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Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1401 of 2005

Allahabad, this the 4th day of September, 2008.

Hon'ble Mr. A.K. Gaur, J.M.

Hon'ble Mrs. Manjulika Gautam, A.M.

Suraj Pal, S/O Sri Bihar, Helper/Khalasi, R/o
Village and Post Guwara, Tayayabpur, District
Kaushambi

...Applicant.

By Advocate : Sri D.P. Mishra.

Versus

1. Union of India through the G.M. N.C.R.,
Allahabad.
2. D.R.M., N.C.R., Allahabad.
3. Sr. Section Engineer (sig.) RRI, Juhi,
N.C.R., Kanpur.
4. Divisional Personnel Officer, N.C.R.,
Allahabad.

...Respondents.

By Advocate : Shri P.N. Rai

O R D E R

By A.K. Gaur, Member-J

Through this O.A., the applicant has prayed for a direction to pay salary of the applicant from 27.3.2005 to 23.6.2005 with 18% interest.

2. It is alleged by the applicant that he was serving under the control of respondent no.2 on Class IV post. Vide order dated 27.3.2001, the applicant was declared unfit in the medical test. As the applicant was declared unfit, for road side duty, ~~he was~~ the applicant was directed to work in the office of respondent no.2 where he performed the duties assigned by his superiors. It is averred that after declaring the applicant unfit in the medical test, he was given the benefit of ~~sent~~ ACP Scheme for financial upgrading in the pay scale of Rs.

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3050-4590 and was directed to go through trade test vide order dated 10.6.2004. The applicant was spared after attending the trade test vide order dated 12.6.2004. But the applicant was returned back to the office of respondent no.2 by respondent no.3 without any posting order. Vide order dated 10.1.2005 the applicant was again sent back to the office of respondent no.3. In compliance of the order dated 10.1.2005, the applicant has been attending the office of respondent no.3 regularly (Annexure-3). Finally, the applicant made a representation on 8.2.2005, stating that he is going to be retired in the month of May, 2007 but his salary for the period from April 1999 to 13.2.2001 has not been paid to ^{him} by the department and in case of transfer, the applicant would be unable to pursue the matter of payment of arrears of salary. The action of the respondents is unjustified. He also stated that he will suffer great hardship in case of transfer at a new place on account of weak eye sight, as the applicant has already been declared medically unfit for performing his duty vide order dated 27.3.2001.

3. Feeling aggrieved, the applicant challenged the order dated 10.1.2005 by filing O.A. no. 336 of 2005, which was disposed of by this Tribunal on 4.4.2005 with the direction to the respondents to consider and decide the representation of the applicant within a period of one month from the date of receipt of copy of the order. Until the representation of the applicant was decided, the operation of the order dated 10.1.2005 was directed to be kept in abeyance. The applicant has clearly mentioned that the order dated 4.4.2005 was sent through the registered post to Sr. Section Engineer (Signals), RRI, Juhi, Kanpur, but he refused to take the order of this Court on 25.4.2005 and the envelop returned to the applicant having the

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endorsement of Postman 'Lene Se Inkar'. The learned counsel for the applicant produced the original envelop for our perusal and it is quite apparent that there is a clear endorsement to the effect that 'Lene Se Inkar'.

4. The applicant was permitted to join his duty on 24.6.2005 without communicating any order and since then the applicant has been performing his duties in the office of respondent no.3 i.e. Sr. Section Engineer (Sig.)RRI, Juhi, N.C.R., Kanpur. The grievance of the applicant is that there is hardly any justification for non-payment of salary for the period from 27.4.2005 to 23.6.2005, which has been stopped by the respondents without passing any order or without granting any opportunity of hearing to the applicant.

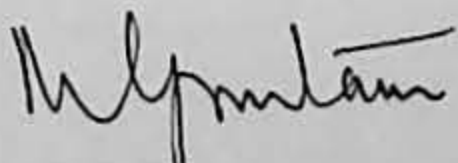
5. Denying the facts contained in the O.A., the respondents filed their Written Reply and submitted that the applicant did not appear before Sr. Section Engineer (Sig.)RRI, Juhi, N.C.R., Kanpur w.e.f. 16.4.2005 to 20.4.2005. It is also contended that the applicant was medically decategorised from the post of Helper Gr.I (Sig.) in the pay scale of Rs. 2650-4000/- (RSRP) and was absorbed as Safaiwala in the grade of Rs.2610-3540/- vide letter dated 18.1.2005 of his own accord, but he did not join. He remained absent from duty without any permission and requested to post him on some other post other than post of Safaiwala. Accordingly the applicant was posted as Chaukidar vide order dated 12.5.2005, where he joined on 24.6.2005. Sri P.N. Rai learned counsel for the respondents vehemently argued that on the principle of 'no work no pay' the applicant is not entitled to get any salary for the aforesaid period.

6. It has been contended by Sri D.P. Mishra, learned counsel for the applicant that the respondents have willfully and deliberately violated the order and directions of this Tribunal and did not permit the applicant to join his duty on the post of Class IV. Sri P.N. Rai, learned Standing Counsel for Railways stated that the proper course for the applicant was to file Contempt Petition, if he had any grievance against the order and directions given by this Tribunal. Since the applicant has failed to file any Contempt Petition for alleged disobedience of the order and directions of this Tribunal, then it would be presumed that he was absconding from duty. We have carefully seen the records of the case and in para 4.11 of the O.A. it is clearly stated that the applicant was present from 16.4.2005 to 20.4.2005 alongwith a copy of the order dated 4.4.2005 passed by this Tribunal and the same was produced before the Sr. Section Engineer (Signals) RRI, Juhi, Kanpur and requested the respondent no.3 to permit the applicant to join his duty, but he refused to take the order of this Tribunal, therefore, the applicant sent the same alongwith representation dated 12.4.2005 by registered post to the respondents. This facts stated in para 4.11 of the O.A. remained uncontroverted and the same has not been denied properly by the respondents in their Counter Affidavit. The registered letter was returned back with the endorsement of the Postman 'Lene Se Inkar'. In view of various decisions rendered by Apex Court as well as High Court postal endorsement of refusal amounts to service on the addressee. It is also contended by Sri Mishra, learned counsel for the applicant that no show cause notice or any opportunity has been given to the applicant before deducting the salary of the applicant and this action of the respondents is clearly punitive in nature. We have also seen the records and there is

not an iota of evidence to indicate as to what was the contents of the letter dated 12.5.2005 and why the salary for the period, in question, was not paid to the applicant. If the applicant remained unauthorized absent, he should have been given a chargesheet for the same. No such action has at all been taken against him. In our considered view, when an interim order was already continuing in the case, there was hardly any justification for the respondents to deny the wages/salary for the intervening period. We have also seen the original envelope produced by Sri Mishra and we are firmly of the view that there is no justification for not granting the salary for the period from 27.3.2005 to 23.6.2005 to the applicant. The plea of the respondents that on the principle of 'no work no pay', the applicant is not entitled for any salary for the intervening period. In our considered view such an argument cannot be countenanced and it was incumbent upon the respondents to have followed the procedure prescribed under law before passing any order of deduction. Merely passing an order directing the respondents not to pay the salary of the applicant is clearly in the teeth of the provisions of law.

7. In view of what has been stated above, the respondents are directed to pay the salary of the applicant for the period from 27.3.2005 to 23.6.2005 within a period of two months from the date of receipt of a certified copy of this order.

8. The O.A. stands disposed of in the above terms with no order as to costs.


MEMBER-A


MEMBER-J