

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALIAHABAD.

Allahabad this the 3rd day of April 1997.

Contempt of Court application No. 1233 of 1998.

In

Original application No. 1799 of 1992.

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

Nakharu, S/o Sri Kanhiya working as
office Khalasi in the office of the
Divisional Engineer, Northern Railway,
Chunar, R/o Railway Quarter No. 159-B,
Railway Colony, Chunar, Dist. Mirzapur.

..... Applicant.

C/A Sri S.S. Sharma

Versus

1. Sri Hitesh Khanna, Sr. Divisional
Engineer, Northern Railway, Divisional
Railway Manager's office, Allahabad.

2. Sri Hari Mohan Gupta, Assistant
Engineer, Northern Rly., Chunar.

..... Respondents.

C/R Sri A.V. Srivastava

O R D E R

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

This contempt application was heard along-
with O.A. 1799 of 1992. However the judgement is being
pronounced separately.

2. The Contempt application has been filed
alleging non implementation of interim order 15.1.93
in O.A. No. 1799 of 1992 as per which it was directed
to maintain status quo if the order of transfer has not

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been given effect to." The applicant submits that he was not allowed to join duty on 29.1.93 when reported for duty after his sickness under the authorised medical attendant. No salary had been also paid to the applicant. This interim stay order dated 15.1.93 was extended further with additional direction that the salary of the applicant should be payable as per rules. The opposite parties have not allowed the applicant to join at Chunnar as office ^{Khalasi} Clerk. The opposite parties have therefore knowingly disobeyed the order of the Tribunal and thus committed contempt of the Court.

3. The opposite parties have filed counter reply through Sh. Hitesh Khanna, Senior Divisional Engineer. It is submitted that the applicant refused to receive the order dated 4.8.92, and left the office and reported sick from Mughalsarai. The transfer order was pasted at the residence of the applicant on 30.9.92, and it was also advised that he had been spared for transfer as per the order dated 4.8.92. In view of this the order dated 4.8.92 had been given effect before the interim stay order was passed on 15.1.93. There is thus no wilful or deliberate violation of the interim stay order dated 15.1.93. Further since the applicant had not joined the place of posting and was absent no payment of the salary could be done as per the extant rules.

4. The applicant has filed the rejoinder reply controverting the averments of the respondents and denying any pasting of the transfer order ~~on~~

at his residence. on 30.9.92 (1)

5. We have heard the counsel for the parties. We have also given careful thought to the material on record and the arguments advanced during the hearing.

6. The respondents have asserted that the applicant was informed of being relieved for carrying out transfer order by pasting the order at his residence on 30.9.92 as he refused to accept the order. The applicant while denying this has admitted the transfer order was pasted at his house on 25.11.92, when he came to know of this order. He has further submitted that no pass was sent for the journey for joining at the place of posting. He has also averred that he represented against his transfer and also filed O.A. 1799/92 on 22.12.92 challenging the transfer order. Since the respondents have not produced any documentary evidence in support of their contention that the order was pasted at his house on 30.9.92, ^{are inclined to} we accept the version of the applicant.

He was aware of his transfer on 25.11.92 vide order dated 4.8.92 and having been treated as relieved. If he was keen to carry out the order, then he would have approached the office for issue of the pass if not received by him alongwith the release order. He did not do so and instead challenged the transfer by filing O.A. 1799/92.

From para 4. (v) of O.A., it is noted that medical certificate was sent to Divisional Engineer on 29.9.92. It is not averred as to the period for which certificate was valid. The applicant has also not made any averment to the fact that he had informed his office about his sickness thereafter and submitted the medical certificate.

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