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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 201/89

~~Ex-Acc No:~~

DATE OF DECISION 04/10/1993

Shri Veera Dhandha **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)**

CORAM :

The Hon'ble Mr. N. B. Patel : Vice Chairman

The Hon'ble Mr. V. Radhakrishnan : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

Shri Veera Dhandha,
Retwa Pado, Mafatiya Plot
Near Highway Road, Opp. Octroi
Naka, Dwarka, Dist. Jamnagar.

(Advocate: Mr. P. H. Pathak)

Versus

1. Union of India
Through:
The General Manager,
Western Railway, Churchgate,
Bombay.
2. Executive Engineer (C)
Western Railway, Kothi
Compound, Rajkot.
3. The Divisional Railway Manager,
Western Railway, Kothi
Compound, Rajkot.

(Advocate: Mr. B. R. Kyada)

ORAL JUDGMENT

IN

O.A. 201/87

Date: 4/10/1993

Per: Hon'ble Mr. N. B. Patel

: Vice Chairman

By filing the present application, the applicant has prayed for a direction that the action of the respondents in terminating his services w.e.f. 18.5.85 and in not allowing him to resume his duties w.e.f. 1.4.88 is illegal and in-effective in law. On that basis, the applicant has prayed for a direction to the respondents to reinstate him in service with continuity and with full backwages. He has also asked for award of interest at the rate of 18% per annum on the amount of wages that the respondents may be directed to pay him.

2. To set out the facts leading to the filing of the present application, they are as follows. The applicant was employed as a casual labourer in the Western Railways in August, 1974 and there is no dispute about the fact that he worked as such till about 17.5.1985. On 18.5.1985 and thereabout, the applicant was orally told that his services were terminated. It may be noted that the applicant had acquired temporary status w.e.f. 1.1.1984 or thereabout. Since, according to the applicant, he was not allowed to work from 18.5.1985, he filed a writ petition in the High Court of Gujarat, being Special Civil Application No.3552/85. In that writ petition, he claimed a relief quashing and setting aside the termination of his employment and other consequential reliefs. That writ petition came to be transferred to this Tribunal and was numbered as TA No.434/86. In the reply filed by the respondents to the said T.A., it was clearly stated that the averment that the services of the applicant and the service of his five other co-applicants in that case were terminated, was not correct. It was stated that their services were not terminated, but they were transferred from Construction work at Dwarka to Open Line at Rajkot. The present applicant and his five other co-applicants in the said T.A.434/86 sought permission of the Tribunal on 10.3.1988 for withdrawal of that case stating that in view of the statement made by the respondents in their reply, the petitioners do not want to prosecute the application. In short, relying upon the statement made by the respondents in their reply

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in TA/434/86, the petitioners of the said case including the present applicant withdrew the said TA with the permission of the Tribunal. The case of the present applicant then is that, after this order dated 10.3.1988, which was based on the statement made by the respondents themselves, he had approached the Executive Engineer, Rajkot (Respondent No.2) with a copy of the Tribunal's order dated 10.3.1988 on 1.4.1988 and requested the Respondent No.2 to allow him to join service as the same was not terminated. The case of the applicant further is that, the Respondent No.2 put off the question of allowing him to resume service under some pretext, or the other. The applicant has stated that he was told by the Respondent No.2 to report ^{to} him again after about 15 days, saying that, in the meantime, he would obtain the necessary instructions/orders from his superiors. The applicant further states that even after the expiry of the period of 15 days, he had approached the Respondent No.2 i.e. the Executive Engineer (Construction), Rajkot seven to eight times but he was not allowed to resume work. The applicant's version is that he was then asked to report at the Jamnagar office on 15.8.1988 and, accordingly, he had reported at the said office on the said day and he was made to wait in the office till 6.00 p.m. and yet he was not allowed to resume duty. Proceeding further, the applicant has stated that thereafter he served the Respondent No.2 with a notice dated 16.11.1988 through his advocate calling upon the Respondent No.2 to allow him to resume duty within 15 days of the receipt of the notice by him but the Respondent No.2 has not complied with the notice nor even replied to the notice. He has then approached the Tribunal by filing the present application on 9.1.1989.

