

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Original Application No.1160 of 1999

Dated: This the 25th day of May, 2004

HON'BLE MRS. MEERA CHHIBBER, JM

Arjun Nath Wali a/a 57 years son of
Late Raj Nath Wali, Presently posted
as Assistant Production Engineer(Jig & Toola)
Diesel Locomotive Works, NR, Varanasi.

...Applicant.

By Advocate: S/Shri Sudhir Agarwal
S.K.Mishra

Versus

1. Union of India through Secretary Ministry of Railways, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. The General Manager/General Manager(P) Diesel Locomotive Works, Varanasi.
4. The Chief Mechanical Engineer, Diesel Locomotive Works, Varanasi.
5. Dy. Chief Personnel Officer (G) Diesel Locomotive Works, Varanasi.
6. The Director General, Research Design and Standard Organisation(Ministry of Railways) Lucknow.
7. Sri O.P.Gupta, General Manager, Diesel Locomotive Works, Varanasi.

...Respondents.

By Advocate: Shri Prashant Mathur.

O R D E R

By Hon'ble Mrs. Meera Chhibber, JM

By this O.A. applicant has challenged the order dated 30.7.1999 by which he was sent on deputation and posted in R.D.S.O., Lucknow from D.L.W., Varanasi.

2. It is submitted by the applicant ~~had~~ that he had requested the authorities that the offer of ^{by R} deputation given ~~to~~ him earlier may be treated as cancelled as in the changed circumstances, deputation to Lucknow does not suit him. It is submitted by the applicant that he applied for leave from 19.8.1999 to 02.09.1999, which was duly sanctioned on 21.8.1999 (page-42). He was not well from 09.6.1999 to 20.9.1999 and had given representation on 16.8.1999 itself followed by another request dated 04.9.1999 (pg.46), requesting the authorities to cancel the order by explaining his difficulties ~~f~~ in joining at Lucknow. Ultimately Railway Board vide his telegram dated 24.9.1999 cancelled the order dated 30.7.1999. But in the mean-time issued an order on 12.10.1999 whereby it was shown as if applicant had been transferred to RDSO, Lucknow and had rejoined at DLW, Varanasi second time whereas according to the applicant he had never joined at Lucknow at all and once his transfer orders were cancelled the intervening period ought to have been regularised, therefore, he amended the O.A. to seek the relief as follows:-

(2-a) to quash the order dated 12.10.99 Annexure A 3 to Comp. II issued by respondent no.5 on behalf of respondent no.3 in so far as it treats the applicant having relieved from D.L.W.Varanasi on 18.8.99 treating him as joining back at D.L.W.Varanasi in pursuance of the Railway Board's order dated 24.9.99 and also to the extent it directs wide notes No. II for handing over and taking over charge, as no such proceeding took place earlier and thus the applicant was never relieved from the post of Assistant Production Engineer (A&T) D.L.W.Varanasi.

(2-b) to issue a mandamus declaring the applicant as continuously holding the post of Asstt. production Engineer(J&T)D.L.W. Varanasi and for the period he was not allowed to work by the respondents no. 3,4,5 to treat him as in continuous service for all attending benefits. "

3. Respondents, on the other hand, have submitted that since a transfer order has itself been cancelled he has joined back at D.L.W., Varanasi and has also retired w.e.f. 31.1.2002, the O.A. has become infructuous. therefore, the same may be dismissed. They have further explained that the period from 19.8.1999 to 02.9.1999 has been treated as L.A.P. as desired by applicant himself(page 41 & 42), from 02.9.1999 to 05.9.1999 period has been treated as on duty, 06.9.1999 to 20.9.1999 applicant has been given commuted leave as he had availed leave on medical ground. The only period left out is from 21.9.1999 to 12.10.1999 for which they have already advised ^{him} to move an application so that the period may be regularised but since applicant did not give any application, said period has been treated as absent. Counsel for the respondents has further said that as far as his retiral benefits are concerned applicant would be paid his pension on the basis of last pay drawn by him and this has not at all affected his pensionary benefits.

4. I have heard both the counsel and perused the pleadings as well. It is seen that initially applicant had challenged his deputation and transfer to Lucknow , which order itself has been treated as cancelled by the respondents vide their wireless message dated 24.9.1999. It is relevant to quote here the message of wrileless, which for ready reference reads as under:-

" MINISTRY OF RAILWAYS (REAILAY BOARD) HAVE WITH THE APPROVAL OF THE PRESIDENT,DECIDED



THAT THE ORDERS TRANSFERRING SHRI,
A.N.WALI/ASSISTANT PRODUCTION ENGINEER/
DLW/VARANASI TO RDSO ISSUED VIDE WIRE-
LESS OF EVEN NO DATED 30.7.99 SHOULD BE
TREATED AS CANCELLED(.) ."

RAILWAYS(.) ."

Perusal of this wireless message shows that main order dated 30.7.99 itself is treated as cancelled and once the order of deputation and posting itself has been treated as cancelled naturally, applicant becomes entitled for the period to be regularised automatically. As stated above, all the other periods have/ been regularised by the respondents already and the only period left out is from 21.9.1999 to 12.10.1999. If respondents had issued an order for modification of the earlier order or insupersession of earlier order to post the applicant back at D.L.W., Varanasi probably the stand taken by the respondents would have been correct. But in the present facts since respondents have themselves cancelled the order of transfer itself it would mean as if the said order was never passed, therefore, I am of the considered view that respondents should regularise the period of applicant from 21.9.1999 to 12.10.1999 also by treating the same as leave due to the applicant as from 12.10.1999 applicant was already posted at D.L.W.Varanasi. Since this is the only small period, which was left out.

5. The O.A. is disposed off with a direction to the respondents to regularise the period of 21.9.1999 to 12.10.1999 in favour of applicant by treating the same as leave due to applicant.

6. There will be no order as to costs.


Member-J