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T/Graind/12
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

YD

O.A. No. 746/88
XXXXXX

DATE OF DECISION 20-09-1991

Shri Govind Tapu Petitioner

Mr. P.H. Pathak Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)

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The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

Shri Govind Tapu,
C/o.Dabhi Pan House,
Railway Station Road,
Ranavav-2,
District Junagadh.

: Applicant

(Advocate: Mr.P.H.Pathak)

Versus

1. Union of India & Ors.

Notice to be served

through:

The Executive Engineer(Const.)
Near Ervin Hospital,
Jamnagar.

2. The Permanent Way Inspector(C),

Kothi Compound,
Rajkot.

: Respondents

(Advocate: Mr.B.R.Kyada)

Mr.P.H.Pathak, learned advocate for the
applicant.

None present for the respondents.

J U D G M E N T

O.A./746/88

Date: 20-09-1991

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member

1. This application under Section 19 of the Administrative Tribunals Act, 1985 is filed by the Gangmate against the railways praying that the action on the part of the respondents railways of not allowing the applicant to resume his duties and/or not giving requisite memo for medical examination of the applicant amounts to termination of the services of the applicant and is therefore illegal, invalid and inoperative in law and the same be quashed and set aside and the respondents be directed to consider the applicant in service w.e.f. 19.5.1988 and to pay his salaries and to allow the applicant to perform his duties under the respondent No.2, and to reinstate the applicant on his original post with full backwages and any other relief with the Tribunal deems fit and proper.

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2. It is the case of the applicant as pleaded in the application that he is serving as a Gangmate at present under the respondent No. 2, PWI whose office is now shifted to Rajkot and the respondent No. 1 is the Executive Engineer (C) at Jamnagar under whom he is working. It is alleged that the applicant was suffering from stomach pain in the month of April, 1986 and so he applied for a leave for one month which was granted by the respondents. It is alleged that during this period of one month the stomach pain increased and the applicant was hospitalised. The applicant sent a copy of the sick certificate dated 1.5.1986 from the Private Doctor along with his application to the respondent No. 2 through his co-workers but the applicant is not having any receipt of sending the said report to the Respondent No. 2. The applicant has produced the copy of the said certificate of the private doctor dated 1.5.1986 at Annexure A/3. The applicant was declared medically fit by the same private doctor under whose treatment at Porbandar the applicant was during that period. The said private doctor has given the certificate Annexure A/4 on 19.5.1988 that the applicant had recovered from his long illness and he was found physically fit on examination to resume his duties from today i.e. 19.5.1988. The applicant after the receipt of this certificate Annexure A/4 from the private doctor reported for his duty to the respondents No. 1 and 2 and requested them as he was now fit he may kindly be allowed to resume his duties. It is alleged by the applicant that the respondent No. 2 verbally directed him that he should obtain ^{ness} fit certificate from the Medical Officer of the Railway, that the applicant reported to the Medical Officer with the sick and

fit certificate of private medical officer but the railway Medical Officer directed the applicant that first he should report to the respondent No.2 under whom he was working and the respondent No.2 should give a memo for medical check-up to the applicant and on receipt of the said memo only, the railway medical officer would be able to examine the applicant and would give an appropriate certificate. According to the applicant, it was not possible for the railway medical officer to examine him without the recommendation of the respondents No.1 and 2. It is alleged by the applicant that again he reported to respondents No.1 and 2 and explained the situation which had taken place with the Medical Officer, ~~Panbandar~~, but they refused to give any recommendation memo for the medical examination to the applicant and also did not allow the applicant to ^{resume} resume duties after his fitness w.e.f. 19.5.1988. The applicant, thereafter, gave a registered notice through his learned advocate to the respondents on 23.5.1988, the copy of which is produced at Annexure A/5 wherein the applicant has narrated his grievances. It is alleged that the respondents did not even care to reply the said notice served on them. The case of the applicant is that the respondents have acted in arbitrary manner and in flagrant violation of the provisions of law in as much as non ^{allowing} allowing the applicant to perform his duties or to give particular memo for the medical check up was totally illegal and invalid and the same be quashed. It is alleged that the action on the part of the respondents refusing to give the memo for medical check up and/or not allowing the applicant to perform his duties amounts to verbally terminating the services of the applicant without holding any inquiry or giving any opportunity of being heard and also is in violation of mandatory provisions of Industrial Disputes Act, 1947 and is liable to be quashed and ^{be} set aside.

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3. The respondents have filed reply contending that this Tribunal has no jurisdiction to entertain the application as the applicant was engaged purely as a casual labour and the application is also time barred. It is contended further by the respondents that the staff ~~was~~ inducted on emergency basis of conversion of Viramgam-Okha-Porbandar (BG) was phased for repatriation back to their parent division ~~also~~ and the applicant was/sought to be repatriated ~~was~~ back to Bhavnagar division like many others and the applicant has been relieved on 30.6.1986 vide memorandum dated 28th April, 1986 for reporting to his parent department i.e. Divisional Railway Manager, Bhavnagar, due to reduction in scope of work, ~~the~~ copy of which is produced at Annexure R-1. The applicant in his rejoinder has denied that he was relieved to repatriate to Bhavnagar division as contended in the reply. It is further contended by the respondents that the applicant refused to take the ~~order~~ Annexure R/1 and remained ~~on~~ silent and now he is seeking relief/fictitious ground after long period. It is contended that the applicant has not made any representation before filing this present application.

