

82

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A. No. 1991/92

New Delhi: this the 26 day of August, 1996.

HON'BLE MR. S. R. ADIGE, MEMBER (A).

HON'BLE DR. A. VEDAVALLI, MEMBER (J).

Shri Suraj Ram,

S/o Shri Ramdev Ram,

aged about 36 years,

Khalasi under suspension, Inspector of Works (NR)
Kishanganj, Delhi.

and r/o Railway Quarter No. 112A/E, Railway Colony
Thomson Road, New Delhi Applicant.

By Advocate: Shri K.N. Nagpal.

Versus

1. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway, DRM Office,
Paharganj, New Delhi.

3. Asstt. Engineer (Estates),
DRM Office, New Delhi Respondents.

By Advocate: Shri R.L. Dhawan.

JUDGMENT

BY HON'BLE MR. S. R. ADIGE, MEMBER (A).

In this OA, applicant Shri Suraj Ram has
prayed for following reliefs:

i) salary from 20.4.89 till 20.7.89;

ii) suspension allowance from 15.2.90 till date

iii) suspension matter be reviewed in view of
the Railway Board's Circular (Annexure-A1).

During hearing ⁽¹⁾ above was not pressed.

29

2. Shortly stated, the applicant and one other, both Khalasis who were placed under suspension w.e.f. 21.7.89 on the charge of having conspired and assaulted their senior officers, filed OA No.1887/89 challenging their transfer in the administrative interest vide order dated 23.8.89 from Delhi to Kurukshetra and Shamli respectively. That OA was dismissed after hearing both parties by judgment dated 9.2.90, and the SLP filed against the said judgment was also dismissed vide order dated 2.4.90 (Annexure-R5). Meanwhile the applicant had also approached the Labour Court for payment of subsistence allowance and vide order dated 3.1.91 (Annexure-R6) the Labour Court ordered payment of subsistence allowance upto the date of Hon'ble Supreme Court's order dated 2.4.90. On 26.2.91, the applicant filed OA No.430/91 for quashing of the suspension order, and for a direction to the respondents for payment of the subsistence allowance. That OA was disposed of on 26.2.91 holding it to be premature and directing the applicant in the first instance to exhaust the statutory remedies available to him. In accordance with that order, the applicant filed appeal under Rule 18 Railway Servants (Discipline & Appeal) Rules, 1968 on 7.3.91.

3. On 30.7.92, the applicant filed the present OA, which was disposed of by judgment dated 1.9.92 at the admission stage itself without issuing any notice to the respondents.

(30)

with a direction to them that the subsistence allowance as due to the applicant should be considered for payment early if he continued on suspension, and preferably within 3 months from the date of receipt of a copy of the order. In this OA, no mention was made by the applicant ~~of~~ ^{that} ~~he~~ ^{had} filed a petition in the Labour Court for payment of the subsistence allowance from 15.2.90, in which the order dated 3.1.91 had been passed by the Labour Court. Thereafter on 2.2.93, the applicant filed CCP No.56/93, seeking implementation of the order dated 1.9.92 passed in the present OA. That CCP was disposed of by order dated 26.3.93, whereby the order dated 1.9.92 which was found to have been passed without issuing notice to the respondents, was set aside and the OA was restored and admitted, and listed for hearing. The CP was itself disposed of as having become infructuous. Aggrieved by that order, the applicant filed SLP No.9804/93 in the Hon'ble Supreme Court who by their order dated 12.8.93 dismissed the same with permission given to the applicant to seek interlocutory directions, if any, from the Tribunal. Accordingly, the applicant came up to the Tribunal who by their order dated 15.9.93, after hearing both parties noted that the applicant had still refused to abide by the order of transfer to Kurukshetra. It accordingly

1

(31)

held that justice required that the applicant should first obey the order of transfer to Kurukshetra, report there and also vacate the railway quarter which he had occupied in Delhi. To ensure that this was done, the following directions were issued:

- i) The applicant was to submit within one week from 15.9.93, a non-employment certificate to Respondent No.3;
- ii) If he produced that certificate within time, he would be furnished within a week therefrom a pass to go to Kurukshetra and report there;
- iii) On being furnished the necessary passes to him, he was to vacate the railway quarter occupied by him and to report at Kurukshetra within 3 weeks;
- iv) Both the applicant and the respondents were to file affidavits in respect of obligations imposed upon them.

This case was posted for direction on 27.10.93 and it was also ordered that it be known that there should be no hindrance in complying with these directions by any of the authorites no matter wherever they were located. A copy of the order was directed to be furnished to both sides.

4. On 27.10.93, the matter came up for hearing again, on which date it was noticed that the respondents had filed a compliance report wherein they stated that a pass had been prepared (a photostat copy of which had also been enclosed); a cheque for Rs.1217/- towards the payment of subsistence allowance from 15.2.90

(32)

was ready,

to 2.4.90 (a photocopy was also enclosed) and the applicant had been directed to contact the Asstt. Engineer/Estates, DRM's Office , New Delhi for collection of the said pass and the cheque after submission of non-employment certificate(a copy of the said letter was also enclosed.)

