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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No. 1379 of 1986

Govind Gupta Plaintiff

Versus

Union of India through the General Manager,
Northern Railway, New Delhi.... Defendant.

Hon. S. Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Suit No. 442 of 1983 Govind Gupta Versus
Union of India has been received on transfer from
the Court of Civil Judge, Moradabad. The plaintiff's
case is that he was selected as Coaching Clerk in
the year 1979. He was subjected to a medical
examination and was sent for training to the Zonal
Training School at Chandausi on 10.3.79. After
successful completion of his training he was directed
to report to the Northern Railway Hqrs. at New Delhi.
Thereafter he was posted as Coaching Clerk at the
Nizamuddin Railway station on Delhi Division. From
Hazarat Nizamuddin Railway Station the plaintiff
was transferred to Sivaha Station by an order
dated 30.7.79 by the Divisional Personnel Officer,
Northern Railway Delhi. This posting was however
changed and the plaintiff was transferred to Jodhpur

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Division. As the plaintiff's circumstances did not allow him to join at Jodhpur he could not move to Jodhpur and made a representation to the authorities. His representation was accepted and he was posted to Moradabad Division by an order dated 19.11.79. He was spared from the Delhi Division on 27.11.79 and reported for duty at Moradabad on 29.11.79. He has however been kept waiting for orders and not been given any duty. On his repeated representations the Hqrs. office issued a direction to the DRM Moradabad vide its memo No. 220-E-878-60 dated 19.5.80 saying that "Shri Govind Gupta has been selected as Coaching Clerk and was temporarily posted on Delhi Division. After completion of the work he was allotted to Jodhpur Division and was relieved by the DRM Delhi on 9.8.79 but he did not report to DRM Jodhpur. He instead approached this office and requested for change from Jodhpur to Moradabad. His request has been subsequently agreed to and he was allotted to Moradabad Division by the Hqrs. letter of 20.11.79. He accordingly reported to DRM Delhi on 22.11.79 for his being directed to DRM Moradabad. The DRM Delhi had advised DRM Moradabad that Shri Govind Gupta remained on unauthorised absence from 10.8.79 to 21.11.79. Shri Gupta has already been allotted Moradabad Division. Necessary action for his

remaining on unauthorised absence for more than 3 months ^{to} has ~~been~~ taken by you in terms of instructions contained in Note 2 of Rule 732 R-1, he being a temporary employee. In the event, his case is being treated as having resigned for unauthorised absence over 3 months, his case can be considered by you for reemployment in terms of item 45 of DRM's Schedule of powers. In spite of above letters issued by the Hqrs. office the plaintiff kept on waiting but he got no relief and sought the protection of the court of law. The plaintiff has claimed that the defendant's deeming him to have resigned his job is illegal and he continues in the service of the defendant and he is entitled to all salaries and allowances for the period from ³¹29.11.79 till the date he ^{is} ~~was~~ allowed to assume duties. He has sought for relief that a declaration be issued that the plaintiff cannot be deemed to have ~~been~~ resigned his job and a decree of further recovery of Rs. 23,486-25 being the arrears of salaries and allowances be passed in his favour.

2. The defendant's case is that after the expiry of the summer rush and temporary sanction the plaintiff was allotted Jodhpur Division by the General Manager vide their letter of 6.8.79. He did not join at Jodhpur nor was any order ^{issued} ~~communicated~~ to continue on the Delhi Division. Thus he remained absent from duty from 10.8.79 to 21.11.79 and

therefore under the rules he was deemed to have resigned from service. The defendant has admitted that the plaintiff had represented to the authorities that he did not want to be transferred to Jodhpur Division and ^{that} he be transferred to Moradabad Division. But he suppressed the fact that he had not joined duty at Jodhpur and was remaining absent from duty. He was allowed to be posted to Moradabad Division on 19.11.79 but when the fact of his having remained absent from duty for more than 3 months came to notice, the HQrs. office recommended to the Delhi Division that he may be reappointed and then transferred to Moradabad Division. On this the Delhi Division had opined that the plaintiff was neither appointed on Delhi Division nor the plaintiff is likely to continue on this Division. In case he agreed to work on Delhi Division they had no objection to appoint him at Delhi Division. According to the defendant as the plaintiff was neither appointed on the Moradabad Division nor he remained absent from duty from Moradabad nor he came as a transferred employee from Jodhpur or Delhi Division, there was technical difficulties to reappoint him and therefore the recommendation of the HQrs. office could not be acceded to. Therefore according to the defendant the plaintiff had no right for any declaration nor he is entitled to any emoluments which he has claimed in this suit.

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3. We have heard the learned counsel for both parties. The learned counsel for the plaintiff contended that the deeming ^{3/} ~~class~~ ^{use} of having resigned cannot be made applicable after the HQrs. office had modified the previous order which posted the plaintiff to Jodhpur Division to his being allotted to Moradabad against the existing vacancy on 19.11.79. He further contended that in view of the very clear instructions of the HQrs. office and the recommendation of the HQrs. office the DRM Moradabad should have exercised powers to post the plaintiff when he reported to the Division on 29.11.79. There should have been no automatic termination.

