

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 29th DAY OF December, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)

Hon'ble Mr. D.C.Lakha, Member (A)

Original Application No.583 of 2006

(U/s 19, Administrative Tribunal Act, 1985)

Vishwa Bandhu Chopra,
S/o Late Shri Indrajit Chopra,
R/o P.O. Bidhuna,
District: Auraiya,
U.P. - 206 243.

..... ***Applicant***

Present for Applicant : Shri S. Mandhyan.

Versus

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Divisional Railway Manager, Northern Railway, Lucknow.

..... ***Respondents***

***Present for Respondents : Shri A. Dwivedi, Advocate
Shri R. Ranjan***

O R D E R

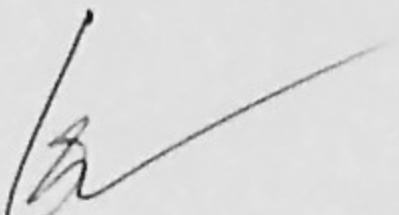
(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The applicant initially appointed in the Work Shop, Electrical Engineer, Lucknow was transferred to Carriage and Wagon Work Shop Alambagh and from Alambagh to

Diesel Shed Mughalsarai in April 1966 and thereafter, he was transferred from Mughalsarai to Diesel Shed Allahabad in November 1996, from where also he was transferred to Diesel Shed, Kanpur in July 1967. While, according to the applicant he was governed by Pension Rules, according to the respondents he was Ex. RPF optee. According to the applicant himself, he had some medical problems and could not attend the office after January 1968. He was paid salary till December 1967. According to the applicant he was sending the regular representations in respect of his claims due from the respondents and he sought intervention of the Hon'ble Minister in 2005 in this regard. Simultaneously he had approached Railway Authorities as well. He had also filed a representation of Chairman, Railway Board dated 14.1.2006 explaining his entire history and requested for release of all the dues payable to him.

2. In a communication addressed to Shri Manish Kumar such officer on special duty to Minister of State, Home Ministry the DRM Northern Railway Lucknow vide Annexure A-15 or letter dated 13.3.2006 informed as under:-

विषय : विश्व बन्धु चौपड़ा के समापक भुगतान के सम्बन्ध में ।



आपके द्वारा श्री विश्व बन्धु चोपड़ा का प्रत्यावेदन प्राप्त हुआ। प्रत्यावेदन में दिये गये तथ्यों की जांच की गयी श्री विश्व बन्धु चोपड़ा के द्वारा प्रत्यावेदन में दिये गये तथ्यों के आधार पर यह प्रतीत होता है कि इनकी प्रथम नियुक्ति नई दल्ली में हुई थी। दिल्ली से श्री चोपड़ा का स्थानान्तरण कैरिज एण्ड वैगन कारखाना आलमबाग हुआ, जो लखनऊ मण्डल के अधिकार क्षेत्र में नहीं है। इसके उपरान्त श्री चोपड़ा को दिनांक 15-04-66 के कार्यालय आदेश के द्वारा मुख्य कारखाना प्रबन्धक, आलमबाग, लखनऊ से डीजल शेड मुगलसराय भेजा गया। दिनांक 09-11-66 यानी की लगभग 6 माह बाद श्री चोपड़ा को पुनः मुगलसराय से डीजल शेड इलाहाबाद स्थानान्तरित कर दिया गया। दिनांक 29-07-67 के कार्यालय आदेश के द्वारा श्री चोपड़ा को डीजल शेड कानपुर स्थानान्तरित कर दिया गया।

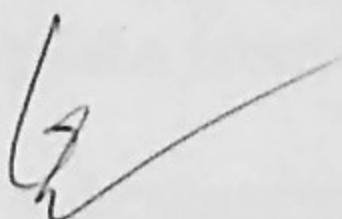
अभिलेखों के आधार पर (पी0एफ0न0-105535/10708 एवं टिकट नं. 0,26-ए०सी० वरिष्ठ लेखा अधिकारी आलमबाग 1964-65) से स्पष्ट है कि विश्व बन्धु चोपड़ा लखनऊ मण्डल में कार्यरत नहीं थे। ऐसी स्थिति में श्री चोपड़ा का लखनऊ मण्डल से समापक चुकौता भुगतान करना सम्भव नहीं है।

आपका ध्यान इस ओर आकृष्ट कराना चॉहूगा कि विश्व बन्धु चोपड़ा के प्रत्यावेदन के अनुसार यह दिनांक 2-2-68 से सेवा निवृति की तिथि तक डियूटी पर नहीं थे।