3. The respondents have filed reply to the present application stating that there was no termination of the employment of the applicant on or about 18.5.1985 but the applicant and others were transferred to Rajkot in May, 1985 or thereabout. It is also not disputed that a clear statement was made by the respondents in their reply to TA/434/86 that the employment of the applicant and his co-applicants in T.A./434/86 was not terminated but they were only transferred to Rajkot. In other words, the stand of the respondents is that, though the applicant and others were transferred to Rajkot, they had not reported at Rajkot. It means that respondents had shown willingness to allow the applicant, and the other persons with him, to resume duty at Rajkot if they ~~had~~ reported there. The respondents have contended that, though the other persons who were co-applicants with the present applicant in TA/434/86, had reported to the Respondent No.2 for resuming duties, the present applicant had not done so and it was, therefore, that he was out of job. It is stated that it should be held that, in the circumstances, the present applicant had himself abandoned his employment and was, therefore, not entitled to claim any relief from the Tribunal. It is very important to note that, though in his application, the applicant has clearly stated that he had required the Respondent No.2 first by his letter dated 15.9.1988 and then by an Advocate's notice dated 16.11.1988 to allow him to resume duties, it is nowhere stated in the reply that

the respondent No.2 had not received the letter dated 15.9.1988 and or the notice dated 16.11.1988. In other words, what the respondents have tried to suggest that is if the applicant had reported for duty after withdrawal of TA/434/86, he would have been allowed to resume duty but the applicant himself had not done so.

4. In the circumstances, the factual question which arises for determination in the case is whether, after withdrawing TA/434/86 on 10.3.1988, the applicant had reported to the Respondent No.2 for resuming duty as stated by the applicant or whether he had never reported to the Respondent No.2 for resuming duty as stated by the respondents.

5. The above question has to be examined in the context of some admitted facts and some disputed facts, if such disputed facts are found to ~~be~~ be well-established. The admitted factual position is that the applicant was ~~admittedly~~ working as a casual labourer right from 1974, and immediately after May, 1985, he had approached the High Court by Special Civil Application No.3552/85 on finding that he was not allowed to work at Dwarka. This Special Civil Application was transferred to this Tribunal and it was withdrawn by the applicant only after the respondents made a clear statement in their reply that the services of the applicant and his colleagues were not terminated but they were only transferred to Rajkot so that the question of their absorption may be considered. It is stated that, this applicant, who was thus admittedly working from 1974 and had approached the High Court to get resumption of duty, with and in connection \angle whom the respondents themselves

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had said that his services were not terminated, had not cared to report to the Respondent No.2 after 10.3.1988 when the T.A. was withdrawn with the permission of the Tribunal. We find it extremely difficult, if not impossible, to believe that the applicant who had worked for a long time as a casual labourer and who had started and waged a long litigation would not report for resuming duty in the face of a clear impression created by the respondents that he will be allowed to resume duty on his reporting at Rajkot. Mr.Kyada submitted that, if the other five persons who were co-applicants ~~of~~ the present applicant in TA/434/86, had reported for resuming duty and were actually allowed to resume duty, it would be highly improbable to believe that the applicant would not be allowed to resume duty especially when it is not alleged that the respondent No.2 had any extraneous reasons to discriminate against the present applicant. When we put both these arguments in balance, we find that the argument advanced on behalf of the applicant, that it would be highly improbable to believe that he would not report for duty and thereby give up a valuable right which had accrued to him as a result of his long service and the litigation which ^{he} ~~had~~ instituted, far outweighs the arguments advanced by Mr.Kyada. It is of course not known to us as to why the applicant was not allowed to resume duty when his five other ~~were~~ colleagues ~~were~~ allowed to do so. We only say that it is highly improbable, in the circumstances of the case, that the applicant would not have reported for duty at Rajkot.

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6. The above finding which we reach on the basis of preponderance of probabilities is strengthened by documentary evidence in this case. The applicant has produced at Annexure-A2 a copy of a letter, said to have been sent by him to the respondent No.2, on 15.9.1988. In this letter, the applicant has mentioned that after, withdrawing TA 434/86 on the basis of the statement of the respondents made in that case, he had reported to the Respondent No.2 with a copy of the order of the Tribunal and had given that copy to the Respondent No.2 whereupon the Respondent No.2 had told him to see him again after 15 days and that thereafter also he had gone to the Respondent No.2 seven to eight times but the Respondent No.2 was not allowing him to resume duty and was only putting off the matter. In his letter, the applicant ~~had~~ mentioned that he was last asked to report at Jamnagar office on 15.8.1988 where also he was made to wait in the office till 6.00 p.m. The applicant has, in the end, urged the Respondent No.2 to intimate to him the date and the place where he should report for resuming work. Mr.Kyada stated that there was no proof adduced by the applicant to show that he ^{had} addressed any such letter to the Respondent No.2. As already stated by us earlier, we do not find even a remote hint in the reply of the respondents to the effect that Respondent No.2 had not received any such letter. In the reply and in his arguments, Mr.Kyada only emphasised the fact that it would be highly improbable to believe that the applicant would be called to report at Jamnagar office on 15.8.1988(a national holiday) and to wait there

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till 6.00 p.m. It is quite likely that the applicant may have committed a mistake in mentioning the date 15.8.1988 in his letter dated 15.9.88 (Annexure A-2). The fact is that the applicant is not put to the proof of having despatched such a letter to the Respondent No.2 or the Respondent No.2 having received it from the applicant.

