

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD**

OA/021/00560/2021

Date of CAV : 22.09.2021

Date of Pronouncement : 30.09.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

Shri Mohammed Sujauddin,
S/o Mohd.Imammuddin, Group 'B',
Aged about 53 years, Occ : Maintenance Staff (Handyman),
Jeddah Consulate, Soudi Arabia, Ministry of External
Affairs, Government of India, R/o I/326, NRR Puram
Colony, Borabanda, Hyderabad-500 045,
Cell No.9701017895, Email ID : shuja.uddin2014
@gmail.com.

...Applicant

(By Advocate : Mr.N.Vijay)

Vs.

- 1.Union of India, Ministry of External Affairs,
Represented by its Secretary, South Block,
New Delhi-110011.
- 2.The Joint Secretary (Administration),
Ministry of External Affairs, South Block,
New Delhi-110011.
- 3.The Attache (Administration),
Ministry of External Affairs, South Block,
New Delhi-110011.
- 4.The Consulate General of India,
Tahlia Street, Post Box No.952,
Jeddah-21421 Saudi Arabia, Rep. by its
Consul (CW) & HOC.

....Respondents

(By Advocate : Mrs.B.Gayathri Varma, Sr PC for CG)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed challenging the termination of the services of the applicant as Handyman cum Technical Assistant.



3. Brief facts are that the applicant was appointed as Handy man cum Technical Assistant in the Consulate of India, Jeddah. While working in the said assignment, applicant met with an accident causing backbone injury. After getting treated at Jeddah, applicant came to India on 20.12.2020 after taking annual leave. On reaching India, he was affected with Jaundice and the same was communicated to the respondents vide e-mail dated 11.01.2021. After recovering from Jaundice, applicant took treatment for back pain from an Ayurvedic Specialty Centre at Hyderabad, which was communicated to the Consulate on 19.2.2021. Later, he sought 2 months leave which was granted up to July 2021. Thereafter, notice was issued to the applicant on 28.7.2021 to report to duty by 1.8.2021, otherwise his services will stand terminated on 31.7.2021. Applicant vide his reply dated 29.7.2021 tendered apology for not informing about his health condition and sought help for arrangement of his itinerary by the earliest possible flight to join duty. No arrangements were made by R-4 and there was no response from the respondents thereafter to allow him to join. Hence the OA.

4. The contentions of the applicant are that he is working for the respondents since 2010 without any remark. The terms and conditions of the Labour contract provided for graded penalties to be imposed taking into

cognizance the lapses committed. The medical insurance of the applicant was renewed belatedly on every occasion. After the treatment at Jeddah for back pain due to an accident, since the pain was persisting, applicant had to come to India for treatment. Due to pandemic, the applicant could not travel back to report by the deadline fixed, as the flights to Jeddah were not operational between 29th July to 5th August 2021. To travel by “Vande Bharat” flight, respondents did not help the applicant the way they helped his colleagues to join duty by 8th August 2021 at Jeddah.



5. Respondents filed detailed standing instructions confirming that the applicant was recruited as Handyman w.e.f. 15.9.2010 at their Jeddah office through a Labour Contract dated 18.9.2010. Applicant has been frequently going on leave due to health reasons. The decision to terminate his services was taken because he was not physically fit to do the job involving strenuous duties. By allowing him to continue to do work, it would be fatal to his health and also the Jeddah Consulate would not be able to engage a new person in his place, which in turn would derail office functioning. Often, his duties had to be assigned to others. Applicant did not inform as to when he recovered from Jaundice and about his treatment for back pain. Only after contacting the applicant over telephone, the respondents came to know that he was taking treatment at Uma Ayurvedic Specialty Centre. More than 7 months lapsed since the applicant proceeded on leave from 20.12.2020 and thereafter, notice dated 28.7.2021 was issued. Action was taken to terminate his services on 31.7.2021 after taking into consideration his email reply dated 29.7.2021 as per paras 11(iv) & 13 of the labour contract.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the termination of services of the applicant working for the respondents at Jeddah. The factual matrix on record indicates that the applicant was engaged by the respondents in 2010 through a Labour Contract. While working at Jeddah, he was involved in an accident resulting in an injury to his back bone, forcing him to take initial treatment at Jeddah. As the pain was persisting, he came on annual leave to India in December 2020 for further treatment. After reaching India, applicant suffered from jaundice and on recovering from the same, he was under the medical care of Uma Devi Ayurvedic Specialty Centre for back pain. In view of the said development, applicant sought leave upto July 2021, which was granted. However, respondents issued notice on 28.7.2021 to the applicant calling upon him to join duty on 01.08.2021, failing which, his services would stand terminated from 31.7.2021. The notice of termination is extracted here under:



“Sub: Termination of your services as locally recruited Handyman from this Consulate.

Vide your email dated 26.05.2021, it was informed that you were undergoing back pain treatment and required 2 months rest. Accordingly, your leave was approved till end of July 2021.

