

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No.100/3286/2014

New Delhi this the 8th day of November, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

Hon'ble Mr. P.K. Basu, Member (A)

1. Shri Adarsh Kumar s/o. Shri Murari Lal,
Age 33 years, R/o. Village & Post Didauli,
Distt. Amroha.
2. Shri Asad Ali
S/o. Shri. Mohd. Ali,
Age 37 years, R/o. Lal Bagh Uncha, Hasanpur,
Distt. Amroha.
3. Shri Santosh Kumar Chaube
S/o. Shri Vijay Shankar Chaube,
Age 32 years, R/o. Quarter No. H-102,
Railway Harthala Colony, Moradabad.
4. Shri Kulwant Sing
S/o. Shri Giriraj Singh,
Age years, R/o. Village Khewaria, Post Monather,
Distt. Moradabad.
5. Shri Ashok Kumar
S/o. Shri N. P. Singh,
Age 26 years, R/o. House No. 484/1,
Gali No. 5/3, Ganesh Nagar Colony,
Bareilly.

..Applicants

(Argued by : Shri K.S. Saxena, Advocate)

Versus

1. Ministry of Railway
Through the Secretary,
Govt. of India,
Rail Bhawan, New Delhi.
2. Chairman,
Railway Board, Baroda House,
New Delhi.
3. Chief Medical Superintendent,
Division Office, Northern Railway,
Moradabad.

..... Respondents

(By Advocate: Shri Shailendra Tiwari).

ORDER(ORAL)**Justice M.S. Sullar, Member (J)**

The applicant, Adarsh Kumar S/o Shri Murari Lal and Others, have preferred the instant Original Application (OA), challenging the impugned termination order dated 10.01.2013 (Annexure A-1), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

2. The sum and substance, of the facts & material, which needs a necessary mention for the limited purpose of deciding the core controversy involved in the instant OA, and emanating from the record, is that, applicants were initially engaged as Health and Maleria Inspectors, on contract basis on a monthly stipend of Rs.9653/- till 30.06.2010, by way of Office Orders dated 17.09.2009/18.09.2009 (Annexure A-2 Colly) in reference to letter dated 26.05.2009 of General Manager Railways by the Divisional Railway Manager (Personnel) [DRM(P)]. Thereafter, they were freshly engaged from 12.07.2010 to 30.06.2011 on contractual basis on a monthly stipend of Rs.17145/- vide office order dated 12.07.2010 (Annexure A-3 Colly). Sequelly, they were again engaged from 14-15.07.2011/18.07.2011 to 30.06.2012 on contractual basis on the stipend of Rs.17145/- vide office orders (Annexures A-4 Colly and Annexure A-5 Colly).

3. There was a clear stipulation in engagement letters dated 01.08.2012 (Annexure A-5 Colly), that the fresh

appointments of the applicants were valid till availability of selected candidates/regular employees by the Railway Recruitment Board (for short "RRB") or 30.06.2013, whichever is earlier. Having accepted the terms and conditions of their appointment, the applicants joined the services. It was also stipulated that in future neither the applicants shall make a claim for their regularisation nor shall be entitled for the same.

4. Thereafter, the services of the applicants were terminated, vide impugned order dated 10.01.2013 (Annexure A-1 Colly.) by DRM(P).

5. Aggrieved thereby, the applicants have instituted the present OA, challenging the impugned termination order on the following grounds:-

"A. That the respondents have acted in violation of order of this Hon'ble Tribunal dated 17.02.2012 as they have terminated the services of applicants without recording any reasons.

B. That the respondents action in not giving show cause notice to applicants and then terminating their services and not recording any reasons in impugned termination order, is highly illegal, arbitrary and unconstitutional.

C. That the respondents have acted in violation of Article 14 & 16 of the Constitution of India in as much as, they have discriminated the applicants vis-à-vis other similarly placed persons. Once the other similarly placed persons, allowed to continue in service, the applicants could not have been discriminated.

D. That the contractual Health and Malaria Inspectors were removed from their work without giving them an opportunity of being heard."

6. On the strength of the aforesaid grounds, the applicants seek to quash the impugned termination order, in the manner indicated hereinabove.