4. The respondents have asserted that the applicant was granted leave from 2.4.1986 to 30.4.1986 but his further leave was regretted by the competent authority vide telegram dated 6.5.1986, the copy of which is produced at Annexure R/2 with the reply. The applicant in his rejoinder has contended that there was no communication regarding refusing leave to him. The respondents have denied that the applicant had extended leave on the ground of sickness as alleged but according to the respondents, the applicant had asked for extension of leave for domestic works and the copy of this application is produced at Annexure R/3. The applicant in his rejoinder has denied that he had not sought extension of leave on the ground of sickness. It is contended by the

respondents that the sick and fit certificate purported to have been issued by the private doctor to the applicant is a bogus certificate. The applicant in his rejoinder has contended that the statement of the respondents that the sick and fitness certificate issued by the private doctor is bogus certificates amount to defamation of the concerned doctor. The applicant in his rejoinder has reiterated that he was sick and the said certificate was given by the Medical officer and denied that it was managed one or it was an after thought to get advantage of his own cause. The respondents denied that the services of the applicant are terminated. According to the respondents, the applicant has been repatriated back to his parent division i.e. Bhavnagar division from where his services were taken on loan. It is contended that if leave of absence is required on medical certificate, a request for such leave should be made to the competent authority within 48 hours of falling ill, and except in circumstances referred in G.R.-3 it should be subsequently supported by sick and fit certificate from the competent railway doctor as per SR 2/7 of Rules for the grant of leave on medical certificate to non-gazetted railway servant, copy of which is produced at Annexure R-IV. It is contended that the applicant has suppressed material fact and not disclosed the real facts and hence the application should be dismissed.

5. In the instant case, the main attack of the applicant is that though he had given notice to the respondents Annexure A/5 though his advocate on 23.5.1988 incorporating the facts that the applicant who had been granted leave for one month from 2.4.1986 had suffered stomach pain also during that time and was hospitalised and that the applicant had informed ~~about~~ to respondents about the sickness and inability to attend the duties and when he was declared

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fit by his medical officer from 19.5.1988, he reported for duty but the respondents did not allow him to resume duties. It is also the case of the applicant in the notice Annexure A/5 that the respondents ~~had~~ verbally directed the applicant to obtain medical fitness certificate from the Railway doctor but the Railway doctor told him that he would examine the applicant only if the applicant got a memo for medical check up from the respondents. It is also mentioned in the notice that thereafter the applicant again reported to the respondents for resuming duties or for memo requiring him for medical check up but the respondents refused to either take the applicant or to give him the said memo and hence the applicant was forced to remain ~~idle~~ ^{idle} from 19.5.1988 and that the respondents were asked to allow the applicant to resume duties. The respondents have taken many contentions in the reply as narrated above which are controverted by the applicant in rejoinder. However the fact remains that the respondents have not given any hearing to the applicant in response to his notice Annexure A/5 nor his grievances in the said notice are replied by the respondents. Nowhere in the reply, it is mentioned that the respondents had given any reply to the notice of the applicant Annexure A/5. In the peculiar circumstances of this case, we are of the view that the respondents ought to have given a reply to the applicant on his notice. As such a reply was not given and an application is filed before this Tribunal, we are of the view that the applicant should be heard in this case and proper reply as per rules given to the applicant thereafter.

6. The respondents have taken contentions that this Tribunal has no jurisdiction to entertain this application because the applicant was a casual labourer, working as a Gangmate under the respondent No. 2 at Porbandar. This

contention has no merits because the case of the applicant fails under Section 14 of the Administrative Tribunals Act, 1985 and hence this Tribunal has jurisdiction as this pertains to the service matter of the applicant. So far as the question of limitation is concerned, also there is no substance in the contention of the respondents that this application is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 because the applicant reported to the respondents on 19.5.1988 but the respondents refused to take him on duty and also refused to give requisite memo for medical examination of the applicant which would certainly amount to the termination of service. The applicant has filed this application within one year from the said date of 19.5.1988. Hence, it is within the limitation.

7. In the result, we pass the following order:

The respondents after giving an opportunity to the applicant of being heard on the point about his grievances mentioned in notice Annexure A/5 dated 23.5.1988 served on the respondents are directed to dispose of the same in accordance with the rules applicable to the applicant within three months after the receipt of this order under intimation to the applicant. The application is allowed to the above extent. No orders as to costs.

R.C. Bhatt
(R.C. Bhatt)
Member (J)

M. M. Singh
(M.M. Singh) 28/9/91
Member (A)