

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No 897 of 1988

Allahabad this the 29th day of November 1995

Hon'ble Dr. R.K. Saxena, Member (J)
Hon'ble Mr. D.S. Baweja, Member (A)

Taulan S/o Late Ganpat, Gangman, Gang no.42, under
P.W.I. Central Railway Shankergarh, Distt. Allahabad.

APPLICANT

By Advocate Shri Anand Kumar

Versus

1. Union of India through the General Manager,
Central Railway Bombay V.T.
2. Divisional Railway Manager, Central Railway,
Jabalpur (MP)
3. Assistant Engineer, Central Railway, Satna(MP.)
4. Permanent Way Inspector, Central Railway, Shankergarh
District Allahabad.

RESPONDENTS.

By Advocate Shri G.P. Agrawal

O R D E R

By Hon'ble Dr. R.K. Saxena, Member (J)

This application has been filed with
relief of direction to the respondents to allow duty
to the applicant after his medical examination; and
to treat the period of absence on duty. The payment
of salary and privileges due to him are also claimed
as consequential benefits.

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2. The brief facts of the case are that the applicant was appointed as gangman on 23.1.1963 under the P.W.I. Shankergarh. He worked as gangman till 15.9.1984 when he suffered from vertigo and mental disorder. He was taken to the Railway Health Unit, Naini on 16.9.1984, and was then referred to the Railway Hospital Allahabad. He was treated there till 20.10.1984 but was discharged subsequently. The contention of the applicant is that he was discharged because his condition had deteriorated. He was, however, given by his son in the treatment of a private doctor-Dr. G.K. Mallik. The treatment started from 29.10.1984 and continued till 18.6.1986. The P.W.I. was informed about the illness of the applicant on 10.11.1984 through telegram. The son of the applicant also attempted to get the applicant admitted in Central Railway Hospital Jabalpur but in vain. The son of the applicant had, however, been informing the authorities concerned from time to time and were finally informed by sending medical certificate dated 18.6.1986-annexure-A.

3. It is averred that for the treatment of the applicant, money was required, and, therefore, his son contacted the time-keeper of the office of P.W.I. in May 1985 for the payment of salary and

bonus which had become due. The time-keeper advised to take his father to the office for putting thumb-impression on papers in token of payment. The applicant was then taken to the office of P.W.I. where the time-keeper obtained his thumb-impressions on blank papers. The payment was ensured to be remitted at the residential address of the applicant.

4. The applicant fully recovered from his illness in 1988. The fitness certificate dated 07.5.1988 was obtained and D.R.M. Jabalpur was approached for joining of duty by the applicant. Similarly, other authorities were also approached. The time-keeper and the P.W.I. paid no heed. The application was, on the other hand, torn into pieces. The applicant then served a notice u/s 80 C.P.C. on the respondents but with no results. The applicant was not allowed to join duties, hence this O.A. is filed with the above mentioned reliefs.

5. The respondents resisted the O.A. on several grounds. It is averred that the O.A. is not maintainable and is time barred. It is contended that the applicant was removed from service on account of his long unauthorised absence, and the said order of removal was acknowledged by the applicant on 31.8.1985. The departmental remedy of appeal was not availed of by the applicant. It is pointed out that this O.A. has been filed in 1988 after the gap of three years.

6. The respondents disputed the illness of the applicant. It is, however, averred that the applicant on the ground of his sickness, had urged for the employment,

of his son in his place. He also prayed for payment of settlement dues vide application dated 18.4.1987. It was then brought to his notice that an amount of Rs.1307-90 was outstanding in his name and he should deposit the said amount for getting final settlement. The amount was deposited by the applicant on 25.9.87. He was then finally paid an amount of Rs.9522-00 on 05.1.1988 as settlement dues.

7. On these grounds, the respondents pleaded that the applicant was not entitled to any relief.

8. The applicant filed rejoinder and contended that the order of removal was passed when the applicant was suffering from mental disorder. It is also pleaded that the respondents had misused the blank papers on which the thumb-impressions of the applicant were obtained. He explains that when he was suffering from mental disorder, there was no occasion to avail of the departmental remedy such as appeal against order of removal passed in an inquiry. On other points, the facts, as are disclosed in the O.A., are restated.

9. We have heard the learned counsel for the parties and have perused the record.

10. The question for determination is

whether the applicant is entitled to be allowed join duty. There is no dispute that the applicant did not discharge his duties since 16.9.84 when he was referred to Railway Health Unit, Naini for treatment. He was then referred to Railway Hospital, Allahabad. He was treated there till 20.10.1984 and was discharged thereafter. In this way, the applicant can be treated on sick-leave from 16.9.1984 to 20.10.1984. The contention of the applicant is that he had been under treatment of private doctor but this fact has been denied by the respondents.

11. The applicant referred to annexure-B dated 02.3.88 in which it is written that on 4.1.85 he attended Railway Health Unit, Manikpur, and the doctor had referred him to Railway Hospital, Jabalpur on 5.1.85 but Jabalpur doctor had refused to admit him. Since this averment has been disputed by the respondents, it should have been established by some cogent evidence. The applicant referred to the medical certificate annexure-A of Dr. G.K. Mallik but there is no document to show that the annexure-A dated 18.6.86 was ever sent to the concerned authority for sanction of leave. The first application sent to D.R.M. for joining the duties was on 2.3.88. It is thus revealed that the applicant did not send any application for leave from 16.9.84 or 20.9.84 till 2.3.88. The absence of such a long period cannot be ignored by any employer.

12. The respondents have come with the case that since the applicant remained absent without any intimation, the proceedings were started against him;

and he was removed from service, It further contended that the applicant had acknowledged the order on 31.8.1985. The rejoinder of the applicant impliedly supports this fact. What he disputes now is that the action could not be taken because he was suffering from mental disorder. He does not specifically deny the order of removal. Thus it is transpired that the applicant was removed from service on account of his long absence and without any application or information.

13. The respondents also plead that the order of removal which was passed in 1985 and was acknowledged by the applicant on 31.8.1985, cannot be challenged indirectly and that too after the gap of three years. The contention of the respondents is not without substance. The removal order cannot be challenged with relief of allowing the applicant join duties. Assuming for the sake of argument that the removal order is challengeable in this form, it cannot be allowed after three years.

14. The other ground for rejection of the plea of the applicant is that he had sought final settlement of his dues; and such a settlement is sought only either after retirement or removal from service. The plea of the applicant that papers for settlement were got prepared on the blank papers on which the applicant had put his thumb impressions, can also be not accepted because before final settlement he was required to deposit an amount of Rs.1307-90 which was deposited by him on 25.9.87.

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15. The result of the consideration of all these facts and circumstances is that there is no merit in the case of the applicant. The O.A . is, therefore, rejected. No order as to cost.

(D.S. Baweja)
Member (A)

(Dr. R.K. Saxena)
Member (J)

/M.M./

typed and confirmed.
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