6A. The respondents refuted the claim of the applicants and filed their reply, wherein, it was pleaded that they were engaged on a monthly stipend of Rs.17145/- in Moradabad Division as Health and Malaria Inspectors on contract basis, till the availability of regular selected candidates or till the validity of the Scheme, whichever is earlier. Their services were disengaged after receiving the panel of regularly selected candidates from RRB, Allahabad. It was alleged that the observation of this Tribunal dated 17.02.2012, relied upon by the applicants, are not applicable to the facts of the present case and they are not entitled for reinstatement as per terms of contract. Virtually acknowledging the factual matrix & reiterating the validity of the impugned termination order, the respondents have stoutly denied all other allegations and grounds contained in the OA and prayed for its dismissal. That is how we are seized of the matter.

7. After hearing the learned counsel for the parties, after going through the record with their valuable help and considering the entire matter, we are of the firm view that there is no merit and the instant OA deserves to be dismissed, for the reasons mentioned hereinbelow.

8. Ex-facie, the arguments of learned counsel that the applicants were engaged vide Office Order dated 17.09.2009 (Annexure A-2 Colly), and since they were working with the Railways till 10.01.2013 (Annexure A-1), so they are entitled

to be retained in service, is neither tenable nor the observations of Hon'ble Apex Court in case ***H.S. Rajashekara Vs. State Bank of Mysore and Another*** in ***Special Leave Petition (C) No.10845 of 2009*** decided on 24.11.2011, are at all applicable to the facts of the present case, wherein one Shri Devaraju, who had qualified the SSLC examination, was absorbed as a permanent employee but the petitioner (therein), who had also qualified the SSLC examination, was not absorbed. On the peculiar facts and in the special circumstances of that case, respondent Bank was directed to absorb the petitioner (therein) as a permanent employee in the Sub-Staff cadre on the basis of having rendered service for more than 240 days during 1994-95. But in the present case, no cogent evidence is forthcoming on record that the applicants have continuously worked for more than 240 days in a calendar year. Moreover, it was specifically mentioned therein that decision shall not be treated as a precedent, as the same was rendered keeping in mind the peculiar facts and circumstances of the case.

9. Similarly, in case of ***Pawan Kumar Vs. Govt. of NCT of Delhi and Others*** in ***OA No.282/2011*** decided on 11.01.2011 by this Tribunal, relied upon on behalf of the applicants, the staff nurses and para medical staff working in various hospitals under the Government of NCT of Delhi on contract basis were held to be similarly treated, as is the

practice in many of the hospitals. They were held to be entitled to the same salary and allowances at par with the regular employees, but the same would not come to the rescue of the applicants in the present controversy.

10. What cannot possibly be disputed here is that initially the applicants were engaged purely on contract basis at a monthly stipend of Rs.9653/- as Health and Malaria Inspectors in the Railways (Annexure A-2 Colly). Thereafter, fresh offer of appointments dated 12.07.2010 (Annexure A-3 Colly) were issued. Again, fresh appointment letters dated 14-15.07.2011/18.07.2011 (Annexure A-4 Colly) were again issued to them. Not only that, fresh offer of appointments dated 01.08.2012 (Annexure A-5 Colly) were issued to the applicants engaging them purely on contract basis on the post of Health and Malaria Inspectors on a monthly stipend of Rs.17145/-. The subsequent latest engagement letters (Annexure A-5 Colly) postulate that the appointment of the applicants shall be valid till the availability of the selected candidates/regular employees by the RRB or 30.06.2013, whichever is earlier.

11. Meaning thereby, the applicants were engaged purely on contract basis on a monthly stipend of Rs.17145/- till the availability of duly selected candidates/regular employees by RRB or 30.06.2013, whichever is earlier. The applicants have voluntarily accepted the terms and conditions of offer of

appointment (Annexure A-5 Colly). The specific case of the respondents-Railways is that, the services of the applicants were disengaged after receiving the panel of regularly selected candidates from RRB, Allahabad. This factual matrix has not been denied by the applicants, as they have not filed the rejoinder. In this manner, once Health and Malaria Inspectors were regularly recruited by the RRB, in that eventuality, the applicants have no claim at all, over the indicated posts.

12. Therefore, it is held that the impugned order of termination dated 10.01.2013 (Annexure A-1) is simpliciter and has been passed in terms and conditions of appointment letter. The respondents have rightly terminated the services of the applicants on account of regularly appointed Health and Malaria Inspectors selected by the RRB, Allahabad.

13. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

14. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the OA deserves to be and is hereby dismissed, as such. However, the parties are left to bear their own costs.

(P.K. BASU)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
08.11.2016

Rakesh