

Reserve

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

Pronounced on 5th day of February, 2020

Original Application No.330/00592/2014

(U/S 19, Administrative Tribunal Act, 1985)

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Krishna Mohan Srivastava son of late Kamla Prasad Srivastava resident of Rambagh, Jatepur North, District- Gorakhpur.

..... **Applicant**

**By Advocate: Ms. Mamta Sharma and
Sri S.K. Anwar**

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager (Personnel), North Eastern Railway, Lucknow.
3. The General Manager (Personnel), North Eastern Railway, Gorakhpur.
4. The Chief Commercial Manager, North Eastern Railway, Gorakhpur.

..... **Respondents**

By Advocate: Sri D.D. Srivastava

ORDER

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Sri Krishna Mohan Srivastava, applicant has filed this Original Application (O.A.) with the following reliefs:-

- i) That this Hon'ble Court may graciously be pleased to quash the order dated 10.1.2014 issued by the office of Divisional Railway

Manager (Personnel), North Eastern Railway, Lucknow by which the claim of the applicant for salary for the period 28.4.2009 to 11.5.2012 has been rejected by the respondents on the ground of no work no payment.

- ii) That this Hon'ble Court may graciously be pleased to issue a direction for payment of salary to the applicant for the period 28.4.2009 to 11.5.2012.
- iii) That this Hon'ble Court may graciously be pleased to pass such other and further order, as it may deem fit and proper in the facts and circumstances of the case.
- iv) That this Hon'ble Court may graciously be pleased to award the cost of the petition in favour of the applicant.

2. The brief facts born out from the O.A. are that the applicant was working as Chief Ticket Collector (CTI) Gorakhpur (West) in North Eastern Railway, Gorakhpur. He was transferred vide order dated 17.10.2005 to Izatnagar Division of North Eastern Railway. His representation against the transfer order was rejected.

3. Applicant, being aggrieved by the transfer order dated 17.10.2005, filed an Original Application No.

736/2008 (Krishna Mohan Srivastava Vs. Union of India and others). During the pendency of the aforesaid O.A., a charge-sheet was also issued to the applicant on 18.8.2008 which was also challenged by filing Misc. Interim Relief Application No. 1054/2008 on 10.9.2008, whereby seeking a direction from this Tribunal to restrain the Railway Administration from proceeding against the applicant in pursuance of the aforesaid charge sheet.

4. The Tribunal stayed the disciplinary proceedings against the applicant vide its interim order dated 18.12.2008.

5. O.A. no. 736/2008 was allowed vide order dated 9.4.2009, wherein following orders were passed by this Tribunal:-

"8. In view of it, the impugned orders dated 17/18.10.2005/AnneuxreA-1, 22.3.2006/Annexure A-2 to the O.A. as well as consequential order dated 18.8.2008 are hereby set aside giving liberty to the respondents to pass fresh orders as may deem fit and proper in accordance with law. It is made clear that we have not entered into the merit of the transfer order or order to take disciplinary action (referred to above). Applicant is directed to join his past duties forthwith with liberty to the respondents

authorities (keeping in mind the observations) to pass appropriate orders as may be deemed expedient in administrative exigency and/or public interest.”

6. Thereafter, the respondents filed a writ petition No. 39576 of 2009 against the order of the Tribunal dated 9.4.2009, which was dismissed by the Division Bench of High Court vide order dated 6.4.2012. The relevant portion of the aforesaid order is reproduced as below:-

“In view of the aforesaid facts and circumstances, the petitioners could have passed fresh orders in the matter, instead they have approached this Court and obtained an interim order from this Court which appears to be detrimental to their case assailed before us. For all the reasons aforesaid, we are of the firm opinion that there is no illegality or infirmity in the impugned order which requires no interference by this Court. The writ petition is accordingly, dismissed. Interim order dated 6.8.2009 is vacated. No order as to costs.’

7. It is pertinent to point out that after the order of this Tribunal, the applicant approached the department to comply with the order of this Tribunal

but the applicant was not permitted to join his duties in compliance of this Tribunal's order dated 9.4.2009.

8. Subsequently, a letter dated 18.1.2010 was issued by the office of the Divisional Railway Manager (Personnel), North Eastern Railway, wherein reference was made of pendency of writ petition in the High Court. After dismissal of the writ petition No. 39576 of 2009, applicant again approached the respondents for allowing him to join his duty in pursuance of Tribunal's order dated 9.4.2009. Ultimately, he was permitted to join his duty at Gorakhpur. Applicant immediately joined his duties.

9. Subsequently, vide order dated 23.5.2012 passed by Senior Division (Commercial) Manager, Izatnagar, the disciplinary proceedings against the applicant were also dropped. Copy of this order is available on record as Annexure -10.