The month of July is almost over, however, you have neither informed regarding your health condition nor informed regarding your intention to join the Consulate. You have been on leave since 20.12.2020. It has been over 07 (Seven) months, so far you have not informed when you will join the Consulate. This is affecting the function of the consulate negatively. Despite having a sanctioned post, we have to hire outside persons for the handyman-related works.

So far you have not informed your intentions to join the Consulate. As such, in case, you fail to report for duties on 01.08.2021 your services as locally recruited Handyman in the Consulate shall stand terminated from 31.07.2021. You will be paid one month's salary in compliance with Para 11(iv) and Para 13 of the Labour contract No. JED/E/579/2/2010 dated 18.09.2010 signed between the Consulate and you.

This issues with approval of Competent Authority.”

To the said notice, the applicant sent his reply on 29.07.2021 tendering his apologies and request to arrange his itinerary at the earliest. Despite the reply, respondents in their written instructions submit that, the Consulate at Jeddah terminated the services of the applicant w.e.f. 31.07.2021 with one month's notice pay.



II. After carefully going through the case, we notice that the applicant has made a pleading at para 4.6 of the OA that the respondents have issued an addendum to the labour contract on 22.07.2000 and according to which, the following penalties were brought into effect in case of misconduct/ indiscipline/ inefficiency of the employee:

- “(i) Oral warning with recording on personal file;
- (ii) Written warning to show cause as to why further disciplinary action should not be taken.
- (iii) Withholding of increment (s) of pay;
- (iv) Termination from service either by giving one month's notice or payment of one month's salary in lieu thereof.

The power to terminate the services by giving one month's pay or one month's notice in lieu thereof stood reserved to the Government of India.”

The addendum provides for graded penalties in order to enable employees to realize their mistakes and improve their work quality. Punishments are imposed for reformation and not to condemn them forever. Termination is the last resort. Application had rendered 11 years' service without any adverse remark, which was not refuted by the respondents. Therefore, without imposing one of the other lighter penalties prescribed, a harsh

penalty of termination, was imposed and that too, in circumstances which were beyond the control of the applicant. Any harsh penalty, which shocks the conscience of the Tribunal, can be set aside as per law.

III. Respondents have not rebutted the issue of the addendum which implies tacit admission. As per the addendum, respondents have to issue one month's notice or pay one month's salary in lieu of the notice, before terminating the services of the applicant. Respondents invoked the later part of the penalty clause to do away with the services of the applicant in a tearing hurry, which we would like to delve upon in the following lines.



Respondents issued notice on 28.7.2021 and on receipt of the reply of the applicant on 29.7.2021, his services were terminated w.e.f. 31.7.2021. There was no order passed by the respondents with reference to the response of the applicant. Respondents have to speak out their mind after the issue of notice. Notice can, under no circumstances, be equated to an order of penalty. Processes and procedures are to be followed. In fact, applicant was left in the woods with no response after reply to the notice. Respondents were duty bound to issue a termination order citing the reasons, which they failed to do. It implies that the applicant has been condemned without being let known as to the final decision of the respondents. Were the respondents' satisfied with the reply and if not why not? When the 'why' of any decision is not answered, then the decision is bracketed as arbitrary. The case on hand is a classic case of arbitrariness in full bloom and colourable exercise of power. Further, such an approach is contrary to the basic tenets of Principles of Natural Justice.



Thus there are two clear legal lacunae in the decision to terminate the services of the applicant, namely respondents have not issued any order of termination after receipt of reply from the applicant. To reiterate, applicant has a legal right to be informed as to the final grounds on which his services have been finally terminated, in consonance with basic principle of Natural Justice. Passing a speaking and reasoned order for terminating the services of the applicant, would have enabled the applicant to be satisfied with the order or explore scope for appropriate administrative and legal remedies. The applicant tried to contact the respondents informally and by his representations dated 30.07.2021 and 10.08.2021 (Annexures A-V & VI), but of no avail. Respondents, as a model employer, under law, cannot drive the applicant to despair, which unfortunately was the case in the present dispute.

Besides, the applicant claimed that he was granted leave up to end of July 2021 and there is no denial of the same by the respondents. Therefore, in the legal plane, there can be no termination inclusive of the day of 31st July 2021. Granting leave up to 31.7.2021 and yet terminating his services from the said date shows callousness and non-application of mind by the respondents in dealing with an issue related to a hapless contract staff member. In other words, respondents have terminated the services of the applicant against rules. Violation of the rules by the respondents has to be curbed and snubbed as observed by the Hon'ble Apex Court in a cornucopia of judgments as under:

The Hon'ble Supreme Court in T.Kannan and ors vs S.K. Nayyar (1991) 1 SCC 544 held that "Action in respect of matters covered by rules should be regulated by rules". Again in Seigal's case (1992) (1) supp 1 SCC 304 the

Hon'ble Supreme Court has stated that "Wanton or deliberate deviation in implementation of rules should be curbed and snubbed." In another judgment reported in (2007) 7 SCJ 353 the Hon'ble Apex court held " the court cannot de hors rules."

