

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

MONDAY, THIS THE 7TH DAY OF OCTOBER, 2002

ORIGINAL APPLICATION NUMBER:- 1415 OF 2001

HON. MAJ. GEN. K. K. SRIVASTAVA, MEMBER-A

HON. MRS. MEERA CHHIBBER, MEMBER-J

Mahavir Prasad,  
s/o Pachkauri.  
r/o European Colony,  
Mughalsaraim  
Dist- Chandauli. ....Applicant

(By Advocate:- Shri S.K.Dey, Sh. S.K.Mishra)

Versus

1. Union of India through the General Manager,  
E.Railway, Calcutta-1.
2. The Divisional Railway Manager,  
E.Railway. Mughalsarai,  
Dist. Chandauli.
3. The senior D.P.O. E.Railway.  
Mughalsarai ,  
Dt- Chandauli. ....Respondents.

(By Advocate:-Sh. K.P.Singh)

O R D E R (ORAL)

HON. MRS. MEERA CHHIBBER, MEMBER-J

By this application, applicant has challenged the order dated 3-4-2001 with a further direction to the respondents to make payment of due salary for the period from 15-12-1996 to 1-12-1999 with all consequential benefits.

2. The brief facts as stated by the applicant are that he was posted as Shunt man in scale of Rs. 2650-4000/- at pay Rs. 2650/- under Station Manager, E. Rly. MGS. When he was transferred from Mughalsarai to Sealdah Division vide order dated 24-12-1996, he challenged the said order by filing O.A No. 12/97 and on 13-1-1997 the court was pleased to grant status-quo in favour of the applicant but he <sup>was</sup> ~~has~~ not yet been allowed to join his duties. The applicant states that he was on Medical

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leave on 13-1-1997. Ultimately the said O.A was allowed vide order dated 27-5-98 (Annexure A-2) and in the said order the Tribunal was pleased to quash the transfer the order dated 24-12-1996 by observing that in the facts and circumstances of the case, it appears that there was unfairness and malice behind the mask of innocence, in the order of transfer. Therefore, the transfer order was quashed and set aside. The grievance of the applicant is that even after the transfer order was quashed by the Tribunal, he was neither allowed to join his duties, nor paid the salary for the said period. Instead, the respondents filed writ petition before the Hon'ble High Court of Allahabad. The High Court of Allahabad dismissed the writ petition vide order dated 12-10-1999 (Annexure A-3) upholding the order passed by the Tribunal. It is relevant to quote the observation made by the Hon'ble High Court-

"We have gone through the order passed by the Tribunal which was of the view that the order suffered from colourable exercise of power. The Tribunal has indicated sufficient reasons and for upholding as such, we are of the view that the finding which has been arrived by the Tribunal cannot be said to be arbitrary in any manner."


3. It is relevant to mention at this stage that even before the said writ petition was dismissed, the applicant had given in writing to the respondents on 10-5-1999 itself addressing a letter to the DRM E.Railway Mughalsarai to provide him a transfer pass, transfer order and transfer allowance in order to proceed<sup>to</sup> Sealdah to carry out the illegal transfer order dated 24-12-1996 (page 19). On 25-5-1999 the applicant wrote a letter to the DRM, E. Railway, Sealdah, requesting him to kindly allow him to join the duties at Sealdah in the interest of justice by narrating all the facts and making it clear that in order to survive his family under compelling circumstances, he is even ready to join at Sealdah. This was again followed



by a reminder on 14.6.1999 wherein he once again requested the DRM, Sealdha Division<sup>go</sup> to either allow him to join the duties or direct him to/back to Mughalsarai in the interest of justice (Page 21), but since the applicant didnot hear any reply whatsoever from any of these authorities, he ultimately gave a representation to the General Manager E. Railway, Calcutta requesting him to allow him to join duties either at Mughalsarai or any other place in the interest of justice. After the writ petition was dismissed the applicant again gave in writ-ing on 24-10-99 to the Chief Personnel Officer a request to allow him to join duty at Mughalsarai since the writ petition filed by Union of India had already been dismissed by the Hon'ble High Court of Allahabad (page 23).

4. It was only vide order dated 26-11-1999 at (page 24) the respondents issued an order <sup>through B</sup> ~~by~~ Divisional Railway Manager E. Railway, Mughalsarai whereby the order dated 24-12-1996 was cancelled and <sup>the</sup> applicant was posted under Senior DOM, Mughalsarai, till further orders as per the CAT's Judgement passed in O.A No. 12/97 upheld by Hon'ble High Court in writ petition No. 23998/98.

It is stated by the applicant that ultimately the applicant was allowed to join the duties at Mughalsarai only on 26-11-1999, but he was not paid salary for the intervening period. Therefore, he gave the representation to the DRM, Eastern Railway, Mughalsarai for payment of salary from 24-12-1996 to 1-12-1999 after adding his increment from the year 1996 itself (page 25). This representation was repeated on 5-6-2000 by addressing a representation to the Chief Personnel Officer, Eastern Railway, Calcutta, but since no reply was given to the applicant, therefore applicant again filed an O.A No. 777/00 which was disposed of vide order dated 21-7-2000 by giving the direction to the respondents to decide the applicants representation within 8 weeks from the date of communication of the order



