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Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 976 of 1996

Allahabad this the 19th day of December, 2000

Hon'ble Mr.S.K.I. Naqvi, Member (J)

Roop Chandra Son of Late Shri Sheo Narain, R/o
11/322, Souterganj, Kanpur, Pin 208001,

(a) Pramesh Chandra			
(b) Roop Kumar		All S/o Late	
(c) Sanjai Kumar		Shri Roop Chandra	
(d) Aswani Kumar			
(e) Km.Meena		D/o Late Sri Roop	
		Chandra	

Substitu-
ted appli-
cants.

By Advocate Shri B.N. Singh

Versus

1. Union of India through the General Manager,
Head Quarters Office, Northern Railway, Baroda
House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Allahabad Division, Allahabad.
3. Senior Divisional Operating Manager, Northern
Railway, Allahabad Division, Allahabad.
4. Divisional Personnel Officer, Northern Railway,
Allahabad Division, Allahabad.

Respondents.

By Advocate Shri G.P. Agrawal

O R D E R (Oral)

By Hon'ble Mr.S.K.I. Naqvi, Member (J)

The applicant-Roop Chandra filed this

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O.A. seeking following reliefs;

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- (a) issue an order or direction to quash the impugned orders dated 31.5.1996 annexure no.1.
 - (b) Respondents may be directed to pay the full salary alongwith other allowance including the bonus from the date 3.2.1992 to 2.11.1992 during which the applicant was prevented to discharge his duties at Juhi due to illegal and arbitrary orders of transfer.
 - (c) Direct the respondents to pay 18% interest on the unpaid salary from the date it become due till date of payment.
 - (d) Award the cost of the Case."

Shri Roop Chandra died during the pendency hence substituted by the present applicants as his legal heirs namely S/Shri Pramesh Chandra, Roop Kumar, Sanjai Kumar, Aswani Kumar, all sons of Late Roop Chandra and Km.Meena, D/o Late Roop Chandra.

2. The applicant had a claim that while he was posted at Juhi, there was some train mishap in which the department tied up several employees including the applicant and transferred them to different places as punitive measure. The applicant was transferred from Juhi to Sonna, against which he made several representations and did not join at Sonna. As pleaded in para-4 Q the applicant joined at Juhi on 18.9.1992 as per order of Area Officer, Northern Railway, Kanpur(Juhi) and was working there continuously till the filing of this O.A. but, respondents have deducted the salary of

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the applicant w.e.f. 03.2.1992 to 02.11.1992. The applicant mentioned that during this period, he did not join awaiting the orders on his representations and the appeal preferred against that transfer order and for not having worked or joined duty ~~at~~ during that period was for no fault of his but, it was because of non-communication of decision on his representation and, therefore, principle of 'No work no pay' does not apply in his case, because he was prevented from working at Juhi, for which he was willing.

3. The respondents have contested the case and filed counter-reply with a specific case that the applicant is not entitled to any payment for the period from 03.2.1992 to 02.11.92 because during this period he did not work at any station nor he remained on sanctioned leave or he was on the sick leave and, therefore, for having voluntarily abstained from work, he is not entitled to any payment for that period on the principle of 'No work no pay'.

4. Heard learned counsel for the parties and perused the record.

5. Learned counsel for the applicants could not refer or produce any rule under which an employee is at liberty not to comply with any

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order against which he has preferred representation. The applicant has a case that he did not join at Somna for having preferred representations against that transfer order but, in the present O.A. no transfer order has been impugned to have judicial verdict thereon as to whether the transfer order was passed as per rules in this regard or was against the law, which could be ignored. In para 4 Q of the O.A. the applicant has come up with a case that he joined at Juhi on 18.9.1992 but, was ^{the salary} not being paid from 03.2.1992 to 02.11.1992 which gives rise another peculiar circumstances, either there is some confusion regarding the dates or in the assertion of the applicant.

6. Learned counsel for the applicant took me through A.I.R.1959 Alld.664 Upper India Couper Paper Mills Co.Ltd. Vs.J.C. Mathur. I find that the principle laid down in that case is not applicable to the present matter. Learned counsel for the applicant also referred A.I.R. 1996 page 102FB Mandegam Radhakrishna Reddy Vs. Sri Bharathi Velu Bus Service and another', in which it has been held that mere fact that a workman was unable for a certain period to discharge the duties of particular nature does not make him anytheless an employee of his master." Referring the law laid down in this case, learned counsel for the applicant emphasised that since the applicant himself did not abstain from work but, it was because of the respondents that he could not perform his duty

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and, therefore, he cannot be denied payment for that period.

7. From the above, it is found that the applicant was transferred from Juhi to Sonna where~~as~~ he did not report to join and insisted that he be allowed to work at Juhi, Kanpur alone. I am afraid that an employee can be so choosy and still claiming for the period during which he did not report in compliance with clear orders in this regard and, therefore, I do not find there is any good reason to interfere with the impugned order dated 31.5.1996, copy of which ~~as~~has been annexed as annexure A-1.

8. Learned counsel for the applicant also emphasised that when the applicant went Sonna to join there after 2 months from the date of order, he could not join because the incumbent Shri Mohan Singh Meena was not relieved and had forgone his promotion and transfer. The other contention is that since the transfer order through which the applicant was transferred from Juhi to Sonna was revoked, therefore, he is entitled for the payment during that period. I do not agree with the contention of learned counsel for the applicant because there is no order on record through which the transfer order was revoked. Moreover, there is nothing on record except mention from the side of the applicant ~~that~~ that he was not allowed to join at Sonna, when he reported there.

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9. From the above facts and circumstances,
case law and arguments, it is found that the O.A.
has no merit and the same is dismissed accordingly.
No order as to costs.

See re again
Member (J)

\$M.M./