10. After joining the services, the applicant submitted a representation dated 25.7.2012, requesting the respondents for payment of his salary for the period 28.4.2009 to 11.5.2012 i.e. the date on which the applicant presented himself for joining after the order of this Tribunal dated 9.4.2009 to the date of actual joining i.e. 11.5.2012. This request was rejected by the impugned order No. E/11/263/TTE/Court Case/2011 dated 10.1.2014 on the principle of "NO work no

payment". This impugned order is under challenge before this Tribunal.

11. Counter Reply is available on record wherein the respondents have taken plea that the payment cannot be made on account of the fact that applicant did not work during the aforesaid period and therefore, he is not entitled for payment on the principle of "No work no payment".

12. Heard Sri S.K. Anwar and Ms. Mamta Sharma, counsel for applicant and Sri D.D. Srivastava, counsel for respondents.

13. The principal ground taken by the respondents is that applicant did not work for the period for which he is claiming salary. It is pertinent to point out that applicant was spared and relieved from his duty on 16.2.2006 but applicant instead of joining at Izatnagar, invoked the jurisdiction of this Tribunal in 2008, where he succeeded. Respondents' writ against the aforesaid order was also dismissed.

14. There is no doubt that applicant after relieving from 16.2.2006 till the order of this Tribunal dated 9.4.2009, neither worked at Gorakhpur nor at Izatnagar. Therefore, he is not entitled for any payment of salary for this period. But it is pertinent to point out that applicant has not sought for payment of salary for the entire period of his absence. He

succeeded in his litigation filed before this Tribunal vide order dated 9.4.2009. In pursuance of the order of this Tribunal, he requested the department to permit him to join his services. The department did not permit the applicant to join his services.

15. It is noteworthy that Tribunal vide its order dated 9.4.2009 (supra) while setting aside the impugned order, merely directed the respondents to pass fresh order as may deem fit. Tribunal did not enter into the merits of the transfer order.

16. Tribunal also directed the respondents to permit the applicant to join his duty. This order was not exactly, completely against the respondents and this fact itself was noted by the Division Bench of Hon'ble High Court in its order quoted above.

17. Department could have easily passed an order in accordance with law as directed vide Tribunal's order dated 9.4.2009 but instead department did neither permit the applicant to join his services nor passed a fresh order as directed by this Tribunal. They chose to file a writ petition against Tribunal's order which ultimately dismissed. Therefore, it is apparent that from 28.4.2009 to 11.5.2012, applicant was not allowed to join service for no fault of his. He was sitting at home despite favourable order of this Tribunal on account of rigid attitude adopted by the

department. Applicant himself has not sought any payment of salary for the period of his relieving dated 16.2.2006 till 28.4.2009. He has merely sought payment of salary for the period from 28.4.2009 when he sought permission from the department to join services in pursuance of favourable order of this Tribunal till 11.5.2012 when he was actually permitted to join services after dismissal of writ petition of respondents. Salary of this period cannot be denied to the applicant on the ground of "no work no payment" . Applicant was not only willing to join the service but actually made representation and sent letters to the respondents apprising them order of this Tribunal and to seek permission for joining.

18. It is pertinent to point out that departmental proceedings contemplated earlier were dropped by letter dated 23.5.2012 (Annexure A-10), meaning thereby, that for the period from 28.4.2009 to 11.5.2012, applicant was denied joining on account of rigid attitude of the department despite the fact that no departmental action was under taken against the applicant.

19. Hon'ble Apex Court in **Union of India vs. K.V. Janki Raman (1991)4 SCC 109** has recognized the fact that on many occasions frivolous proceedings are instituted at the instance of interested person and an

employee is made to suffer both mental agony and privations. In such circumstances, if employee comes out with a clean bill he has to be restored to all benefits from which he has kept away unjustly. In such case normal rule of "no work no pay" is not applicable, inasmuch as, the employee willing to work is kept away from work by authority for no fault of his.

20. In the present case, applicant was not involved in any criminal/departmental case. He merely exercised his right to invoke the jurisdiction of this Tribunal in which he ultimately succeeded. This Tribunal has no doubt that applicant was kept away from work for no fault of his. Proposed and contemplated departmental proceedings were withdrawn by the department itself. Therefore, applicant is entitled for full wages during the period he was willing and eager to join services in pursuance of the Tribunal's order dated 9.4.2009 but was not permitted by the respondents to join services. He was denied salary for the period from 28.4.2009 to 11.5.2012 on account of action of the department and for no any lapse on the part of the applicant.

21. O.A. is allowed. Applicant is entitled for salary for the period from 28.4.2009 to 11.5.2012. Respondents are directed to make payment of salary to the applicant for this period within 4 months after which applicant would be entitled of simple interest of 6% per

annum for the dues of this period. No order as to costs.

(Justice Bharat Bhushan)
Member (J)

HLS/-