5. The Tribunal took note of the further averment of the respondents that the officials were deputed to go to the applicant's residence as there was no response from him, and they were satisfied that the registered letter was received by him, but the applicant behaved very rudely with those officials and threatened them with dire consequences if they did not move from that place(a copy of report in this behalf dated 6.10.93 made by the officials was also produced). The Tribunal also took note of the respondents' averment that inspite of written as well as personal requests, the applicant did not attend the office on 6.10.93 or till 14.10.93 for submission of non-employment certificate and collection of the transfer pass and the cheque, he deliberately disobeyed the Tribunal's order dated 15.9.93. In this connection, the Tribunal also took note of applicant's MP No.3282/93 filed on 8.10.93 in which he prayed for modification of the order dated 15.9.93 on the ground that as he was involved in several cases pending before different courts of Delhi and that if he was transferred to Kurukshetra, he would not be able to pursue the criminal cases effectively

(33)

and further more as his children were studying in school and colleges, if the applicant vacated the quarter in the middle of academic session, their studies would be in jeopardy. He further stated that there was other places where he could be conveniently transferred and posted.

This MP was vehemently opposed by the respondents, and after hearing both sides, the Tribunal observed that it was left with the impression that the applicant had been consistently defying the orders of the administration and he showed no keenness in abiding the court's orders. Although the applicant was transferred from Delhi to Kurukshetra as far as back on 23.8.89, he had not obeyed that transfer order despite the passage of 4 years. It was true that the applicant had challenged the transfer order before the Tribunal and had obtained an interim stay, but the OA was dismissed on 9.2.90 affirming the transfer order which also resulted in vacating the interim orders and the applicant's challenge to the said order in the Hon'ble Supreme Court was dismissed on 2.4.90. Nearly 3 years have elapsed since, but the applicant had not only failed to report for duty at Kurukshetra but continued to occupy the Govt. quarter, and despite having been evicted by the respondents, he had forcibly re-entered and taken possession of the same, which had resulted in a criminal case being lodged against him, which was still pending. The Tribunal held that

2A

it was the applicant's responsibility to have vacated the quarter and obeyed the transfer order, at any rate immediately after the Hon'ble Supreme Court's order dated 2.4.90, but he had not done so and he could not now take advantage of the situation to generate a sort of equity in his favour on the ground of children's education. The circumstances noted above were sufficient to justify the inference that he was not a person who was interested in respecting and obeying either the orders of administration or acting consistently in accordance with the Tribunal's directions and such being the applicant's conduct, the Tribunal was justified in not acceding his request for modification of order dated 15.9.93. As regards the assertion made by the applicant's counsel that the applicant being a member of SC Community, if he was transferred, he was entitled under relevant orders to be provided with appropriate quarter at the place of transfer, the Tribunal noted the statement of the Respondents' counsel that on his joining at Kurukshetra, an appropriate quarter would be made available to him.

6. For the above reasons, the Tribunal held that the applicant was not interested in obeying its orders in the matter of joining at Kurukshetra and vacating the railway quarter, although the respondents had done everything which they were required to do in compliance with the Tribunal's

35

directions and in this background, it was held that the Tribunal would not be justified in showing any indulgence to the applicant.

7. It is in this background that the case came up for final hearing. We have heard applicant's counsel Shri Nagpal and Respondents' counsel Shri Dhawan. We note with anguish that despite the passage of nearly 3 years since the order dated 15.10.93 the applicant has still not reported at Kurukshetra, although we were informed by respondents' counsel that the quarter was since got vacated forcibly on 16.11.93. In this connection, we had wanted to satisfy ourselves as to the rule position requiring the applicant to report at Kurukshetra before he could be released any suspension allowance. Shri Dhawan has invited our attention to Appendix 31 of IRE Code Volume II. We note that this point has specifically been discussed in paragraph 7 of the judgment dated 9.2.90 in OA No. 1887/89, wherein it has been held that there was no bar to the competent authority transferring a Govt. servant under suspension, more so, when the applicant had been ordered to be transferred as in the present case along with his post, resulting in his headquarters also undergoing a change. We are bound by this finding.

8. We have referred copiously to the Tribunal's order dated 27.10.93, to highlight the fact that even at that stage, the Tribunal had expressed its concern at the applicant's conduct which showed that he was neither interested in respecting and obeying the administration orders, nor acting consistently in accordance with the court's

(36)

directions. Nearly 3 years have gone since then but the applicant has still failed to report for duty at Kurukshetra, and instead he is continuing to press for release of his suspension allowance from 15.2.90 till date and for review of his suspension matter in the light of Railway Board's Circular at Annexure-A1.

10. In this connection, it is necessary to mention that the document at Annexure-A1 is not a general circular issued by the Railway Board but only an aid memoir dated 22.2.90 wherein the General Manager had instructed that the staff should not be allowed to continue under suspension for long period of time and cases of suspension over three months should be immediately reviewed and action should be taken to put back as many of these persons on duty as possible. The contents of this aid memoir are unexceptionable, but are not relevant in the present case, where the applicant has been suspended on serious charges and has been transferred to Kurukshetra while under suspension, but has refused to abide by those orders despite the Courts' directions to do so. He cannot on the one hand continue to flout the Tribunal's directions to report at Kurukshetra and in the same breath seek a direction from the Tribunal to the respondents to pay him his suspension allowance from 15.2.90 till date, or for review of his suspension matter.

11. The applicant has also contended that his appeal under Rule 18 Railway Servants (D & A) Rules, 1968 (Annexure-A3) filed on 7.3.91 has not been disposed of by the respondents as yet.

(3)

The applicant has a right to ask the Tribunal for direction to the respondents to dispose of his appeal dated 7.3.91 provided he himself approaches us with clean hands, but as pointed out above, the applicant has not done so. He cannot seek any direction from us unless he himself in the first instance reports at Kurukshetra in compliance with the administration orders and the Tribunal's directions.

12. This OA is accordingly dismissed. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

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

/ug/