CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

RA No. 06/1999 in
O.A.NO. 399/91
~~**T.A.NO.**~~

DATE OF DECISION 25.3.1999

Man Union of India & Others — Petitioner

Mr. N.S.Shevde — Advocate for the Petitioner [s]

Versus

Mansukh Lavji — Respondent

-- — Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Ramakrishnan, Vice Chairman

The Hon'ble Mr. Laxman Jha, Member (J)

JUDGMENT

1, Whether Reporters of Local papers may be allowed to see the Judgment ?

2, To be referred to the Reporter or not ?

3, Whether their Lerdships wish to see the fair copy of the Judgment ?

4, Whether it needs to be circulated to other Benches of the Tribunal ?

1. Union of India
   Notice to be served through
   Divisional Railway Manager
   Western Railway
   Kothi Compound
   Rajkot.

2. Assistant Engineer
   Western Railway
   Kothi Compound
   Rajkot.

3. Inspector of Works
   Western Railway
   Hapa.

Applicants
(Original
Respondents)

Advocate- Mr. N.S.Shevde-

Versus

Mansukh Lavji
C/o. Magan Jivraj (Valveman)
Hapa Rly. Colony
Quarter No.A/B 175
Hapa, Post Dhuvav
Dist. Jamnagar.

Opponent
(Original
Applicant)

REVIEW ORDER

IN

R.A. NO. 06/1999
IN
O.A. NO. 399/91

Dated 25-3-1999.

Per Hon'ble Mr. V.Ramakrishnan, Vice Chairman:

M.A./192/99 may be allowed.

I have seen RA/06/1999 which seeks review of our orders in OA/399/91 dated 3.8.98. The Review Applicant seeks reconsideration of the award of back-wages for the period from 17.7.91 which is the date of the order of the Tribunal in the case of one Mahesh Devji till 13.11.91 which is the date on which the original applicant was taken back in service as a

Khalasi. The Railways now contend that the original applicant had not worked during the relevant period, he should not have been given back wages on the principle of no work no pay. It is the stand of the review applicant that original applicant had remained absent from 21st June 1991 to 13.11.1991 on his own. Mr. Pathak for the original applicant had contended that he had reported for duty but was not allowed to perform such duties as Khalasi by the Railways. After considering all aspects, the Tribunal came to the finding that the original applicant had reported for duty but was not allowed to work as a Khalasi and accordingly he was held entitled to back wages from 17.7.91 which is the date of the decision in the case of one Mahesh Devji who was similarly situated as the original applicant. The present contention raised by the review applicant had already been taken into account by the Tribunal while rendering its orders. There is therefore no error apparent on the face of the record. The Review Application is rejected.

As the O.A. was disposed of by a Bench consisting of myself and Hon'ble Mr. Laxman Jha who has since been transferred to Patna Bench, the file alongwith my views as expressed above may be forwarded to him for recording his ~~rev~~ views.

(V.Ramakrishnan)
Vice Chairman

pmr

Review Application No. 6/99

O R D E R

Hon'ble Mr. Lakshman Jha, Member(J) :-

The original applicant has been allowed back wages for the period as mentioned in the order passed in O.A., after due deliberation and consideration of the rival contentions of both the parties, there is no error apparent on the face of the record. The exercise of the judicial discretion in particular facts and circumstances, wrong application and interpretation of law/rules and violation of principle of natural justice seldom fall within the purview of "review" as provided under order 47 Rule 1 of CPC. The remedy, if any, lies some where else. Accordingly, I agree with the view as expressed by the learned Vice-Chairman Shri V.Ramakrishnan that the Review Application be rejected. Order accordingly.

7.5.99

(Lakshman Jha)
Member (Judicial)

MRS.

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 399/91 with MA/279/92
T.A.NO.