by passing a detailed order (page 27). It is submitted by the applicant that pursuant to such directions, the respondents passed an order on 24-11-2000 which was issued by Divisional Personnel Officer for Senior DPO wherein it was clearly stated that Hon'ble CAT, Allahabad has quashed the transfer order in O.A No. 12/97, therefore, the competent authority has ~~decided~~<sup>that</sup> the period from 24-12-1996 to 1-12-1999<sup>be treated</sup> as spent on duty. Accordingly the salary of Shri Mahavir for the period from 24-12-1996 to 1-12-1999 at the rate of Rs. 2650/-<sup>got</sup> per month should be released, if not already paid. This order is on page 28 marked as Annexure A-13. The applicant's grievance is that once the respondent had passed this order treating the entire period as spent on duty and even a direction was given to make the payment there was absolutely no justification whatsoever in issuing the order dated 3-4-2001 taking absolutely a different stand to deny the salary of the applicant for the said period on the ground that he had not worked either at Mughalsarai or at Sealdah Division during the said period. Therefore as ~~per~~ the principle of 'No work no pay' he would not ~~have been~~ entitled for any salary from the period of 15-12-1996 to 1-12-1999. The applicant was however given liberty to apply and get this period decided as leave or extraordinary leave (Annexure A-14, page-8). It is this order which the applicant has challenged in the present O.A. The applicant's counsel has submitted basically ~~the~~ two contentions. Firstly, that once the competent authority had issued the order on 24-11-2000 treating the period from 24-12-1996 to 1-12-1999 as spent on duty and directed to make the payment, the respondents could not have issued the order dated 3-4-2001 without cancelling the earlier order or making it clear



that this order was being <sup>issued</sup> ~~superseded~~ <sup>the earlier order.</sup> Secondly, ~~that is why~~ even though the applicant's transfer order had been quashed by the Tribunal holding the same to be arbitrary and issued in a colourable exercise of power, yet the applicant had shown his willingness to join duties ~~either~~ at Sealdah or any other place because he was <sup>at the</sup> verge of starvation. Therefore it is submitted by him that since he was willing to work and it is the respondents <sup>who</sup> ~~did not~~ allow him to join the duties <sup>at</sup> ~~either~~ of the places, the principle of 'No work no pay' cannot be attracted in the given circumstances of the case nor the order dated 3-4-2001 can be sustained in the eyes of law as the reasoning given in this is absolutely wrong and contrary to the material on record.


5. The respondents have opposed the O.A and the only ground taken by them is that on 24-12-1996 the applicant had already been relieved from Mughalsarai. ~~Therefore,~~ statusquo order would further mean that he was not on the strength of Mughalsarai and since the applicant did not report or worked at Sealdah also. Therefore he cannot be given the salary for the said period.

6. We have heard both the counsels and perused the pleadings as well.

7. We are constrained to observe that this is one of those cases where the applicant is being harassed for no fault of his. The applicant was transferred vide order dated 24-12-1996. The applicant challenged the same immediately thereafter and on 13-1-1997 the court was pleased to grant status-quo in favour of the applicant. The counsel for the respondents has not been able to show us from the judgement or any other document to suggest that the applicant had already been relieved from Mughalsarai on 24-12-1996. Infact, no effort was made by the respondents to get the stay vacated by stating that applicant had ~~had~~



already been relieved by the 24-12-1996. Even for a minute we grant the benefit to the respondents for what they had said yet the subsequent events are more revealing and throws much light as to what happened to the applicant. Thereafter the Tribunal had quashed the transfer order on 27-5-1998 as a consequence of which the naturally the applicant should have been reinstated at Mughalsarai itself. But it seems the respondents filed a writ petition in the High Court of Allahabad in which the Judgement of Tribunal was stayed. The applicant didnot sit idle at this stage. A perusal of Annexures annexed with the petition clearly shows that he had showed his willingness to even comply with the transfer order by giving various letters to DRM, E.Railway Mughalsarai as well as Sealdah. Annexure A-4 to Annexure A-8 that is from page 19 to 23 of the O.A., <sup>the</sup> applicant wrote as many as five to six letters and representations to various higher authorities requesting them to permit him to join at either of the stations because he was at the verge of starvation but for reasons best known to the respondents, the respondents did not permit the applicant to join at either of the stations. Even in the counter filed before us no justification has been given as to why the applicant was not allowed to join. He ~~Could~~ have worked either at Mughalsarai or Sealdah when he was very much willing to join and having requested the various authorities to allow him to join. In such circumstances we have no other alternative but <sup>to</sup> come to the conclusion that <sup>the</sup> applicant had been willing to work throughout but it was the respondents who didnot permit him to join the duties and in such circumstance it is not open for the respondents to attract the 'principle of 'no work no pay'. Infact, <sup>we are</sup> ~~he has~~ started at the reasoning given by the respondents in the impugned order because they have stated that applicant neither worked at Mughalsarai nor at Sealdah Division, <sup>He</sup> Therefore he was not entitled for the



salary for the intervening period. Since we have already seen the various letters written by the applicant showing his willingness <sup>but</sup> ~~and~~ no response coming forth from the respondents. The reasons given by the respondents in their impugned order is definitely not sustainable in law. According to us, the same needs to be quashed and set aside. There is yet another reason as to why the impugned order should be quashed and set aside. We have already referred to Annexure A-13 wherein the competent authority had already decided the period from 24-12-96 to 1-12-99 as period spent on duty and even issued a direction to Office superintendent, (salary) Mughalsarai, to make the payment of salary from 24-12-96 to 1-12-99 if not already paid. There is nothing on record to show that either this order was withdrawn or cancelled or superseded by any other order. Even the impugned order does not say that it is issued in supersession of order dated 24-11-00. We are therefore of the considered ~~opinion~~ opinion that once the competent authority had already taken a decision, the respondents could not have detracted from the said decision and taken a contrary view.

8. In view of the discussions made above, we are satisfied that the order dated 3-4-2001 is wrong, illegal and arbitrary and the same is accordingly quashed and set aside. The respondents are directed to comply with their own order dated 24-11-2000 and pay the salary to the applicant within a period of 3 months from the date of communication of this order. The O.A is accordingly allowed with no order as to costs.



Member-J



Member -A

madhu/