

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/137/2016

Order Reserved on: 23.07.2018

DATE OF ORDER: 02.08.2018

CORAM

**HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER**

Dilip Kumar Sharma S/o Shri Murlidhar Sharma, aged about 35 years, R/o C-4/150, Near Pawan Bal Vidyalaya, Nahri Ka Naka, Shastri Nagar, Jaipur. Last employed as Multi Tasking Staff (MTS), office of Principal Director of Audit, North West Railway, Jaipur under the Principal Accountant General (General and Social Sector Audit), Rajasthan, Jan Path, Near Statue Circle, Jaipur – 302005.

....Applicant
Mr. C.B. Sharma : counsel for applicant.

VERSUS

1. The Union of India through Comptroller & Auditor General of India, 9 Deendayal Upadhyaya Marg, New Delhi – 110124.
2. The Principal Accountant General (General and Social Sector Audit), Rajasthan, Jan Path, Near Statue Circle, Jaipur-302005.
3. The Principal Director of Audit, North Western Railway, Near Jagatpura, Jawahar Circle, Jaipur.

....Respondents
Mr. Rajendra Vaish : counsel for respondents.

ORDER

Per: Suresh Kumar Monga, Judicial Member

The pleaded case of the applicant herein is that he had been working as casual worker since the year 1998 in the office of the respondents. An employment notice was published by the respondents in the year 2010 inviting the candidates for recruitment on various posts of Multi Tasking Staff (MTS). The casual workers who had been working for the last more than two years were also considered to be eligible to apply against the

said posts by giving them the age relaxation. Pursuant to said employment notice, the applicant had also submitted his application, which was considered by respondent no. 3 and he was issued the appointment order dated 04.04.2011 (Annexure A/4) with a condition that he shall have to qualify 10th standard examination within a period of two years. It has further been averred that the applicant could not qualify the 10th standard examination within the said stipulated period of two years and, therefore, vide order dated 05.04.2013 (Annexure A/5), his services were terminated by the respondents with effect from 07.04.2013 without even being affording an opportunity of hearing to him. It is the case of the applicant that on the similar ground, services of Shri Sharwan Singh Chauhan, Shri Laxman Kumar Sain, Shri Rajendra Kumar, Shri Lokesh Kumar Jagotar and Shri Praveen Kumar Jagotar were also dispensed with and they preferred O.A. No. 438/2013 and OA No. 478/2013. In the case of Sharwan Singh Chauhan (OA No. 478/2013) a direction was issued to the respondents to decide his representation. After considering the representation of Shri Sharwan Singh Chauhan, he was reinstated by the respondents with effect from 28.08.2013. The other Original Applications (OA 438/2013 and other connected OAs) were disposed of vide order dated 06.03.2014 by this Tribunal with certain directions. Against the order dated 06.03.2014 passed by this Tribunal, the respondents preferred a D.B. Civil Writ Petition No. 1817/2015 (Union of India & Ors. Vs. Laxman Kumar Sain) before the Hon'ble High Court of Rajasthan at Jaipur. The said Writ Petition was disposed of by the Hon'ble High Court of Rajasthan vide order dated 08.07.2015 holding that Shri Laxman Kumar Sain (respondent in

the Writ Petition) is also entitled to the benefit of reinstatement in service as has been allowed by the respondents to Shri Sharwan Singh Chauhan. The applicant has further pleaded that in the month of March 2014, when his O.A. was disposed of vide order dated 06.03.2014, at that time, he was in the process of appearing in the examination of 10th standard. He qualified the 10th standard examination in the year 2013-14 from the National Institute of Open Schooling and the certificate in this regard was issued on 09.06.2014 in his favour. The applicant has further asserted that after the order passed by the Hon'ble High Court of Rajasthan on 08.07.2015 in D.B. Civil Writ Petition No. 1817/2015, Shri Laxman Kumar Sain has been reinstated in service on 07.09.2015. Claiming parity with Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain, the applicant has sought his reinstatement in service by way of filing the instant Original Application under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents by way of filing a joint reply have joined the defence and opposed the claim of the applicant. It has been pleaded that the applicant was appointed as MTS with effect from 08.04.2011 in the office of Principal Director of Audit, North Western Railway in compliance of dossier received from the office of Principal Accountant General (Civil Audit) Rajasthan, Jaipur, which was the recruitment agency. The applicant was 8th class pass at the time of appointment and as per terms of offer of appointment, he had to pass 10th class from any recognized board of education / National Open School within two years from the date of his appointment, failing which his services were liable

to be terminated. The applicant could not produce any document in support of passing 10th class until the month of December, 2012. In the month of January, 2013, vide letter dated 10.01.2013, the applicant was asked to produce requisite document in support of passing of his 10th class examination. Pursuant thereto, the applicant submitted an application on 23.01.2013 and sought permission to appear in the 10th class examination conducted by National Institute of Open Schooling in the month of February, 2013, which was granted to him. The applicant could not acquire the requisite qualification within the stipulated period, resultantly on completion of stipulated period i.e. 02 years from the date of appointment, he was discharged from service with effect from 07.04.2013. Thereafter, he submitted a representation on 12.04.2013, which was forwarded to the office of Comptroller and Auditor General of India, New Delhi for getting the necessary legal guidance. The office of Comptroller and Auditor General of India, New Delhi vide letter dated 06.05.2013 clarified that non-matriculate MTS appointed other than through compassionate appointment, who failed to pass the matriculation examination within two years of their appointment, will have to be terminated from service. The applicant was informed accordingly vide office letter dated 14.06.2013. Thereafter, the applicant preferred O.A. No. 439/2013 before this Tribunal wherein his counsel accepted that the applicant has not passed 10th class examination and he is not pressing for his reinstatement or any relaxation. Accordingly, O.A. No. 439/2013 was dismissed by this Tribunal with the observation that the respondents shall consider the claim of the applicant on casual basis if the respondents have work of that

