

(6)

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 541/2002

This the 29th day of October, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Shri Hoshiar Singh
S/o Shri Jeet Ram
R/o H. No. 839, Nangaloi Road,
Najafgarh,
New Delhi-110043.

-Applicant

(By Advocate: Shri M.L. Chawla)

Versus

1. Union of India,
Through Secretary
Ministry of Mines,
Shastri Bhawan,
New Delhi.

2. The Secretary,
Department of Personnel
& Training
Ministry of Personnel
Public Grievances & Pensions,
North Block
New Delhi-110001

-Respondents

(By Advocate: Shri Ravi Kant, proxy for
Shri Arun Bhardwaj)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

This is the second OA filed by the applicant seeking reliefs as set out in paragraph-8, including quashing the impugned Memorandum dated 13.2.2001 (Annexure A-1).

2. In the aforesaid impugned memorandum, reference has been made by the respondents to a representation submitted by the applicant dated 13.2.2001. The applicant had earlier filed OA-187/93 which was finally disposed of by the ^{the} Tribunal vide order dated 12.2.1997. The relevant

18

portions of the judgment/order of the Tribunal dated 12.2.97 read as follows:-

"6. Admittedly, the applicant was continuously engaged as a daily wager peon with respondents from 6.4.82 to 1.5.91 that is for a period of over 9 years. Respondents have not shown us any materials for us to conclude that his work was not satisfactory during this period, and we have no reason to doubt the veracity of the certificate issued by the Under Secretary, Dept. of Mines and the Jt. Secretary, Dept. of Mines, even if they were issued in their private capacity, that applicant discharged the duties assigned to him of operating photocopies, telex, data entry processing, publishing of documents etc. with sincerity of devotion. It appears that the only reason why respondents discharged the applicant after 9 long years of continuous of service was that he absented himself from 1.5.91 to 21.5.91. Of this period applicant claims he had been granted C.L. for 1st, 2nd, 3rd, May 1991 (which respondents deny); and 4th and 5th May 1991 were closed holidays. The applicant asserts that he was ill with typhoid from 6.5.91 to 21.5.91 and has produced a Medical certificate in support of the same. If the respondents had any doubt about the veracity of those medical certificates which were issued by a private doctor, it was open to them to have referred the applicant for a second medical opinion, but they did not do so. Instead by their Memo dated 14.5.91 they directed applicant to report for duty by 9.00 a.m. on 15.5.91 and upon his failing to do so they disengaged him when he sought to rejoin duty on 21.5.91. Applicant asserts that he had sent a C.L. application on 14.5.91 which respondents claim not to have received, but they do not deny receiving his second application dated 18.5.91 in which he refers to his earlier application dated 14.5.91. If respondents had any doubt as to veracity of the contents of the applicant's application dated 18.5.91 they should have given an opportunity to explain his conduct before abruptly visiting upon him the extreme decision of disengagement and thus depriving him of his livelihood after 9 years of service with them, and that too by verbal orders. . .

18

7. Under the circumstances we have no hesitation in holding that in the facts and circumstances of this case, the action of the respondents in terminating the applicant's services without issuing him any show cause notice, and merely by verbal orders, depriving him of his livelihood, is highly arbitrary and violative of the basic principles of fairness and natural justice.

8. In the result, the OA succeeds and is allowed to this extent that the respondents are directed to take the applicant back into service, within four weeks from the date of receipt of a copy of this judgment. The applicant will not be entitled to any back wages. After reengagement it will be open to the respondents to examine and take a decision regarding the period of the applicant's absence from duty from 1.5.91 to 21.5.91 in accordance with rules and instructions on the subject. Likewise it will be open to the applicant on reengagement to work out his rights for grant of temporary status/regularisation in accordance with law".