DATE OF DECISION 03.08.1998

Mansukh Lavji — **Petitioner**

Mr. P.H. Pathak — **Advocate for the Petitioner [s]**

Versus

Union of India and Others — **Respondent**

Mr. N.S. Shevde — **Advocate for the Respondent [s]**

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. Laxman Jha, Member (J)

Mansukh Lavji,
C/o. Magan Jivraj (Valveman)
Hapa Rly. Colony
Quarter No. A/B 175
Hapa, Post Dhuvav
Dist; Jamnagar. ... Applicant

(Advocate : Mr.P.H. Pathak)

VERSUS

1. Union of India
   Notice to be served through
   Divisional Railway Manager,
   Western Railway,
   Kothi Compound,
   Rajkot.

2. Asstt. Engineer,
   Western Railway,
   Kothi Compound,
   Rajkot.

3. Inspector of Works,
   Western Railway,
   Hapa, ... Respondents

(Advocate : Mr. N.S. Shevde)

ORAL ORDER

O.A./399/91
with
M.A./270/92

Dated: 03.08.98

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman

We have heard Mr. Pathak for the applicant and Mr. Shevde for the respondents.

2. The applicant was working as a Casual Labour Khalasi under the Railways for a number of years. On 22.4.91, an order was issued as at Annexure A-1 which approved him as Gangman which is in a higher scale than that of Khalasi. This order is in the nature of regularisation of the applicant as a Gangman. The applicant had challenged this order contending that he would prefer to continue as a Khalsi and that he should be

ised in July, 91 itself. He also submits that a lawyer's notice was also issued to the Railway Administration in respect of the present applicant stating that he also should be allowed to resume duty as Khalasi as he was similarly situated as Mahesh Devji. However, the Railway Administration did not permit him to resume duty till 13.11.91. He was allowed to join duty only on 13.11.91 pursuant to the interim direction of the Tribunal in this case dt. 24.10.91. He therefore contends that the applicant should be paid wages for the period of absence namely from 21.6.91. to 13.11.91 and that his date of regularisation should be according to his seniority in the cadre of Khalasi and not from 1997 as has been done now.

4. Mr. Shevde brings out that OA/202/91 was filed in May, 91 by various parties including the ~~first~~ present applicant. This Tribunal by its order dt. 31.5.91 restricted that OA only to the first applicant.. Mr.Shevde says that it was incumbent on the part of the applicant to have moved the Court in time instead of waiting till October, 91. He also brings out that the applicant has since been regularised and for the period for which backwages are claimed, he is not entitled to the same as he had not worked. Mr. Shevde however agrees that his regularisation as Khalasi can be done as per the rules and in accordance with his seniority at that level. He also says that he is not aware of the details of the case of Mahesh Devji and it would not be proper to hold that the applicant should be given the same ~~with~~ facility including the date of regularisation as given to

Mahesh Devji unless it can be established that he stands on an identical footing.

5. We have carefully considered the rival contentions. In view of the subsequent developmen s which have taken place, the main relief sought for ~~was~~ mainly that the applicant should not be made to work as a Gangman has, in fact, been granted, on the basis or the interim orders of the Tribunal and subsequently the orders of the Railway Administration in regularising him at that level. We note that after issue of the impugned order dt. 22.4.91 the applicant however continued to work as such till 21.6.91 and he was taken back on 13.11.91. The Tribunal's order in the case of Mahesh Devji was issued on 17.7.91 and we are informed by Mr. Pathak that he was taken back by the Railway Administration immedia ely thereafter, and was soon thereafter regularised as Khalasi. So far as the present applicant is concerned, he had also approached the Tribunal alongwith Mahesh Devji but was directed to file a separate OA which he did some four and a half months later. Meanwhile a lawyer's notice was also issued on 23.9.91 on his behalf demanding that he should be allowed to resume duty as Khalasi. There is some controversy regarding the question as to whether he actually reported for duty as Khalasi or not. Mr. Pathak says that he did report for duty but was not allowed to perform such duty as Khalasi by the Railways. The Railway Administration on the other hand submit that he remained away insisting that he would work only as Khalasi and not as a Gangman. From the reply statement, it is not clear as to whether he remained absent without reporting or whether he reported for

Contd..6/-

duty but refused to work as a Gangman. It is also seen from Para 2 of the reply to the MA that the applicant insisted to work as a Khalasi only and for reasons best known to him he did not resume duty as a Gangman. Mr. Pathak says that this would convey that the applicant wanted to work as a Khalasi but was prevented from doing so.

