

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 9th day of July 1996.

Original application No. 569 of 1988.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

Ramu Prasad, S/o Shri Bhagwati Prasad,
a/a 40 years, R/o Khallabad, Post
Bharwari, P.S. Kokhraj, District Allahabad,
at present posted under Signal Inspector,
Northern Railway, Roberstsganj.

..... Applicant.

C/A Sri P.K. Kashyep

Versus

1. Union of India through the General
Manager, Northern Railway, Baroda
House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway, Allahabad.
3. The Senior Divisional Signal and Tele-
communication Engineer, Northern Railway,
Allahabad.
4. The Chief Signal Inspector (D) I, Northern
Railway, Allahabad.
5. The Signal Inspector, Northern Railway,
Robertsganj.

..... Respondents.

C/R Sri Govind Saran

O R D E R

Hon'ble Mr. D.S. Baweja, AM

The applicant was posted as a Thela Chalak
under Signal Inspector Robertsganj, Northern Railway,
Allahabad Division. He had fallen sick from 16.3.88

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to 21.3.88 and was under Railway doctor's treatment. After being made fit for resuming duties, he appeared before the Chief Signal Inspector on 21.3.88 and requested him to allow him to perform his duties. He directed the applicant to Signal Inspector Robertganj on the same day through letter dated 21.3.88 (Annexure -I). On 22.3.88 the applicant reported to the Signal Inspector Robertganj and handed over the letter of Chief Signal Inspector. However after reading the letter, the Signal Inspector returned the letter to the applicant and refused to take him on duty. Instead of taking on duty, the applicant was served with a minor penalty chargesheet issued by Chief Signal Inspector. He submitted a reply to the same on 28.3.88 (Annexure-3). *The applicant has further submitted that* Since he was not being taken on duty he again wrote to Chief Signal Inspector and also met him personally but there was no response. The applicant has been prevented from performing his duty and denied the salary inspite of the fact that the services of the applicant have been neither terminated nor suspended. Therefore the action of the respondents is against the guarantee provided under Article 21 of the Constitution.

3. The respondents in the counter-reply have strongly contested the averments of the applicant. It is submitted that the applicant never reported to join duty to respondent No. 5 i.e. Signal Inspector Robertganj and absented himself from duty. He did not produce the letter written by respondent No. 4 to respondent No. 5 directing to allow the applicant to join duty. Since he was absent he was not eligible for the salary.

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(2/12/89)

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The chargesheet dated 21.3.88 was issued for the matter relating to taking away of multi-meter costing Rs. 800/- and not returning the same.

4. Heard the learned counsel for the parties. The applicant has filed rejoinder affidavit in which the averments made in the application have been reiterated. We have carefully gone through the material placed on the record.

5. During the pendency of the application, the applicant had been taken on duty on 22.12.89. Vide order dated 13.12.94, the respondents were directed to file a supplementary affidavit to indicate if any action had been taken either for regularising the period of absence of the applicant from 16.3.88 to 21.12.89 or whether any departmental proceedings had been initiated against the applicant for the unauthorised absence. However inspite of repeated opportunities having been given, no supplementary affidavit has been filed by the respondents.

6. From the rival contentions, the short question to be determined is whether the applicant did not join duty on his own and absented himself or he was not allowed to join duty. It is admitted fact that on 21.3.88 on being declared fit for joining duty, he reported to Chief Signal Inspector who in turn directed him to report to Signal Inspector Robertganj with a letter to this effect. The applicant contends that he reported to Signal Inspector on 22.3.88 while the respondents refute this and submit that he never reported

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there with the letter of the Chief Signal Inspector. On consideration of the material placed on the record, we are unable to persuade ourselves to accept this version of the respondents. The applicant has been issued a chargesheet dated 21.3.96 which was received by him 22.3.96. If he was absent, he would not have been served with chargesheet in person. It is obvious that he was present in the office of Signal Inspector Robertganj when the chargesheet was received by him. Further the applicant has submitted his defence to the chargesheet on 28.3.88 in person in the office and acknowledgement of the same obtained. This fact has not been denied in the counter. Therefore the submission of the respondents that the applicant never reached the office of Signal Inspector Robertganj is not borne by the facts. Further the contention that the applicant was never inclined to join duty is not comprehensible. If it was so, then the applicant would not have accepted the chargesheet on 22.3.88 and could have easily avoided being absent.

The applicant has made representation to Chief Signal Inspector (Annexure-4) which is acknowledged by the office of Signal Inspector Robertganj. It is averred that it never reached the respondent No. 4. This is not tenable as it is incumbent on the office to forward the same. The receipt of the representation dated 6.4.88 at Annexure-5 to Senior Divisional Signal and Telecommunication Engineer is denied by the ^{respondent's} receipts. The applicant has placed on the record the representations made even after filing of the O.A. on 4.5.88 at annexure-I

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and II which are said to have been acknowledged by the respondents as per the endorsements. However there is no reply to any of the representation.

The applicant has been taken on duty on 22.12.89 by the respondents on their own. The respondents were directed to file supplementary affidavit as brought out above in para 5 but the same was not filed. We are therefore not able to know the considerations which weighed with the respondents to allow the applicant to join duty and as to how the period from 21.3.88 to 22.12.89 has been treated.

The applicant has filed this application on 4.5.88 after about 1 1/2 month after being refused to join duty. If the applicant was not inclined to join duty as alleged by the respondents he would have not sought the legal remedy for wrong being done to him in a short period.

Further if the applicant was unauthorisedly absent, their certainly action should have been taken against him or at least a letter issued to him to join duty. However there is not even a whisper on this aspect in the counter affidavit.

From the averments made in the counter affidavit, we are inclined to form the opinion that respondents have not come out with true facts of the case. However ~~The~~ facts and circumstances of the case, as have emerged above, persuade us to accept the version of the applicant

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that he has been denied joining duty after he reported back after sickness with the proper fit or sick certificate. The applicant therefore deserves to be treated on duty for the entire period from 22.3.88 to 21.12.89.

7. In the light of the above discussions, the application is allowed with the directions that the entire period from 22.3.88 to 21.12.89 will be treated on duty and he will be paid full pay and allowances as due. The compliance will be done within four months from the date of judgement. No order as to costs.

Shyam
Member - A

P. Sundar
Member - J

Arvind.