

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2535/98

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

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New Delhi, this the 20th day of October, 2000

Shri Guru Bux Singh
s/o Shri Dalip Singh
r/o B1/A, East Babarpur
Shahdara
Delhi - 32. .. Applicant

(By Shri K.G.Bhat, Advocate)

Vs.

1. Union of India through
The General Manager
Western Railway
Church Gate
Mumbai.
2. Divisional Rly. Manager
Jaipur
Power House Road
Jaipur.
3. Divisional Rly. Electrical Engineer
Western Railway
Power House Road
Jaipur.
4. Sr. Electrical Foreman
Western Railway
Sarai Rohilla Station
Delhi. ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

The applicant while working as Electric Fitter Gr.I at Delhi Junction was transferred to Achhnera(UP), by order dated 18.7.1988. The applicant challenged the transfer order before the Tribunal but it was dismissed vide order dated 23.11.1989. He filed SLP before the Supreme Court and the SLP was also dismissed. Thereafter he approached the DEE, Jaipur to allow him on duty but he was not taken on duty. He was thereafter served a charge sheet dated 7.3.1990 for the misconduct of unauthorised absence

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from 20.7.1988 to 22.3.1991. After enquiry he was imposed penalty of reversion from Electric Fitter Grade-I to Electric Fitter Grade-II by order dated 4.9.1991. Thereafter he submits that he made several representations from 28.10.91 till 4.3.1994 to the respondents to take him on duty but they have not allowed him on duty neither at Fulera nor Achhnera, they turned down his request. The respondents have also not furnished the transfer order to the applicant to enable him to join in the new place. The respondents, however again issued the charge sheet dated 9.12.1993 on the ground of unauthorised absence for the period from 8.3.1990 to 2.12.1993 and after enquiry the applicant was penalised with the major penalty of removal of service vide impugned order dated 21.7.1997. The appeal filed by the applicant has been dismissed. The OA is filed challenging the order awarding major penalty.

2. The learned counsel for the applicant submits that the enquiry has been vitiated on the ground of double jeopardy as the enquiry officer has taken into consideration the period from 22.7.1988 till 22.3.1991 which has already been taken into consideration under the previous chargesheet which resulted in imposing the punishment of reversion. It is vehemently contended by the learned counsel that the applicant was not allowed to join duty in spite of several representations made by him, hence he cannot be found for not joining duty. It is argued that the applicant having been suspended under the impugned order dated 4.9.1991, he was entitled for payment of

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subsistence allowances which was denied to him and thus denying him the reasonable opportunity of defending his case.

3. The learned counsel for the respondents, however, submits that the period under question in the previous/first chargesheet was from 20.7.1988 to 7.3.1990 and not from 20.7.1988 to 22.3.1991. The second chargesheet has been issued from 8.3.1990 to 2.12.1993 and enquiry officer after taken into consideration the evidence on record found that the applicant has not joined duty at the new place where he was transferred. It was also contended by the learned counsel for the respondents that the applicant had been making representations to Respondent No.4 to allow him to join duty at Delhi whereas he was to join at Achhnera.

4. We have given careful consideration to the contentions raised. The first contention as regards the period of unauthorised absence which was stated to be in question in the first charge sheet appears to be factually incorrect. The first charge sheet dated 7.3.1990 and the period of absence alleged to have been committed was from 20.7.1988 to 7.3.1990. We have perused the enquiry officer's report. It was merely noticed therein that, as a matter of record, the applicant was found absent from 20.7.1988 to 22.3.1991 but the enquiry officer has not taken the period beyond the charge sheet into consideration in coming to his conclusion. He was found to be continuously absent from 20.7.1988 to the date of charge sheet, i.e., 7.3.1990. Since the applicant

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continued to be absent afterwards till 1994, the second charge sheet has been issued for the period from 8.3.1990 to 2.12.1993. It is therefore not possible to accept the contention as regards the plea of double jeopardy.

5. The thrust of the arguments of the learned counsel is that even after several representations made by the applicant he was not taken into duty. He relied upon the representations made to Respondent No.4 for taking him on duty which remained unresponded. But once the applicant has been transferred, he has to go and join to duty in the new place at Achhnera. From a perusal of the enquiry officer's report it is clear that the applicant had refused to accept the transfer order and abide by it to join in the new place of transfer. He questioned the ~~stay~~ order of transfer and even after failing to succeed in his attempt, he refused to join in the new place of transfer. Once he has been transferred his applications to Respondent No.4 at Delhi need not be responded to. On the basis of the evidence on record the enquiry officer found that he was absent during the entire period under question and that he had not made any application either for his unauthorised absence or otherwise. We do not therefore find any substance in the plea of the applicant.

6. The contention as regards the non payment of subsistence allowance is also of no avail. The learned counsel relies upon the order of disciplinary authority dated 4.9.1991 imposing penalty of reversion where he was shown as having been suspended. But it

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is not the subject matter in this enquiry. No order has been shown to us placing him under suspension during the period of the unauthorised absence under question in the second charge sheet. The case of the respondents is that he has not abided by the transfer order. Hence the question of payment of subsistence allowances will not arise.

7. Lastly, it is contended that the punishment is very harsh. The attitude of the applicant right from 1988 to 1994 in not abiding by the order of transfer itself shows that he was not interested to continue in service. It is also not possible for us to interfere with the order of punishment only in the ground the punishment is harsh. The OA is accordingly dismissed. No costs.

Embodying
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

Govindan S. Tampi
(GOVINDAN S. TAMPI)
MEMBER(A)

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