nature and they propose to engage fresh persons to perform the duties. However, the applicant did not approach the office of Principal Director of Audit, North Western Railway, Jaipur in this regard. Opposing the claim of the applicant on the ground of parity with Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain, it has been asserted that Shri Sharwan Singh Chauhan appeared in the matriculation examination before dismissal of his services and Shri Laxman Kumar Sain appeared in the examination conducted by Rajasthan State Open School in October-November 2012, in which he was declared successful in two papers. It has been asserted that Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain appeared in the matriculation examination before the termination of their services and passing of the order dated 06.03.2014 by this Tribunal. Thus, the applicant cannot equate his services with that of Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain. By making all these assertions, the respondents have prayed for dismissal of the O.A.

3. Heard learned counsel for the parties.

4. Learned counsel for the applicant contended that the applicant had appeared in the matriculation examination after taking due permission from the respondents. He argued that Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain also could not qualify the matriculation examination within the stipulated period of two years. The distinction sought to be drawn by the respondents has already been dealt with by the Hon'ble High Court of Rajasthan at Jaipur while deciding D.B. Civil Writ Petition No. 1817/2015. Learned counsel further

argued that the applicant is entitled to parity with Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain and the respondents cannot be allowed to act discriminately.

5. Per contra, learned counsel for the respondents argued that there was a specific stipulation in the offer of appointment letter of the applicant that he shall have to qualify the matriculation examination within a period of two years, which he could not qualify within the said stipulated period. Learned counsel further argued that the applicant cannot claim parity with Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain, who had appeared in the matriculation examination before dismissal of their services and even before disposal of their cases by this Tribunal on 06.03.2014. He, thus, prayed for dismissal of the O.A.

6. Considered the rival contentions of the learned counsel for the parties and perused the record.

7. Admittedly, while disposing of batch of OAs including O.A. No. 439/2013 filed by the applicant, vide order dated 06.03.2014, this Tribunal had issued a direction to the respondents to consider the claim of 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. A further direction was also issued that the applicants shall be given priority while engaging workers on casual basis in future. The respondents-Union of India preferred D.B. Civil Writ Petition No. 1817/2015 before the Hon'ble High Court of Rajasthan at Jaipur challenging the said order of the

Tribunal in the case of Laxman Kumar Sain (OA No. 440/2013). The Hon'ble High Court of Rajasthan, while noticing the fact that Shri Laxman Kumar Sain (respondent in the Writ Petition) and Shri Sharwan Singh Chauhan both had acquired qualification of 10th Standard School Examination after a period of two years, had arrived at a conclusion that two different standards in evaluating the order of termination in the case of Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain cannot be applied and the distinction pointed out by the respondents is of no substance and ultimately Laxman Kumar Sain (respondent in the said Writ Petition) was ordered to be reinstated in service. The fact that Shri Sharwan Singh Chauhan and Shri Laxman Kumar Sain could not qualify the matriculation examination within the period of two years as stipulated in their appointment letters, has not been disputed by the respondents. The only distinction which the respondents are trying to make is that they appeared in the examination of 10th class before termination of their services and passing of the order dated 06.03.2014 by this Tribunal, in our considered view, is of no substance in the light of the order dated 08.07.2015 passed by the Hon'ble High Court of Rajasthan at Jaipur while deciding D.B. Civil Writ Petition No. 1817/2015. The fact that the applicant had been working as casual worker since 1998 and he had a long tenure of services at the time of his termination with effect from 07.04.2013, cannot be ignored. The respondents-department while taking into consideration his long tenure of services also gave him age relaxation and he was allowed to compete for the post of Multi Tasking Staff pursuant to Employment Notice dated 9-15 January 2010. It also requires to be noticed that the applicant

had appeared in the matriculation examination conducted by National Institute of Open Schooling in the month of February, 2013 after taking due permission from the respondents. He qualified the said examination. However, the certificate was issued on 09.06.2014 by the National Institute of Open Schooling. In these circumstances, the respondents ought not to have taken such a harsh decision to the extent of curtailing the livelihood of the applicant more particularly when his long services since the year 1998 had been recognized by the respondents while giving him age relaxation to compete for employment as Multi Tasking Staff.

8. In the conspectus of discussions made hereinabove, we are of the view that termination of the services of the applicant pursuant to order dated 05.04.2013 (Annexure A/5) cannot be sustained and the applicant deserves to be reinstated in service forthwith. However, he will be entitled for actual benefit including salary from the date of his reinstatement in service.

9. Accordingly, the instant Original Application is allowed. The respondents are directed to reinstate the applicant in service forthwith. It is made clear that the applicant shall be entitled for actual benefit including salary from the date of his reinstatement in service.

10. Ordered accordingly. There shall be no order as to costs.

**(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER**

**(SURESH KUMAR MONGA)
JUDICIAL MEMBER**