

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 9th day of May, 2001.

Original Application No.292 of 1993.

CORAM :-

Hon'ble Mr. Justice RRK Trivedi, V.C.

Hon'ble Maj Gen KK Srivastava, A.M.

Makhan Singh S/o Late Sri Mohan Lal,
Working as Chokidar under P.W.I.(TRT),
Northern Railway, Aligarh.
(SriAnand Kumar, Advocate)

. Applicant

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Personnel Officer, Northern Railway,
D.R.M. Office, Allahabad.
3. P.W.I. (TRT), Northern Railway, Aligarh.
(Sri Prashant Mathur, Advocate)

. Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. RRK Trivedi, V.C.

By this OA the applicant has prayed for a direction to the respondents to pay back wages from the date of termination of services i.e. 22-6-1990 till date 17-9-1992 when he was taken back on duty with 14% interest. Applicant has also prayed for a direction to the respondents to regularise him in the service. The learned counsel has, however, submitted that this relief has already been granted and the applicant has been regularised.

2. Before coming to file this OA, the applicant filed OA No.679/1990. The relief claimed in the OA



was as under :-

(a) The Hon'ble Tribunal may kindly quash the verbal termination order dt.22.6.90 by the respondent no.4 and pass orders to reinstate him in service with full back wages including House rent allowances.

(b) The Hon'ble Tribunal may kindly direct the respondents to absorb the applicant in alternatives medical category posts in which he is found fit by Railway Medical Officer after issue of fresh Medical Memo to conduct medical examination as a railway employee in relaxed standard and in lower medical category; and or in case he is found unfit in all medical categories, he should be retired on medical ground from service giving all benefits of pension, service gratuity, leave encashment, compassionate appointment of his ward, and retrenchment compensation treating him a temporary/permanent Rly. Servant.

(c) Any other writ, order or instructions which the Hon'ble Court may deem fit and proper, may kindly be issued also in the circumstances of the case.

(d) Award the cost of the application.

3. The Tribunal allowed the OA by the order dated 10-9-1991. The operative part of the order contained in paras 3 and 4 of the order reads as under :-

"3. Accordingly, this application is allowed and the termination order if any is quashed. The applicant shall be treated to be in continuous service. In case he has been found to be medically unfit for Category-B, he still can be given an alternate post as permissible under relevant Railway Rules, in view of the fact that it was not a case of first appointment as has been stated. The respondents in order to cover its shortcoming it is still open for them to examine him again and in case he fails he may be given the alternate appointment.

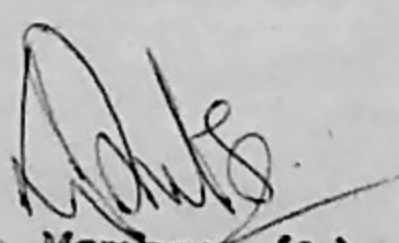
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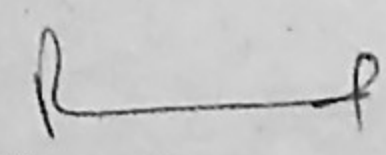
4. With the above directions the respondents are directed to reinstate him in service forthwith and to proceed thereafter according to law. No order as to costs."

4. From the perusal of the relief claimed in the OA No.679/1990 and the relief granted it is clear that though relief with regard to back wages was specific claim, but it was not allowed. The applicant was directed to be reinstated on the post with continuity in service. The effect was that absence on account of the illegal order of termination would not cause break in service but if the Tribunal did not grant any relief with regard to back wages, it is not open to the applicant to claim the same by filing a second OA.

5. Learned counsel for the applicant placed reliance in the judgement of Hon'ble ^{High} ~~Supreme~~ Court dated 18-1-2001 in Civil Misc. Writ Petition No.47105/1999- Union of India Vs. Jai Prakash and anr. From the perusal of the judgement it is clear that the claim has arisen out of the suit and the claim of back wages contested on the ground of Order II, Rule 2. In the present case facts and circumstances are different. The applicant specifically claimed ~~that~~ the relief with regard to back wages which has been denied. Hence, the judgement relied upon is not applicable. The claim of the applicant is barred by Res Judicata. The application is accordingly devoid of merit and is dismissed. ^{Accordingly} ~~Accordingly~~. There shall be no order as to costs.

Dube/


Member (A)


Vice Chairman