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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 134 of 1988 (6)

Prabhu Singh

..... Petitioner

Versus

Union of India & Ors

..... Respondents

CORAM:

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

HON'BLE MR. V.K. SETH, MEMBER(A)

(By Hon. Mr. Justice R.K. Varma, V.C.)

By this petition filed Under Section 19 of the Administrative Tribunals Act 1985, the petitioner has challenged the action of the respondents in not allowing him to join duty after he reported for duty on being medically fit for duty on 6.8.87 and has prayed for a direction to the respondents to treat the petitioner on duty from 19.6.87 with continuity of service till the date the petitioner is allowed to join duty and a further direction to give the petitioner salary and allowances from 19.6.87 till he is allowed to join duty.

2. The petitioner is an Electrical Khalasi posted at Dadri, Northern Railway under the control of the respondents. The petitioner joined at Dadri in pursuance of this Tribunals order dated 28.8.86 passed in Registration No. 26-T of 1986. The respondents had posted the petitioner as M.B. Cleaner at Rura by order dated 11.1.82 but this Tribunal vide its aforesaid order directed the respondents to post the petitioner as Khalasi somewhere and if the post of Khalasi is vacant at Rura, the order dated 11.1.82 should be amended suitably and incase no post of Khalasi is vacant and no vacancy can be

created there for ^{now} accommodating the petitioner, he should be given a fresh posting as Khalasi somewhere in the Allahabad Division positively within two months from the date of said order dated 28.8.86.

3. The grievance of the petitioner is that due to litigation the respondents had harassing attitude towards the petitioner and as such the respondents no.2 & 3 namely the Senior Traction Supdt, N.Railway, Dadri and the Electrical Chargeman, Dadri did not allow the petitioner to work as Khalasi but were taking the work of Chaukidar from the petitioner at Dadri. The petitioner had made a grievance in this behalf by making a representation to the annoyance ^{who are} to the respondents no.2 & 3, started harassing and threatening the petitioner.

4. The petitioner averred that he any how did the job at Dadri upto June 1987 but due to the work of Chaukidar which he was required to do, he became ill on 4.6.87 and was on Earned leave upto 18.6.87 but on account of his house at Chunar getting damaged badly he went to Chunar to get his house repaired on earned leave, but he fell ill and attended Chunar railway hospital and as such could not join his duty from 25.6.87 to 5.8.87 due to illness and he reported for duty on 6.8.87 with medical fitness certificate. The petitioner submitted the medical certificate alongwith an application dated 6.8.87 (Annexure-1 to the petition) when he reported for duty in the office at Dadri and in his application he prayed for sanction of earned leave to him for the period 19.6.87 to 28.6.87 and to grant sick leave on half average pay for the period of illness from 25.6.87 to 5.8.87. It is the grievance of the petitioner that he was not allowed to join duty by respondent no 2 & 3 when he reported for duty on 6.8.87.

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5. The petitioner made a complaint against respondents no. 2 & 3 to respondent no.1 vide (Annexure-2 to the petition) dated 24.6.87. The petitioner made another complaint to respondent no.1 stating that he has been presenting himself for duty but he is not allowed to do the job nor his attendance is entered and the respondents no.2 & 3 told him that he will not be paid salary.

6. In response to the complaints of the petitioner to the Divisional Railway Manager, the respondent no.1, the petitioner received a letter dated 27.8.87 (Annexure-1 to the petition) from Shri R.N. Sharma, Enquiry Officer and Chief Traction Supdt. Aligarh, wherein the petitioner was informed that his complaint shall be enquired into as per the direction of Divisional Electrical Engineer, Northern Railway, Aligarh. It was also stated in the said letter (Annexure-4) that as per information received from respondent no.2 the petitioner has absented himself after 6.8.87.

7. The petitioner ^{reported} before the Enquiry officer Sri R.N. Sharma on 10.9.87 and requested for appointment of another Enquiry officer to conduct the enquiry, since the petitioner alleged that Sri R.N. Sharma was biased against him. The petitioner also made a complaint to respondent no.1 in this behalf vide (Annexure-5 to the petition) alleging that the Enquiry officer Sri R.N. Sharma, was compelling the witnesses to depose against him and requested for appointment of any other Enquiry officer. The petitioner did not receive any reply and the respondents no.2 & 3 according to the petitioner ^{did} ~~were~~ not allowing him to join duty and by giving him duty as Chaukidar at night they wanted to kill him. It is strange

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that since then no attention was paid to resolve ^{the} controversy nor any action was taken to see that the petitioner is put on job. The petitioner's services have been continued and no work has been taken from him on the job of Khalasi. The inaction on the part of the respondents for all these years since 6.8.87 only discloses a callous approach to the problem which should have been resolved timely.

8. According to the Counter reply filed by the respondents the petitioner was sanctioned earned leave from 4.6.87 to 18.6.87 and thereafter he was on unauthorised absence from 19.6.87 to 24.6.87 and after that he was on the railway sickness from 25.6.87 to 5.8.87 and that the petitioner joined at Dadri on 6.8.87 and worked for one day and thereafter remained unauthorisedly absent right from 7.8.87 till date. Apparently, the respondents have not granted leave to the petitioner for the period of his absence from 19.6.87 to 24.6.87 although in his letter dated 6.8.87 (Annexure-1) addressed to respondent no.2 presented by him ^{the petitioner} made the prayer for treating the period from 19.6.87 to 24.6.87 as ^{on} ^{the} earned leave.

9. Having heard learned counsel for the parties and having considered the facts as laid on the record, it appears that the respondents have not been taking the petitioner on duty in the job of Electrical Khalasi and have been insisting the petitioner to work as Chaukidar. If that be the position, the action of respondents would be contrary to the direction made by this Tribunal in Registration no. 26-T of 1986 dated 28.8.86 whereby the respondents were specifically directed to post the petitioner as Khalasi. Posting the petitioner as Cleaner or Chaukidar amounts ^{to} non-compliance of the order of this Tribunal and the petitioner cannot be penalised

for not working as Chaukidar. The respondent no.1 has also not taken care to enquire into the genuineness of the complaint made by the petitioner. The Enquiry officer appointed for enquiry into the complaint of the petitioner is not supposed to go outside the scope of enquiry namely ascertainment of the genuineness of the complaint made by the petitioner. Incase the complaint of the petitioner is found to be genuine and it is found that the petitioner is being compelled to work as Chaukidar instead of being given a job of Khalasi, the petitioner cannot be penalised for refusing to work as Chaukidar. The petitioner certainly continues to be in service in the absence of any order of termination.

10. In view of the discussion aforesaid and in view of the fact that the petitioner continues in service since no order of termination has been passed against him, it is directed that the petitioner shall be posted as a Khalasi and not as a Chaukidar without delay. It is further directed that the respondent no.1 shall depute an independent officer not belonging to the Electrical wing to enquire into the genuineness of the complaint made by the petitioner and the fact whether the petitioner was being compelled to work as a Chaukidar instead of being given the work of Khalasi. If the result of enquiry reveals that he was not allowed to join as a Khalasi, he shall be entitled to arrears of salary and allowances since the date of his reporting on duty i.e. 6.8.87 till he is taken on duty.

11. The petition is accordingly allowed with no order as to costs.

W.L.
Member(A)

R.K. Varma
Vice Chairman

Dated: Sept: 8th, 1993

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