In view of this statement of the Railway Administration, we hold that he reported for duty but was not allowed to work as a Khalasi.

As a reference was made to the case of Mahesh Devji, we had called for the OA/202/91. We find from that OA that the same order ~~namely~~ dtd 22.4.91 was impugned and the Tribunal disposed of the same with certain directions dated 17.7.91. We may reproduce Para 4 and Para 6 of this order:-

Para 4:-

"We have heard Mr. P.H. Pathak, learned counsel for the applicant and Mr. B.R. Kyada, learned counsel for the respondents. Mr. Kyada sees no difficulty in allowing the applicant to remain in the rank from which he was promoted and that the order of promotion can be withdrawn for ever so far as the applicant is concerned."

Para 6:-

"The respondents are directed not to implement the order no.E/840 dated 22.4.91 of promotion of the applicant to the rank of Gangman so far as the applicant Shri Mahesh Devji figuring at Serial No.6 of the order is concerned. There are no order as to costs."

In view of the submissions of the Railway counsel in the case of Mahesh Devji who was similarly situated, the Rail-

Contd..7/-

ways in any case would have been aware that they should take back the applicant as Khalasi at least from the date of the orders of the Tribunal. In the facts and circumstances of the case, we hold that it is a fit case fo grant backwages to the applicant with effect from 17.7.91, which is the date of the order of the Tribunal in the case of Mahesh Devji. We direct accordingly.

6. So far as the claim of regularisation is concerned, we direct the Railway Administration to regulate the case of the applicant for regularisation in accordance with the relevant rules and instructions and as per his position in the relevant seniority list as Khalasi. For this purpose, they shall ignore the period of absence from June, 91 to 13.11.91 and this will not be treated as a break in service. They shall examine the question of regularisation of the applicant on the above lines and issue a Speaking Order within three months from the date of receipt of a copy of this order.

7. The above directions shall be complied with within three months from the date of receipt of a copy of the order. The OA is disposed of as above. No costs.

Sd/-
(Laxman Jha)
Member (J)

Sd/-
(V. Ramakrishnan)
Vice Chairman

hki/mb

तैयार करनेवाला
Prepared by: BKshah 13/8/98
मिलाने वाला
Compared by: RSC 13/8/98
True Copy

Tribunal
Ahmedabad Bench

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

RA No. 06/1999 in
O.A.NO. 399/91
~~T.A.NO.~~ xxxxxxxxx

DATE OF DECISION 25.3.1999

Man Union of India & Others Petitioner

Mr. N.S.Shevde Advocate for the Petitioner [s]

Versus

Mansukh Lavji Respondent

-- Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Ramakrishnan, Vice Chairman

The Hon'ble Mr. Laxman Jha, Member (J)

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(Original
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Advocate- Mr. N.S.Shevde-

Versus

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..3

Khalasi. The Railways now contend that the original applicant had not worked during the relevant period, he should not have been given back wages on the principle of no work no pay. It is the stand of the review applicant that original applicant had remained absent from 21st June 1991 to 13.11.1991 on his own. Mr. Pathak for the original applicant had contended that he had reported for duty but was not allowed to perform such duties as Khalasi by the Railways. After considering all aspects, the Tribunal came to the finding that the original applicant had reported for duty but was not allowed to work as a Khalasi and accordingly he was held entitled to back wages from 17.7.91 which is the date of the decision in the case of one Mahesh Devji who was similarly situated as the original applicant. The present contention raised by the review applicant had already been taken into account by the Tribunal while rendering its orders. There is therefore no error apparent on the face of the record. The Review Application is rejected.

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(V.Ramakrishnan)
Vice Chairman

pmr

Prepared by: 23-07-99
Compared by:
True Copy

अनुभाग अधिकारी (न्या.)
Section Officer (J)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अहमदाबाद न्यायपीठ,
Ahmedabad Bench

Review Application No. 6/99

O R D E R

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sd/-

(Lakshman Jha)
Member (Judicial)

MRS.

Prepared by: 23-07-99

Compared by:

Free Copy

Section Officer (J).
Central Administrative Tribunal
Ahmedabad Bench