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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00528/2014 &
MA No.060/01073/2014, 060/01371/2014

Date of Decision : 2.12.2015
Reserved on: 21.10.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Neeraj Babuta, son of Sh. Sushil Kumar Babuta, Commercial Apprentice,
Railway Station, Northern Railway, Jalalabad, Ferozepur Division, Ferozepur
Cantt.

Applicant

Versus

1. Union of India through General Manager (P), Northern Railway,
Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Ferozepur Division,
Ferozepur Cantt.
3. Senior Divisional Operating Manager, Northern Railway, Ferozepur
Division, Ferozepur Cantt.
4. Senior Divisional Commercial Manager, Northern Railway, Ferozepur
Division, Ferozepur Cantt.
5. Senior Divisional Personnel Officer, Northern Railway, Ferozepur Division,
Ferozepur Cantt.
6. Ms. Preeti Katiyar, Senior Divisional Personnel Officer, Northern Railway,
Ferozepur Division, Ferozepur Cantt.

Respondents

Present: Mr. N.P. Mittal, counsel for the applicant
Mr. Puneet Jindal, Sr. Adv. along with Mr. Yogesh Putney, counsel for
the respondents

ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the
Administrative Tribunals Act, 1985, seeking the following relief:- As

- “8 (i) Respondents be directed to produce complete original record of the case of the applicant with reference to (A-1, A-2, A-3, A-4 & A-5) respectively, and the original files with notings.
- (ii) The impugned order dated 20.06.2014 (Annexure A-1), 25.06.2014 (Annexure A-2) and 03.12.2010 (Annexure A-3) be quashed and set aside, declared, invalidated qua the applicant and allow the applicant to continue working as Commercial Apprentice at Railway Station Jalalabad without any interruption.
- (iii) The respondents be directed to release the salary of the applicant for the month of June, 2014, unlawfully stopped by respondent no.6 vide impugned order (Annexure A-1) and direct respondent no.6 to pay the full salary to the applicant with compound interest and exemplary costs to be imposed by this Tribunal on respondent no.6 in the interest of justice and further direct to release regular salary to the applicant without any interruption.”

2. Interim order was also sought as follows:-

“Pending final decision on the application, applicant prays for staying the operation of impugned order (Annexure A-1, A-2 & A-3) on the short premise that the salary of the applicant has been fully stopped by respondents no.5 & 6, an incompetent authority, without any notice, reason and without any concurrence / approval / consent of the competent authority respondents no.3 and 4 and unnecessarily issued orders to transfer the applicant to work as SM / Safety under AOM/G/FZR. As the competent authority respondent no.1 GM (P) Headquarters, Northern Railway, vide order (Annexure A-4 and A-5) directed respondent no.2 to post the applicant as Commercial Apprentice on which the applicant has been continuing working as Commercial Apprentice with reference to Annexure A-1 and A-5 respectively. The interim order prayed is urgent as the salary of the applicant has been ordered to be stopped by incompetent authority respondent no.6 taking the law in hand for the month of June, 2014. Prima facie case and balance of convenience is in favour of the applicant and against the respondents. There is no time left with the applicant to serve advance notices on the respondents, hence, compliance of Section 24 of the Administrative Tribunals Act may be dispensed with.”

3. The prayer for interim relief was disposed of vide order dated 15.07.2014, paras 4, 5 and 6 of which read as follows:-

- "4. Learned counsel for the respondents stated that the applicant was not working as Commercial Apprentice. He had never been posted as such as was clear from the content of letter dated 19.01.2012 (Annexure A-5). Learned counsel further stated that the applicant had deliberately failed the Psycho Test as he did not wish to move from Jalallabad where he was running two private schools and the Station Master there was in league with the applicant. Till the applicant underwent the necessary training as Commercial Apprentice, he could not be posted as such and he was drawing salary without work. Hence, it had been directed that the applicant would draw his salary at DRM Office, Headquarters, where he would be assigned some work. He also stated that SM Jalallabad had been charge sheeted in this very year. Learned counsel further stated that the order regarding stoppage of salary had been withdrawn and it would be ensured that the representation of the applicant would be decided within the prescribed time frame.
5. Learned counsel for the applicant again asserted that the applicant was marking his presence as Commercial Apprentice and hence he should be treated as such.
6. Keeping in view the fact that the impugned order dated 20.06.2014 regarding stoppage of salary of the applicant has been withdrawn through letter dated 08.07.2014 (on record), and the submissions of the learned counsel for the respondents, it does not appear to be necessary to pass any further directions regarding the plea for interim order made in the OA."

4. In grounds for relief, it has been stated as follows:-

"It is on the record that pursuant to orders of respondent no.1 GM (P) Northern Railway, New Delhi, (Annexure A-4 and A-5) on medical de-categorization in the Psych Test, the applicant was considered for his posting as Commercial Apprentice in Ferozepur Division against direct recruitment quota vacancy in the exceptional circumstances and requisite approval of respondent no.1 is already available in order Annexure A-5 dated 19.01.2012. Accordingly, since then the applicant has been continuing performing his duties as Commercial Apprentice as per respondent no.1 highest authority in Northern Railway at Railway Station, Jalalabad, which automatically superseded order dated 03.12.2010 (Annexure A-3) and became invalid and redundant as the applicant has been continuing working as Commercial Apprentice at Railway Station Jalalabad and his attendance is being marked as Commercial Apprentice. Hence, the question of implementation of the orders of

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four years back, Annexure A-3 does not arise. Further the applicant was constrained to file earlier OA No.588/PB/2013, in which interim order was passed on 22.05.2013 (Annexure A-6) staying deputing the applicant for CI-1 instead of CP-4 at Chandausi and the OA has been finally disposed of on 22.04.2014 (Annexure A-7) and allowed to continue the interim order granted on 22.05.2013, the compliance of this order to the representation of the applicant (Annexure A-10) is still pending with respondent no.1. As such the interim order has been allowed to continue therefore in view of the continuation of the interim order the passing of the impugned order (Annexure A-1, A-2 and A-3) at this stage with a specific order to stop the salary of the applicant is beyond any imagination law or any credential on the part of respondent no.6 as detailed in para 4 (x). The issuance of the impugned order (Annexure A-1, A-2 and A-3) is the outcome of vindictive, biased mind of respondent no.6 impleaded by name in the array of respondents, simply to harass the applicant without any fault on his part. As such the issuance of impugned order, whole action is non-est in law."