3. The aforesaid impugned memorandum dated 13.2.2001 has been passed on the representation made by the applicant, which after perusal of the relevant documents is seen to be in-connection with the Tribunal's order dated 12.2.97 and its implementation. In pursuance of the Tribunal's order, the respondents have issued office orders dated 23.5.1997, 5.9.1997 and 1.12.1997 (Annexures A-9,A-10 & A-11). From these orders, it is seen that the applicant has been appointed as Peon against the supernumerary post w.e.f. 7.3.1997 and was later regularised against regular vacancy w.e.f. 31.7.97. Para-2 of the office order dated 1.12.97 reads as follows:-

"The period of his termination from service from 1.5.91 to 6.3.97 is treated as "Non duty" and he will not be entitled to claim any service benefits like increment, seniority etc. for this period".

JP.

4. We have read and re-read the aforesaid order of the Tribunal in-connection with the submissions made by the learned proxy counsel for the respondents in the context of the facts of this case. We are unable to agree with the submissions made by the learned proxy counsel for respondents that para-2 of the office order dated 1.12.1997 is in-confirmation with the directions of the Tribunal reproduced in paragraph- 2 above.

5. Actually, this order is against the spirit of Tribunal's order in which it has been observed that applicant's services have been terminated abruptly and he has been deprived of his livelihood after a service of 9 years, without an opportunity of explanation having been afforded to him. It was also further observed that according to the applicant, he has submitted more than one casual leave application for the period of his absence which ought to have considered by the respondents while passing the appropriate order and taking a decision in terms of the direction contained in paragraph-8 of Tribunal's order dated 12.2.1997. Although, it may not be possible to say that there has been any contumacious or wilful disobedience of the Tribunal's order, as quoted above, it cannot also be stated that the order passed by the respondents in pursuance of the Tribunal's order has been done in the letter and spirit of the order.

6. The present application has been filed by the applicant as stressed by Shri M.L. Chawla, learned counsel, not for payment of any back wages for the period

(10)

he has not worked but for being granted continuity in service for the intervening period under reference as duty period. He has relied on paragraphs-24 and 25 of the judgment of the Hon'ble Supreme Court in **Union of India vs. K.V. Jankiraman** (1991 4 SCC 109). Paragraphs-24 and 25 of this judgment are to the effect that although an employee is willing to work but is kept away from work by the authority for no fault of his, he has to be restored all benefits for which he has been kept away unjustly, including pay in applicable cases. The later relief has, however, not been sought by the applicant in the present case.

7. We are not impressed by the submissions made by the learned proxy counsel for respondents that the prayer made by the applicant in the present case is barred by res-judicata, having regard to the earlier order passed by the Tribunal dated 12.2.97 and the judgment of the Hon'ble Supreme Court in **K.V. Jankiraman** (supra). It is also relevant to note that the impugned memorandum issued by the respondents dated 13.2.2001 is on a representation made by the applicant dated 31.1.2001. This has been considered by them but replied in a very sketchy manner, without giving the specific reasons for denying him "the other benefits" sought by the applicant.

8. In the circumstances of the case, the impugned memorandum dated 13.2.2001 is liable to be quashed and set aside. In other words, on taking the applicant back in service in pursuance of the earlier order passed by the Tribunal dated 12.2.1997, the applicant was entitled to

87

benefits in accordance with rules and law. The orders of the Tribunal, inter-alia, that the respondents are "directed to take the applicant back into service" which they had done does imply that some continuity of service has to be accorded to the applicant in the facts and circumstances of the case. We also note that the respondents have not specifically taken any decision and passed orders with regard to his absence from duty from 1.5.91 to 21.5.91 as further directed by the Tribunal. The submissions of the learned proxy counsel for respondents that this period may be included in para-2 of the memorandum dated 1.12.97 is accordingly rejected as the respondents have not cared to follow the directions.

9. It is relevant to note that this is the second OA filed by the applicant against the respondents. In the facts and circumstances of the case, for the reasons given above, the OA succeeds and is allowed. The impugned memorandum dated 13.2.2001 is quashed and set aside. The respondents are directed to treat the intervening period w.e.f. 1.5.91 to the date when he was taken back in service in pursuance of the earlier order passed by the Tribunal dated 12.2.1997 as a period spent on duty for purposes of continuity in service only as prayed for here.

No order as to costs.

V.K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

cc.