

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Allahabad : Dated this 4th day of July, 2000
District : Bijnore

CORAM :-

Hon'ble Mr. S. Biswas, A.M.

I. Original Application No. 862 of 1998

Gulwa son of Nanhey,
Resident of Vill-Trilokawala,
Post-Jhilmila, Pargana & Tahsil-Nagina,
District-Bijnore.

(Presently working on the post of Gateman
at Gate No. 476/C under P.W.I.,
(Gate No. 10), Dhampur, Northern Railway,
District Bijnore.

(Sri Shyamal Narain, Advocate)

. . . . Applicant

Versus

1. The Union of India through the
Ministry of Railways, Rail Bhawan,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Moradabad.
3. The Divisional Superintendent Engineer 1st,
Northern Railway, Moradabad.
4. The Assistant Engineer, Northern Railway,
Moradabad.
5. The Senior Divisional Personnel Officer,
Northern Railway, Moradabad.
6. Jai Prakash son of Lallu
President of Lalwala,
Pargana and Tahsil Nagina,
District-Bijnore,

(Presently Working as Rest Giver Gateman
under PWI Dhampur, Northern Railway,
District - Bijnore.

(Sri OP Gupta, Sri Prashant Mathur/
Sri MP Singh, Advocates)

. . . . Respondents

S. J.

II. Original Application No. 1063 of 1998

District : Bijnore

Jai Prakash S/o Sri Laloo Singh,
Resident of Village Lalwala,
Post Nagina, District Bijnore.

(Sri OP Gupta, Advocate)

. . . Applicant

Versus

1. Divisional Railway Manager,
Northern Railway, Moradabad.
 2. Assistant Engineer, Northern Railway,
Nazeebabad (under Moradabad Division),
Dhampur, Bijnore.
 3. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
 4. Guluwa son of Nanhey working as
Gate Keeper under Assistant Engineer,
Nazeebabad, at Dhampur Distt. Bijnore.
- (Sri Shyamal Narain/Sri Prashant Matur, Advocates)

. . . Respondents

O R D E R

By Hon'ble Mr. S. Biswas, A.M.

The applicant in this OA has sought for the following reliefs:-

- (i) quashing the order dated 1-8-1998 (Annexure-1 and 2) and;
- (ii) a direction to confirm his posting at Gate No.476/C as Gangman under RWI, Dhampur as per the order dated 29-6-1998.

2. The facts of the case in brief are that the applicant, a Gateman, posted at Gate No.476/C, Gangman No.10, Dhampur, on 16-2-1970.

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3. That for treatment of eyes he was required to report to the senior Divisional Medical Officer on 30-5-1996. He was under treatment of Assistant Medical Officer, from 24-7-1996 to 20-10-1996. When on expiry of this period, the applicant went for resuming his duties, one Sri Jai Prakash, who was rest giver Gangman was holding the post. Sri Jai Prakash was transferred to the vacant post on 22-11-1996. He was there since 5-6-1997 and after the applicant furnished his medical certificate on 24-6-1998, he was posted there on 29-6-1998 by the Assistant Engineer. The applicant was taken back on duty since 29-6-1998 but suddenly on 1-8-1998 Sri Jai Prakash was posted at the same Gate No.476/C and the applicant's posting order dated 29-6-1998 was cancelled. His transfer order was cancelled within a very short time after he resumed his duty on the basis of medical certificate and valid order dated 29-6-1998. Hence, the cause of action has arisen.

4. I have heard counsel for both the parties. Learned counsel for the respondents has mentioned that the applicant was unauthorisedly absent and consequently and consequently it was required that Sri Jai Prakash, who is one of the Union leaders should be posted there and his posting was valid order but later on due to pressure from the association of the employees Sri Jai Prakash was posted. The said respondent no.6 agreed to surrender his seniority for being posted there at Gate No.476/C. The Assistant Engineer permitted the applicant to reposting on

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26-8-1998 on the basis of fresh representation.

5. During the argument, however, it has come to light that no such authorised protection to a member of the association is provided and it has also come to light that the ^{present} applicant's posting on return from leave on Gate No. 476/C was issued by the Assistant Engineer on representation. His order of cancellation dated 1.8.1998 was also issued by the same Assistant Engineer. Therefore, it is not clear from the order, if the Assistant Engineer was authorised to issue transfer and posting orders of Gateman. Both the orders issued under his signatures.

6. Learned counsel for the applicant contended that the applicant had actually proceeded on medical leave for checking of his eyes and a review of the defect ^{was} noted by the Railway Doctor. Therefore, ^{the} period of absence cannot be treated as outright unauthorised. The delay in his posting at Gate No. 476/C was due to delay in obtaining medical certificate since the same was given to him, he was permitted to join. There is nothing unauthorised about it and he has joined there with a due authority of the order.

7. In this connection I have also looked into OA No. 1063/98 filed by the respondent Sri Jai Prakash on 29-8-1998 impleading the present applicant as respondent no. 4. The applicant in OA No. 1063/1998 has sought relief of setting aside the order dated 18-9-1998 ^{9.11.98} and the direction to continue at Gate No. 476/C on the ground that the applicant was working

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there since 5-6-1997 during the absence of the applicant in OA No.862/1998.

8. The cause of action in OA No.1063 of 1998 has arisen as the applicant in OA No.862 of 1998 was permitted to rejoin duty at the same station on 29-6-1998. Therefore, if the cause of action in either of the case survives the ^{of the OA} order automatically fails. The applicant in case of OA SM No.1063/1998 SM has admitted SM has joined as leave reserve and since the applicant (Gulma) is illiterate, he fitted there and his case was suitably recommended for posting there by surrendering seniority by the Assistant Engineer. But this was interferred by the Divisional Authorities. His impugned plea is that if he is not posted at Gate No.476/C, the Union activities of which he is a member will suffer. But he has not been able to clarify how the Union's activities did not suffer all the years when he was not posted there or when other members were not posted there. No authority was shown to me that a Union member should accommodated at a particular place for the convenience of the Union's activities.

9. Considering the fact that the present incumben^t, the applicant Sri Gulma in OA No.862/1999 has only a few months to go ^{before} on retirement, in my opinion, the transfer order dated 29-6-1998 should not be interferred with and he should be permitted to spend his remaining few months at the place of his ^{new} joining where he is posted since 1970. If nothing has happen^{ed} so long, nothing will ^{probably} happen in the remaining few

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months. This is also not the allegation of the respondents.

10. If the applicant was unauthorisedly absent, the respondents are at liberty to take suitable action ^{for that} or decide the leave as per rules. The orders dated 1-8-1998, both, are quashed and the order dated 29-6-1998 posting the applicant at Gate No. 476/C ^{be} is confirmed. The application is allowed. No order as to costs. Consequently the OA No. 1063/98 is dismissed accordingly.

S. B. Breen
Member (A)

Dube/