4. In the Indian Railway Establishment Code Vol-I para 732 deals with the Leave Rules for other staff. Note 2 under this para reads as follows :-

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" Where a temporary railway servant fails to resume duty on the expiry of the maximum period of extra ordinary leave granted to him or where he is granted a lesser amount of extra ordinary leave than the maximum amount admissible, and remains absent from duty for period which together with the period of extra-ordinary leave granted exceeds the limit upto which he could have been granted such leave under sub rule (1) above, he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned his appointment and shall, accordingly, cease to be in railway employ. "

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It has been admitted by the defendant in paras 34 and 35 of the ³²~~the~~ written statement that the HQrs. office had recommended to the Divisions to reappoint the plaintiff. This recommendation ³²~~of~~ the HQrs. office, however, was not acted upon by either the Delhi Division or the Moradabad Division and in the bargain the plaintiff was made to suffer.

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5. The plaintiff had been duly selected for appointment to the post of Coaching Clerk. He had worked on the Delhi Division at Nizamuddin Station after completion of his training on 2.5.79 upto 30.7.79. His representation was accepted and he was allotted to the Moradabad Division by an order dated 19.11.79 issued by the Northern Railway HQrs. office. Since he was originally working on the Delhi Division he naturally reported back to the Delhi Division for his release for transfer to Moradabad and the Delhi Division spared him on 27.11.79 and he reported back for duty on 29.11.79. His predicament about the Moradabad Division not giving him duty on account of the absence which was more than 3 months was further considered by the HQrs. office who issued a direction to the Moradabad Division on 19.5.80. In this directive the HQrs. office has said that necessary action for his remaining on

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unauthorised absence for more than 3 months may be taken and his case should be considered for re-employment in case as a result of his absence he is treated as having resigned for unauthorised absence of over 3 months. There is no doubt that the DRM had the powers to reappoint the plaintiff but this power had not been exercised by the DRM. In the written statement in para 36 it has been said that the plaintiff was neither appointed at Moradabad Division nor he remained absent from duty at Moradabad nor he came on transfer from Jodhpur or Delhi Division and therefore there were technical difficulties to reappoint him, and he should have been deemed to have resigned either from Jodhpur Division or Delhi Division and therefore he had no right to file his suit at Moradabad.

6. We do not agree with the statement made in the reply to the plaint by the Moradabad Division. There were clear instructions from the Northern Railway Hqrs. office to the Moradabad Division to consider the plaintiff for fresh employment under the DRM's power. We note that these powers were not exercised by the DRM for reasons which were not adequate enough to deny the plaintiff a job and means of livelihood. The plaintiff had already been selected and appointed and had worked at the Nizamuddin station. He

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had on receipt of his posting orders for Jodhpur represented against that posting and requested for a posting at Moradabad Division. This request of his was ultimately agreed to by the Northern Railway Hqs. office. The plea taken by the defendant that his case should have been considered either by the Jodhpur Division or the Delhi Division and not by Moradabad Division as directed by the Hqs. office was not ^{& entirely} correct. However this was a matter of procedure only and could have been solved with a little effort on the part of the defendant.

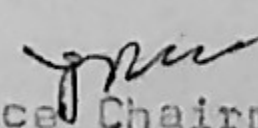
31 / 7. We however could not lose sight of a very important fact that the plaintiff after he was posted to the Jodhpur Division and after he had represented against that posting did not join duties at any place. His posting order till it was changed from Jodhpur to Moradabad was for the Jodhpur Division and in the normal course after representing he should have reported to the Jodhpur Division and joined duties as a Commercial Clerk there instead he chose to remain absent till a decision was available to him on his request for allotment to Moradabad Division. This unauthorised absence on his part was an act which caused all the problems for him. He had acted unwisely and had violated the rules and this unauthorised absence attracted the provisions of the Note under para 732 R-I of the Indian Railway Establishment Code. The

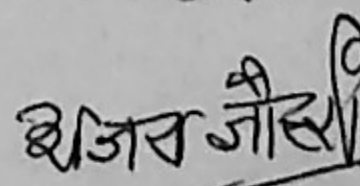
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plaintiff had no right to ignore the posting order given to him and he should have joined the post on the Jodhpur Division. We therefore do not think that the Moradabad Division in any case acted without jurisdiction in treating him as having deemed to have resigned his appointment and accordingly his ceasing to be in railway employ. What the DRM Moradabad could have done was to exercise a power available to him to reappoint the plaintiff as was suggested by the HQrs. office? But this was not done and we have already commented on this in the para supra.

8. Under the circumstances we feel that the applicant has a case and we therefore direct that reappointment should be offered to the plaintiff by the DRM Moradabad under the powers available to him as suggested by the Northern Railway HQrs. office. This may be done not later than one month from the receipt of this order. We, however, under the circumstances of the case, and on the fact that the plaintiff chose not to join at Jodhpur after having requested for a change of his allotment, cannot ~~be~~ ^{be} ~~considered~~ ^{to} ~~as~~ being in the employ of the railway after having unauthorisedly remained absent for more than 3 months. He will therefore not be entitled to ~~any~~ ^{any} benefits as claimed by him. The petition (Suit No. 442/83) is disposed of accordingly. Parties will bear their own costs.


Vice Chairman


Member (A)

Dated the 8th July, 1987
RKM