 of Shri Sharwan Singh Chouhan, as produced by the learned counsel for the respondents. From the perusal of the file, it is clear that Shri Sharwan Singh Chouhan was given appointment vide office order No. 37 dated 04.05.2011. In this office order, there is same condition that the applicant has to pass Class 10th within a period of two years from any recognized education Board/National Open School. His services were terminated by the respondents vide office order No. 22 dated 30.04.2013 because he had not passed Class 10th Examination within the prescribed period of two years. Being aggrieved by this order, Shri Sharwan Singh Chouhan approached this Tribunal and filed OA No. 478/2013. This OA was decided on 26.06.2013 with the direction to the respondents to consider and decide the representation of the applicant dated 10.06.2013 by passing a reasoned & speaking order according to the provisions of law expeditiously but not beyond the period of two months from the date of receipt of a copy of this order.

22. In pursuance of this order, Shri Sharwan Singh Chouhan represented before the respondents, enclosing the copy of the order of the Tribunal. The Deputy Accountant General (Admn.) referred the matter to the office of Controller and Accountant General, New Delhi on 02.07.2013. Subsequently, a reminder was also sent to the office of CAG vide letter dated 23.08.2013. The Controller General of India vide their letter dated 27.08.2013 stated that the representation of Shri Sharwan Singh

Chouhan has been reconsidered in this office and keeping in view the merit of the case, the competent authority has decided that he may be reinstated to the post on which he was working before the termination of his services on 03.04.2013. The reinstatement will be effective from the date of the issuance of the formal order in this regard by the office of the Principal Accountant General Rajasthan Jaipur. The intervening period between termination and reinstatement may be regularized by sanctioning leave due and admissible if any and extra ordinary leave for the remaining period. Based on this communication, the office of the Principal Accountant General (G & SSA) Rajasthan, Jaipur office issued order No. 92 dated 28.08.2013.

23. Thus it is clear that Shri Sharwan Singh Chouhan has been reinstated by the respondents. Shri Laxman Kumar Sain (applicant in OA No. 440/2013) and Shri Lokesh Kumar (applicant in OA No. 441/2013) are similarly situated and, therefore, the respondents are directed to consider their case at par with Shri Sharwan Singh Chouhan and pass necessary orders within a period of two months from the date of receipt of a copy of this order.

24. The learned counsel, Ms. Shalini Sheoran, submitted that the list of recognized institutes produced by the respondents is of the year 2011 (Annexure R/13 of OA No. 534/2013). The applicant nos. 1, 2 and 4 (OA No. 534/2013) have passed the examination in the year 2013, therefore, there may have been revision in the list of recognized institutes. Considering the

submission of the learned counsel for the applicants, it is directed that these three applicants are at liberty to file proof before the respondents within two months from today that the Institute from which they have passed the 10th Class examination is a recognized Institute. On their submitting the proof, the respondents would verify this fact and if the respondents come to the conclusion that the Board from which the applicants have passed Class 10th Examination is a recognized Board then they would also be reinstated in service on the same terms and conditions as that of Shri Sharwan Singh Chouhan. However, if the applicants fail to prove that their Board from which they have passed 10th Class Examination is a recognized Board, then they would not be entitled to be reinstated in service.

25. The learned counsel for the applicants, Mr. Amit Mathur and Ms. Shalini Sharma have argued that those applicants who have been terminated and have not passed the High School Examination, they may be allowed to work on casual basis with the respondents department as they were working prior to their appointment otherwise they will face undue hardship. The learned counsel for the respondents submitted that the applicant have no lien/right to work on casual basis.

26. Having heard the rival submissions on this point, I am of the opinion that no positive direction can be given to the respondents to engage these persons on casual basis. However, keeping in view the fact that they have been working for long

time with the respondents on casual basis and they would suffer undue hardship, the respondents are directed to consider the claim of these applicants on casual basis as they were earlier appointed if the respondents have work of that nature and they propose to engage fresh persons to perform those duties. In such a situation these applicants may be given priority while engaging workers on casual basis in future.

27. I am inclined to agree with the arguments of the learned counsel for the respondents that the services of the applicants were terminated as per condition no. 2 of the appointment, therefore, it was not necessary to give one month's notice or salary in lieu of notice period to the applicants

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

sd/
(Anil Kumar)
Member (A)

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