उपरोक्त परिस्थिति में जबकि विश्व बन्धु चोपड़ा लखनऊ मण्डल में कार्य नहीं किया है उनका समापक भुगतान लखनऊ मण्डल से करना सम्भव नहीं है। श्री चोपड़ा के प्रत्यावेदन से ऐसा प्रतीत होता है कि यह मुख्य कारखाना प्रबन्धक, सवारी एवं माल डिब्बा कारखाना, आलमबाग लखनऊ में कार्यरत थे। श्री चोपड़ा का प्रत्यावेदन मुख्य कारखाना प्रबन्धक, सवारी एवं माल डिब्बा कारखाना, आलमबाग लखनऊ को उचित कार्यवाही हेतु भेजा जा रहा है।

3. The applicant has challenged the above decision of the Railways and prayed for quashing of the said letter dated 13.3.2006 and also for a direction in the nature of mandamus commanding the respondents to give entire retrial dues as well as fixation of pension to the applicant.

4. The respondents 1 & 2 filed a separate counter while respondents no.3 filed his counter. In both the counter the contention has been one and the same stating that the applicant is an Ex. RPF optee which is evident from the statement of amount of bonus paid to him. Besides that the old records are not traceable have also mentioned in the counter by the respondents no.1 & 2. The respondents 1 & 2 further contended that the applicant's claim is totally untenable because he remained absent from duty after January 1968 and claims for the benefit of pension etc where as as per the Extant Rules the maximum period that could be allowed for leave of any kind under proper sanction is only 5 years.

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5. The applicant has filed his rejoinder wherein he has reiterated his earlier contentions in the OA and insisted that he had been a pension optee only which he had given in writing which can easily be verified by the records of the respondents. There is however no serious attempt by the respondents to resolve the issue. The applicant further contended that even if there is a restriction over the total period of leave, the respondents were to take a decision in the matter of sanction of leave and the issue cannot be left in ledge due to the illegal attitude of the respondents.

6. With the consent of the parties written submissions were permitted and judgement was reserved. The applicant in his written submission surprisingly brought out various sequences of events has elaborately explained his OA and mentioned that as per his date of birth his retirement was to take place w.e.f. 31.8.1981. He had also contended that no order what so ever had been passed regarding termination of his services after his last extension of leave 15.4.1968. He has also narrated the correspondence between various authorities that took place from March 2005. Then respondents in the written submission has emphasized that the claim of the

applicant as on date is made after 37 long years and his period of absence from 3.2.1968 onwards. As such he is not entitled to any payment of salary or pension.

7. Pleadings as well as the written submissions were carefully considered. Be it pension or leave, the applicant has waken up after decades and absence from 1966 cannot but be termed as abandonment of service

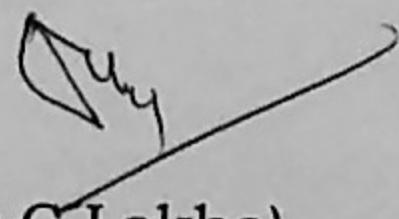
The Apex Court in the case of **C. Jacob v. Director of Geology and Mining, (2008) 10 SCC 115**, has held as under:-

12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for the purpose of pension. That will be a travesty of justice.

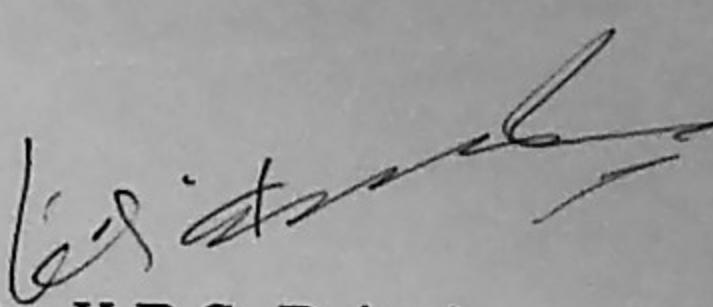
13. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches the court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there ¹²⁴is also no application of mind as to the extent of financial burden, as a result of a routine order for back wages.

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8. The above decision applies in all the four squares in this case. The applicant does not deserve any relief claimed for by him. The O.A. is therefore, dismissed. No costs.



(D.C. Lakha)
Member (A)



(Dr. K.B.S. Rajan)
(Member (J))

Shashi