Hence, the action of the respondents to terminate the services of the applicant having been taken against rules, would not have legal sanction since it contravenes the legal principles laid in the above verdicts.



III. The other aspect we notice is that the respondents were as much aware as the applicant, that the regular flights were not operational from India to Jeddah, between 29th July 2021 to 5th August 2021 due to Corona pandemic. Hence, it was beyond applicant's control to travel to reach the work spot in the time given. Rarely, we come across notices issued to employees giving 4 to 5 days' time to comply and that too, involving travel abroad, especially during Corona pandemic. Giving such a short notice of a few days goes to prove that the respondents have decided to terminate the services of the applicant and issue of notice was an empty formality. Nonetheless, applicant responded to the notice dated 28.7.2021 by stating that he was willing to return to duty vide his email reply on 29.7.2021 and requested to take up with the concerned authority for permitting him to travel by Vande Bharat flight at his own cost, as was done for his colleagues to reach Jeddah by 8th August 2021. Respondents, for reasons best known to them, have not come to the rescue of the applicant and the stoic silence on part of the respondents in responding to this contention, would tantamount to discriminating the applicant. Discrimination under law is impermissible. At the same time, it reaffirms the fact that the

respondents have made up their mind to get rid of the applicant by going through the ritual of issue of notice for the sake of record. It is an example of unbridled exercise of power against a small timer without following rules/law. No matter how high and mighty the competent authority could be, the law would soon catch up, to deliver justice.



IV. Respondents claiming that the applicant was not physically fit to do the job and hence to safeguard the life of the applicant, his services were terminated, would not stand to reason since the respondents cannot don the role of a doctor and decide. It is for the medical authorities to certify that the applicant is unfit for the job in question and not the respondents. There is no such medical certificate placed on record by the respondents. Therefore, the contention of the respondents that applicant's service had to be terminated due to his medical condition is beyond their jurisdiction and competency. Hence, there is a jurisdictional error, again an aspect not supported by law.

V. Moreover, it is not that the applicant was not willing to join but due to the compelling circumstances of lack of flights, he could not join. The applicant worked for about 11 years for the respondents without blemish and this aspect was not borne in mind to impose a harsh decision to terminate his services. Respondents need to remember that they are model employers and their decisions have to stand as a model for others. As a model employer, they have to follow the rules. In the instant case, we found them to be wanting as expounded above. Respondents need to bear in mind



that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. The legitimate aspiration of the applicant was that he would be helped like his colleagues to go over to Jeddah by Vande Bharat flight to rejoin duty by 8th August 2021. Not doing so, has ended in despair forcing him to approach the Tribunal. Hope is gloriously precious and the respondents cannot play a game of chess with his hope of expecting fairness from the respondents by wrongfully terminating his services in violation of the rules and discriminating him with reference to rendering help to his colleagues and not to him. There will be good governance only when the respondents create an atmosphere of trust that the employees will be treated equally and with dignified fairness. Without the flights being operated, there was no way for the applicant to reach Jeddah by the scheduled date and yet the respondents were ruthlessly unfair to him. On the contrary, his colleagues were helped as pointed out. The applicant was absent for reasons of undergoing medical treatment about which the respondents were fully aware. Leave was granted too. Therefore, in the circumstance expounded, the atmosphere of trust and fairness was woefully missing in the decision of the respondents in terminating the services of the applicant. Our above remarks are supported by the observations of the Hon'ble Apex Court in **Bhupendra Nath Hazarika & Anr vs State Of Assam & Ors on 30 November, 2012 in CA Nos 8514-8515 of 2012**, in regard to State enacting the role of a Model employer, as under:

48. Before parting with the case, we are compelled to reiterate the oft- stated principle that the State is a model employer and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.

49. Almost a quarter century back, this Court in *Balram Gupta vs Union of India & Anr.* [1987 (Supp) SCC 228] had observed thus:

“As a model employer the Government must conduct itself with high probity and candour with its employees.”

51. In *Secretary, State of Karnataka And vs. Umadevi And Others* [(2006)4SCC1], the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a model employer.

53. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.



VI. To conclude, as seen from the above, the decision of the respondents to terminate the services of the applicant is not in accordance with rules and law. The penalty imposed by terminating the services of the applicant has shocked the conscience of the Tribunal in the context in which it was imposed. Consequently, we set aside the impugned notice dated 28.7.2021 and the consequential termination of the applicant from service w.e.f. 31.07.2021. We direct the respondents to permit the applicant to join duty at the earliest but not later than 60 days from the date of receipt of this judgment along with the medical fitness certificate. The period of absence from 1.8.2021 till the date of joining may be treated as eligible leave or leave without pay, as per the provisions of the labour contract entered into. If the applicant still continues to be aggrieved by the action of the

respondents pursuant to the verdict delivered, he is granted the liberty to re-approach the Tribunal with relevant grounds.

VII. With the above direction, the OA is allowed with no order as to costs.



(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

‘evr’