

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.547 of 1986(O.Suit No.1740 of
1983)

Budhoo ... Applicant

Vs.

Union of India and 3 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This transferred application was filed as a regular suit by the applicant in the Court of Munsif City Gorakhpur for injunction and has been received u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The applicant was appointed as a Driller in the Bridge Workshop N.E.Railway Gorakhpur in 1949 and in due course was promoted as Welder in the said workshop. It is alleged that on account of his picking up some quarrel with the employees of respondent no.2 the Chief Engineer of the Workshop in June 1980, he was not allowed to work in the workshop and on his approaching the higher authorities, no suitable reply was given. When the applicant was not given any work and pay from June 1980 despite his moving written applications and a notice u/s.80 CPC, he filed the suit on 29.10.1983 for permanent injunction for commanding the respondents to permit the applicant to work on his post and for a further direction to make payment of his pay from June 1980. The applicant retired from service on his reaching the age of superannuation in Jan.1984 and he thereafter sought an amendment in the plaint for claim-

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ing his salary from June 1980 to Jan.1984.

3. The case has been contested on behalf of the respondent no.1 and in the written statement filed on its behalf by the Dy.Chief Personnel Officer N.E.Railway Gorakhpur, it was stated that it was wrong to say that there had been any quarrel between the applicant and respondent no.2. No notice u/s.80 CPC appears to have been served and if it is proved to have been served, it is illegal and defective. The suit is barred by Sections 34 and 41 of the Specific Relief Act. The applicant was in the habit of absconding from his duties and he was absent w.e.f. 28.4.1982(?) and did not report for duty despite registered letter dated 17.1.1982 and reminder dated 30.7.1983. The allegations made by the applicant to the contrary are not correct and as he himself did not attend his duties, the suit is liable to be dismissed with costs.

4. The applicant filed a replication in the case stating that the notice u/s.80 CPC was very much served on the respondents by him and their plea in this connection is self-contradictory. After transfer of the suit to this Tribunal, the provisions of S.80 CPC and Ss.34 and 41 of the Specific Relief Act are not attracted. In view of the own admission of the respondents, the applicant is entitled to his salary atleast till 27.4.1982. He did not receive the letters dated 17.1.1982 and 30.7.1983 from the respondents and in fact, he was not allowed to work in the workshop as his token was removed from the ticket board and he had made complaints orally and in writing to the higher authorities and he is entitled to his pay till the date of his retirement.



5. The applicant had filed certain documents with his replication to show that his token was removed from ticket board of the workshop by someone on account of ill will and without the token he was not allowed to work in the workshop. This plea of removing his token from the ticket board was not taken by the applicant in his plaint nor did he seek any amendment therein after the respondents denied ~~this~~ allegations in their written statement. The copies of the written complaints made by him in this connection are annexures 4 to 9 of this replication. The are dated 2.3.83, 9.3.83, 14.3.83, 21.3.83 and 30.4.83. These complaints simply go to show that several times his token was removed from the ticket board on account of which he was treated absent from duty causing a monetary loss to him and the necessary arrangement be made to save him from such loss in pay. There is no allegation in these complaints that his token was regularly removed from the ticket board from June 1980 ~~for~~ April 28, 1982 on account of which he could not attend his duties. The applicant did not seriously dispute the contention of the respondents in his replication about his remaining absent from duty from 28.4.1982. He also did not produce or summon any record to show that he had ever attended his duty from 28.4.1982. His contention, however, was that in case he was not attending his duty, he should have been charge sheeted for absence from duty under the Railway Servants (Discipline and Appeal) Rules and the contention of the respondents that the applicant was absent from duty should not be accepted. This contention, though plausible, has another aspect for consideration. The applicant admittedly did

not get any pay from June 1980 and he waited till 29.10.83 for filing the suit for his salary. The respondents could not stop the payment of his salary from June 1980 in the case of his attending duties regularly.

6. The written statement filed in the case on behalf of the respondent no.1 was not carefully examined by the officer concerned before signing it. In para 17 it was alleged that the plaintiff was absent from his duties w.e.f 28.4.1982 but in para 18 it was mentioned that the registered letter dated 17.1.1982 was sent to the plaintiff asking him to report for duty. This letter could not be sent to the applicant on 17.1.82 in case of his absence from duty from a subsequent date 28.4.1982. We are further of the view that the written statement filed in the case is very vague and discrepant. The respondents have not shown any cause for withholding the pay of the applicant from June 1980. The plea regarding notice is again evasive and such plea that no notice was served and in case it is proved to have been served, it was illegal and defective, is not expected from responsible and public officers. In case the notice was not served at all, it could not be said that it was defective and illegal. Some more care and sense of responsibility is expected from senior officers in filing the replies in the courts of law and we hope that the respondent no.1 shall take suitable action in this connection so that such defective, vague and incomplete replies are not filed in the Courts/Tribunals in future. The written statement filed on behalf of respondent no.1 is silent on the point as to why the Chief Engineer of the Bridge Workshop N.E.Railway Gorakhpur allowed the applicant to remain absent from his duty from June 1980 without taking any disciplinary action against him.

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7. The record produced before us on behalf of the parties is not sufficient to ^{come to a} ~~give~~ any definite conclusion about the presence or absence of the applicant from duty from June 1980 or April 28, 1982. The respondents have simply filed his leave account and have not produced the register of attendance. They have further filed the copies of the applications of the applicant for leave without producing the copies of the orders sanctioning or disallowing the leave applied for. The respondents have also filed some reports of the workshop Superintendent about the complaints of the applicant in respect of removing his tokens from the ticket board which go to suggest that there is atleast some truth about his allegations and he was making complaints to the authorities even in 1980 about the removal of his token from the ticket board. In these circumstances, if we decide the case taking a technical view based on the question of burden of proof, it may result in miscarriage of justice. We will, therefore, like to refer the matter to the competent authority of the respondents for examining the claim of the applicant regarding the arrears of his pay from June 1980 till the date of his retirement.

8.  The Chief Engineer Bridge Workshop N.E. Railway Gorakhpur-respondent no.3 is accordingly directed to examine the claim of the applicant regarding non-payment of his salary from June 1980 till the date of his retirement and for passing suitable orders of the payment of his dues in accordance with relevant rules within a period of 3 months from the date of the receipt of the copy of this order.  The parties are directed

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to bear their own costs.

Sharma

MEMBER(J)

Sharma
7.7.88

MEMBER(A)

Dated: 7th July 1988
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