5. In short reply filed on behalf of the respondents, it was stated that the competent authority is already seized of the representation dated 22.03.2013 (Annexure A-10) as directed by this Tribunal vide order dated 22.04.2014 passed in OA No.588/PB/2013. It is not disputed by the applicant that for his failure to clear the Psycho Test to 03.08.1998 by the Psycho Cell Northern Railway Hqrs Office the applicant had to be posted in alternative suitable post. It was proposed that the applicant would undergo CI-4 course meant for Commercial Apprentice in the category of direct recruitment. This post is in equivalent grade with that ASM. During the interregnum period, till the time the applicant actually joins a suitable post in Commercial Wing of the Railway Administration, the applicant cannot be allowed to continue on the post of ASM in the field. However, for the purposes of drawing salary, the applicant was posted, as a stop gap arrangement, as SM/Safety under AOM/DRM Office, Ferozepur. Till the

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time the change of category of the applicant is given effect, the applicant cannot be adjusted as ASM even for the purpose of drawing his salary. Keeping this position in mind, initially letter dated 20.06.2014 (Annexure A-1) was issued with the intention to discontinue the illegality i.e. payment of his salary against the post of ASM / JBD. On recommendation of the matter, the competent authority has now decided to withdraw the letter dated 20.06.2014 vide letter no. Sr.DPO/Misc./2014 dated 08.07.2014. It has been further ordered that since the employee has been spared by SS/JBD, where he was wrongly drawing his salary, therefore, till the time he actually joins the Commercial Wing after the requisite training, temporary charging of his salary be made against alternative non safety post available in DRM office at Ferozepur.

6. MA No.060/01073/2014 was filed on 05.08.2014 praying for recalling / modification of the interim order dated 15.07.2014 (reproduced in para 3 above).

7. Counter reply has been filed to this MA on behalf of the respondents.

8. MA No.060/01371/2014 was subsequently filed on behalf of the respondents on 22.10.2014 wherein it has been stated that during pendency of the OA, the competent authority withdrew the order dated 20.06.2014 (Annexure A-1) vide order dated 08.07.2014 and also ordered that since the applicant has been spared by SS/JBD, the decision regarding charging of salary temporarily

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against alternative non-safety post in the interregnum he completes his training as Commercial Apprentice at ZTC/CH will be taken shortly. Therefore, till the time he actually joins the Commercial Wing after the requisite training, temporarily charging of his salary be made against the alternative non-safety post available in DRM office at Ferozepur (Annexure R-1). The competent authority had decided the representation of the applicant in compliance of the order dated 22.04.2014 passed by this Tribunal in OA No.588/PB/2013 filed by the applicant. Speaking order was passed on 25.07.2014 and in view thereof the applicant is to undergo training at ZTS/Chandausi in CI-4 1st Phase course (Annexure R-3). As a consequence of order dated 25.07.2014 (Annexure R-3), the order deputing him for CI-4 1st Phase Course w.e.f. 09.10.2014 to 23.12.2014 has been passed vide order dated 10.09.2014 (Annexure R-4). The copy of order dated 10.09.2014 (Annexure R-4) has been sent to the applicant by post. He has been spared by SS / JBD. Thus, the present OA has been rendered infructuous.

9. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant reiterated the content of the OA and prayed that the impugned orders dated 20.06.2014 (Annexure A-1) and 25.06.2014 (Annexure A-2) be quashed and set aside for the reasons stated in the OA.

10. Sh. Puneet Jindal, Sr. Advocate, appearing on behalf of the respondents stated that before the applicant could work as Commercial

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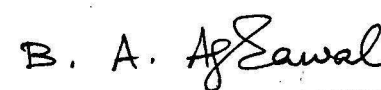
Apprentice, he was required to undergo training course CI-4. The applicant wanted to be sent for CP-4 which was for persons to be appointed as Commercial Inspectors. The applicant had been deputed for CI-4 vide order dated 25.07.2014 (Annexure R-3) and had also been spared vide order dated 10.09.2014 (Annexure R-4). The applicant had not challenged these orders and he had also not joined for the training course. The applicant had thereafter been charge sheeted for not joining the training course. Learned counsel stated that the posting order of the applicant dated 03.12.2010 (Annexure A-3) that had been impugned through the OA had become irrelevant at this stage and hence the OA was also rendered infructuous in view of the later developments regarding deputing of the applicant for the training course, his subsequent suspension due to non-compliance with these orders and the disciplinary proceedings initiated against the applicant.

11. We have given our careful consideration to the matter. Learned counsel for the applicant has not rebutted the statement made by Sh. Jindal, Sr. Advocate, regarding the present status of the applicant being under suspension and facing disciplinary proceedings. The orders impugned through this OA ceased to be relevant in view of the later developments relating to the service of the applicant. If the applicant is reinstated at the conclusion of disciplinary proceedings pending against him, he would obviously be issued orders posting him appropriately.

12. Hence this OA is disposed of as having been rendered infructuous.
MAs No.060/01073/2014 and 060/01371/2014 are also disposed of accordingly.

No costs.


(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER


(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh

Dated: 2.12.2015.

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