

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: Allahabad, This The 17th Day of April, 2000

Coram: Hon'ble Mr. S. Dayal, Member (A.)

Hon'ble Mr. Rafiquddin, Member (J.)

Original Application No. 666 of 1992

Ashok Kumar Pandey

S/O Sri Deena Nath Pandey

R/O Village and Post Office Rajpur, Varanasi (U.P.)

... Applicant

Counsel for the applicant- Sri P.K. Kashyap

Versus

1. The Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Engineer, Northern Railway,
Allahabad.
3. Assistant Divisional Engineer, Northern Railway,
Mirzapur.

... Respondents

Counsel for the respondent- Sri R.K. Ojha

Sri A.C. Mishra

ORDER

(Open Court)

(By Hon'ble Mr. Rafiquddin, Member (J.))

The applicant has sought quashing of his removal order dated 26.2.1988 communicated ~~vide~~ ^Rvide letter No. WF/11/1991 dated 5.1.1992 and direction to the respondent to allow him duty and arrange the payment of his wages from 5.6.1986 to date.

2. The facts of the case as disclosed in the

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OA are that the applicant was employed as casual khalasi at Chunar under the supervision of FWI and has been working as casual working as casual labour for last 9 years. The applicant was medically examined and given the CPC scale of Gangman on 26.6.1984.

3. Further case of the applicant is that on 13.6.1986 he was prevented from performing his duty by FWI Mirzapur who also told him orally that the applicant has been transferred to Aligarh from Mirzapur. According to the applicant no written transfer order was given to him. The applicant was also orally told by the Assistant Divisional Engineer, Mirzapur respondent No. 3 that if the applicant got his wife operated under family planning, his transfer order would be cancelled. The applicant had therefore got his wife co-operated for family planning on 30.6.1986 in Northern Railway Hospital, Allahabad. Even after the operation, the transfer order of the applicant was not cancelled and also not permitted to join duty at Mirzapur. The applicant claims that after the operation, the condition of his wife became worst and therefore he went to his village for treatment of his wife. The applicant could not attend his duty at Aligarh as there was nobody to look after his wife at his village. The applicant was also fell ill at his village and remained under the treatment of government hospital and applicant used to send this information to the respondent. After his wife was declared fit by the medical officer, the applicant came to his office to join his duty and gave his

2

written application on 18.8.1987 to the respondent No. 3. Along with sick and fitness certificate on 21.3.1988. Thereafter the applicant sent applications with the request for permission to join the duty to the respondents on various dates namely on 18.8.1987, 2.5.1988, 16.8.1988, 30.9.1988, 4.3.1989, 18.11.1990, and 7.5.1991 respectively. A copy whereof has been annexed as annexure A-5 to A-11. However, respondent neither sent any reply to the applicant nor allowed him duty hence this application. Thereafter he received an information from Divisional Engineer, Northern Railway, Allahabad on 5.1.1992 that the services of the applicant had been terminated on 25.2.1988 because of unauthorised absence far more than 3 months.

4. The applicant has assailed the order on the ground that the impugned order has been passed in violation of provision of article 14 and 16 of constitution of India.

5. The respondent in their counter reply have stated that the transfer of the applicant from Mirzapur to Aligarh was cancelled due to tubectomy operation of his wife. { ^{vide} ~~the~~ letter dated 30.7.1986 ~~and~~ the applicant was required to join in the office of FWI Mirzapur but the applicant did not join his duty. It is also claimed that the applicant was given opportunity ~~since~~ twice to resume his duties but he failed to resume his duties at Mirzapur. Consequently, the applicant having remained absent from duty without any sanctioned leave or prior notice or information, his services were terminated by order dated 26.2.1988 in accordance with law.

6. None has appeared for the applicant we have

decided the OA on the basis of the material on the record and arguments of learned Counsel for the respondent.

7. We have perused the letter dated 5.1.1992 intimating the applicant that his services ~~have stand~~ ^{stood} R dismissed for 3 months unauthorised absence from duty. The order dated 26.2.1988 has not been filed by the parties for our perusal. However, the perusal of this letter clearly indicates that the applicant has been dismissed from his services without taking ~~any~~ recourse to the procedure prescribed for the purpose of dismissal of a railway servant. The order obviously is not of termination simpliciter but it is a dismissal for misconduct. The order is therefore illegal arbitrary and void and deserves to be ~~quashed~~ ^{quashed}. We therefore find force in the OA which is liable to be allowed. The OA is allowed the order dated 26.2.1988 issued by respondent No. 3 and communicated by the DPM Northern Railway Allahabad vide letter dated 5.1.1992 ^{Rn} is quashed. Respondent ~~is~~ ^{are} directed to re-engage the applicant with all consequential benefits within 3 months from the date of communication of this order.

8. No order as to costs.

Rajendra
J.M.

A.M.
A.M.

T.Joshi