7. The other document which the applicant has produced is more important inasmuch as it is said to be the copy of the notice dated 16.11.1988 sent by the applicant to the Respondent No.2 through an advocate. It may be emphasised that, even in respect of this document, it is nowhere stated in the reply that it was not received by the Respondent No.2. Mr. Pathak stated that if the respondents had denied receipt of the notice by the Respondent No.2, he would have produced the postal acknowledgement slip showing that the Respondent No.2 had received the notice. He stated that he ~~is~~ still has the acknowledgment slip with him, but Mr. Kyada opposed the production of any such document at this stage.

8. In the aforesaid notice, the applicant has, of course, not referred to his earlier letter dated 15.9.1988 but he has stated that he had made several written representations to allow him to resume duty. By this notice, the applicant has called upon the Respondent No.2 to issue an order allowing him to join duty within 15 days of the receipt of the notice by the Respondent No.2. There is no dispute that the Respondent No.2 had sent any reply to this notice. Since we find that the Respondent No.2 had received this notice, the omission on the part of the Respondent No.2 to give any reply to it makes acceptable the version of the applicant, stated in

the notice, that he had made repeated efforts to get back to his service.

9. We, therefore, find that it is highly improbable to believe that the applicant had not reported for duty after the withdrawal of the T.A./434/86. Mr.Kyada also referred to the fact that the applicant has moved this application at a very late stage as a factor falsifying the version of the applicant that he had reported for resuming duty. We do not find that there is any ~~such~~ such delay on the part of the applicant to as to disentitle him~~get~~ to relief at our hands or as to discard his version that he had reported for duty after withdrawing TA No.434/86. The T.A. was withdrawn on 10.3.88. The applicant says that he had then reported on 1.4.1988 with a copy of the order and that he had written a letter to the Respondent No.2 on 15.9.1988 and had also served the Respondent No.2 with an advocate's notice dated 16.11.1988. For the reasons ~~given~~ already stated by us, we accept this version of the applicant.

10. It then follows that the applicant, who, according to the respondents is still not terminated, and, in respect of whom we find that he ~~has~~ not abandoned the job, ~~is~~ is entitled to a direction that he should be allowed to resume his service. Since the respondents have never taken up the stand that the applicant's services have been terminated and since we find that the version of his having abandoned the job is not true, there can be no question but of holding in favour of continuity of the applicant in service right from the inception of his employment in 1974.

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14. As regards back-wages, we find that the applicant cannot get any back-wages till the date of the withdrawal of his T.A.No.434/86 on 10.3.88 and the withdrawal of this application must imply relinquishment by him of his claim in regard to back-wages till that date. We may also not grant any back-wages to the applicant from 1.4.1988 when he states to have approached the Respondent No.2 nor from 15.9.1988 when he sent a letter; but there cannot be any doubt about the entitlement of the applicant to get back-wages for the period starting on the expiry of 15 days after 16.11.1988 i.e. from 1.12.1988. Taking an overall view of the circumstances of the case and bearing in mind the possibility that the applicant might have got some gainful employment in the intervening period, we hold that it will be in the interest of justice to award back-wages to the applicant at the rate of 50% from 1.12.1988. We may, of course, state that Mr. Pathak was opposed to our awarding backwages at the rate of 50% stating that it would be contrary to the decisions of the Supreme Court and also some decisions of this Tribunal. We, however, make it clear that we are awarding back-wages not at 100% but at 50%, bearing in mind the facts and circumstances of this case, so that this case will not create any precedent for any other case. We have particularly found that the applicant must have gainfully employed himself in the intervening period to the extent of earning atleast half the wages which he was earlier earning.

12. In the result, we allow the application to the extent of directing the respondents to permit the applicant to resume his employment within the period to be mentioned

herein below. The respondents are directed to give continuity of service to the applicant right from his employment at the inception and also to pay him 50% back-wages from 1.12.1988 onwards till his reinstatement. The respondents No.2 and 3 are directed to issue an intimation to the applicant stating the time and place when and where the applicant should report for duty. Such intimation may be sent by Registered A.D. post to the applicant at his address mentioned in the present original application and, if thought fit, to the applicant's advocate also latest within 7 days from the date of the receipt of a copy of this judgment. The applicant shall report for duty, within 7 days after the receipt of the intimation, at the time and place and to the authority to whom he may be informed to report. The payment of back-wages to the applicant shall be made within a period of three months from the date of the receipt of a copy of this judgment. No order as to costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice Chairman

a.a.b.