

/4

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Order: 24.3.93

RA 60/93 IN
OA 1299/87

RAJ TILAK SAINI VS. UNION OF INDIA & ORS.

O R D E R

This is a petition dated 16.2.93 under Rule 17 Central Administrative Tribunal (Procedure) Rules, 1987, filed by Shri Raj Tilak Saini, former Gangman, PWI Office, Northern Railway, Kurukshetra, praying for review of this Tribunal's judgement dated 7.1.93 in OA 1299/87.

In that OA, the applicant had prayed for reinstatement as Gangman with full back wages; continuity in service; compensation for injury caused to him; as also a direction to the respondents to continue his treatment at their expense untill he was declared fit.

This Tribunal heard the matter on 7.1.93. Neither the applicant nor his counsel appeared on that date. The respondents were represented by learned counsel Shri B.K. Aggarwal.

After perusing the records and hearing the learned counsel, this Tribunal disposed of the application on merits.

✓ The Tribunal noted that in view of the offer made by the

respondents to take the petitioner back in service and thereafter to get him medically examined if he has to be given light duty, nothing was required to be examined so far as the claim of the petitioner for reinstatement^{as} concerned, as the same had been made clear in the order of the Tribunal dated 11.7.88. What now survived for consideration was only the question of compensation. The Tribunal further noted the submissions made by Shri Aggarwal that the petitioner did not avail of the opportunity offered to him as he failed to report to duty at Kurukshetra, and the question for giving him light duty did not arise as the same was conditional on the petitioner reporting for duty at Kurukshetra.

As far as the question of compensation was concerned, in the counter-affidavit filed by the respondents, it had specifically been stated that the same had since been paid. It had further been stated that the respondents had proceeded to act on the medical certificate of fitness, on the basis of which the applicant was taken on duty on 12.7.84 and the applicant had been paid compensation for 211 days from 14.12.83 to 11.7.84 amounting to Rs.1387/- for the period during which he could not perform duties on account of the injuries sustained by him, and under the circumstances, all the claims of the applicant having been ^{badly} ~~badly~~, the petition was dismissed.

In this Review Petition it has been claimed that the statement made on behalf of the respondents that the petitioner did not avail of the opportunity offered to him is factually incorrect, as the petitioner did report for duty at Kurukshetra as per order dated 11.7.88 and was sent for medical examination on 22.8.88 and thereafter was given light duty as Gangman and is still working there till date. It is also asserted that the respondents' statement that the only issue which survived for consideration was regarding the question of compensation, was also factually incorrect because the OA sought not only compensation, but back wages also as per Tribunal's order dated 11.7.88.

From that order it is clear that the respondents had stated that they were willing to take the applicant back to duty and on his joining duty, the respondents were willing to get him medically examined on the question of posting him for light duty assignment. The respondents were accordingly directed to take back the applicant to duty if he physically reported for duty at Kurukshetra, where he was working, and the respondents were further directed to get him medically examined within a week of his joining, in regard to his injury to decide whether he was entitled to be given light duty assignment. The Tribunal has specifically observed that as far as the OA

was concerned, it would continue on the question of compensation and back wages alone and was disposed of so far as the applicant's reinstatement was concerned.

The applicant has sought to prove that as per the order dated 11.7.88, he was sent for medical examination on 22.8.88 and thereafter given light duty as Gangman and was still working there till date. He has cited the medical report dated 22.8.88 (Annexure R-1) in support of the fact that he reported for duty. As against that, however, the respondents have pointed out that in compliance of the Tribunal's order dated 11.7.88, they got the applicant medically examined within a week of his joining duty. The medical report (Annexure R-1) makes no mention of the light duty to be given to the applicant. The applicant was declared fit for the job in B-1 Class, there was no such category under CPWI/AEN, where the applicant could be absorbed as casual labourer. In their counter-affidavit also, the respondents had stated that the applicant was never on the roll after 2.2.85. During the course of hearing also, the respondents' counsel had submitted that the petitioner did not avail of the opportunity offered to him and he had failed to report for duty at Kurukshetra. The question of giving him light duty was conditional on the petitioner's reporting for duty at Kurukshetra, and as he had failed to report for duty, the question of re-engaging him did not arise. The Tribunal had

no reason to disbelieve the averments made by the learned counsel for the respondents, and under the circumstances, had held that nothing further remained to be examined as far as the claim of the petitioner for reinstatement was concerned. The petitioner has failed to furnish any evidence to support his contention made in his review petition that he was reengaged after 22.8.88, and even if his contention is accepted, the question of payment of back wages does not arise as the petitioner was not on the rolls for the period 2.2.85 to 22.8.88 and did not work for that period to justify payment of wages.

Under Order XXXVII Rule 1 of the CPC a decision/order/judgement of the Tribunal can be reviewed only;

- a) if it suffers from any error on the face of the record;
- b) it is liable to be reviewed on account of discovery of any new material or evidence which was not within the knowledge of the party or could not be produced by him at the time the judgement was made despite due diligence or;
- c) for any sufficient reason, construed to mean "analogous reason".

Nothing is contained in the Review Petition which points to an error on the face of the record, nor any new material or evidence been brought to light which could not be produced at the time the judgement was delivered.

Under the circumstances, this Review Petition has no merit and it is accordingly dismissed.

Andolige
(S.R. ADIGE)
MEMBER (A)

Melvin
(V.S. MALIMATH)
CHAIRMAN