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(12/3)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 340 of 1987

THIS THE 21st DAY OF AUGUST, 1996

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR. S. DAS GUPTA, MEMBER(A)

Hodal singh, s/o Bhopal Singh
Gangman, Gang No.76, Jaleswar Road
Permanent Way Inspector's office,
Hathras, Aligarh

Applicant

Versus

1. Divisional Railway Manager,
Northern Railway, Alld.
2. Divisional Engineer, Tundla
Agra
3. Permanent Way Inspctor-2
Tundla, Agra

Respondents

O R D E R(Reserved)

JUSTICE B.C.SAKSENA,V.C.

Through this O.A. the applicant seeks a direction to be issued to the respondents to pay him the salary for the period between 13.11.84 and 6.1.1986.

2. The brief facts as set out in the OA are that the applicant was a gangman of gang no.76 and the said gang was working under the Permenant Way Inspector, Hathras station. It is alleged that on 13.11.84, the name of the applicant was illegally struck off from the pay sheet alongwith two other persons although no order of suspension, termination or transfer was served upon him. The applicant ~~was~~ filed a writ petition before the High Court at Allahabad which was numbered as civil misc. writ petition no. 10136 of 1985. In the said writ petition the applicant sought the relief of mandamus commanding the respondents to take work from the applicant and to release his salary immediately.

3. It is stated that a counter affidavit was filed in which the stand of the respondents therein was that the services of the applicant were not terminated and he had

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been transferred from Jalesar road to Mitawali. A division bench of the High court disposed of the writ petition on 10.12.85 with the following observation:

" the petitioner's services have not been terminated instead the counter indicates that his services have been transferred from Jaleshar to Mitawali station where the petitioner should go and join.

The petition is accordingly dismissed."

4. The applicant's case is that for the first time from the order he came to know about his transfer and he accordingly joined his services on 7.1.86. He thereafter preferred a representation claiming that he be paid salary for the entire period. The applicant has also indicated in the OA that a charge sheet was issued to him. The same however ^{is} not subject matter of the present O.A.

5. In the counter affidavit the respondents have indicated that ^{as per} the transfer order dated 5.11.84 passed by the AEN Tundla the applicant was spared from duty on 6.11.84. It is further averred that the transfer order was duly served on the applicant by one Mohan Lal Trolley man and when the petitioner refused to accept the same the P.W.I. himself served the same on the applicant. The copies of the order sparing the applicant and endorsement regarding service of the order of transfer has been filed as Annexure 1 to the counter. It has been indicated that since the applicant has been transferred his name was struck off from the rolls. The applicant remained absent from 13.11.84 to 6.1.86. He reported for duty only on 9.1.86. It has further been pleaded that the applicants have deliberately violated joining without any justification. Consequently under the principle of no work no pay the applicant will not be entitled to any payment for the period in question.

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6. The applicant in his rejoinder affidavit has denied service of transfer order dated 5.11.84. In the rejoinder averments have been made with regard to the inquiry proceedings consequent to the charge sheet. Since the same is not the subject matter of the present OA it is not necessary to indicate the said averments.

7. The first and foremost question that falls for our consideration is whether this OA would not be barred by resjudicata. As noted hereinabove, for the same relief the writ petition had been filed by the applicant and it was dismissed. The applicant could have very well pleaded before the Hon'ble High Court that he was never served with the copy of the transfer order and he cannot be faulted or deprived of the salary for the period he was made to sit idle. The applicant does not seem to have filed any rejoinder in the writ petition to contest the stand of the respondents therein. The said decision clearly debars the applicant from filing this OA for the same cause of action and relief on the principles of resjudicata.

8. Even on merits in view of the specific averments made in the counter supported by documents that the transfer order was brought to the notice of the applicant and efforts of its being served upon him were made but the applicant refused to accept the transfer order cannot be disbelieved.

9. The O.A. accordingly lacks merit and is dismissed.

Cost easy.

MEMBER(A),

Dated: August 21st 1996

Uv/

Patil

VICE CHAIRMAN