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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 2 of 1991
~~RAXXX~~

DATE OF DECISION 28.2.1995

K.P. Udhwani Petitioner

Mr. V.M. Dhotare Advocate for the Petitioner(s)

Versus

Union of India and ors. Respondent

Mr. R.M. Vin Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. K. Ramamoorthy, Administrative Member

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 ?

K.P. Udhwani,
Station Master,
Koth Gangad,
Bhavnagar Division,
W. Railway

Applicant

(Advocate : Mr. V.M. Dhotare)

Versus

1. Union of India
Through :
The General Manager,
Western Railway,
Churchgate,
Bombay-20.

2. Divisional Rail Manager,
Bhavnagar Division,
Western Railway,
Bhavnagar para

Respondents

(Advocate : Mr. R.M. Vin)

Date : 28.2.1995

D.A. No.2 OF 1991

JUDGMENT

Per : Hon'ble Mr. N.B. Patel, Vice Chairman

By filing the present OA on 5.10.1990, the
applicant seeks the following relief :-

"It be declared that the impugned order Annexure-A8 of the respondent No.2 is void ab initio, in total disregard of the orders passed by Hon'ble High Court in L.P.A. No.36/82 and the orders passed by this Hon'ble Tribunal on 30.1.1990 and the same is based on extraneous consideration and after-thought and the respondents be directed and ordered to restore the applicant to his original post and to treat his past service as continuous service with all benefits of pay, promotion, pension etc. and to compute the entire services as a continuous service rendered and to be rendered by the applicant, treating the period of break as leave without pay, so that the applicant is not put to any loss to the benefit of provider

(2)

fund, gratuity, pension, etc., as per observations of Their Lordships".

2. This case has a chequered history and the material events may first be narrated. The applicant was appointed as Assistant Signaller-cum-Assistant Station Master in the Western Railways with effect from 4.5.1954 and he was holding ^{the} a promotion post of Station Master at Katkala at the relevant time in 1974. He tendered resignation by a letter dated 18.3.1974. According to him, he withdrew his resignation by letter dated 1.4.1974. It may be noted that the respondents' dispute having received any such letter. The applicant was relieved from duty on 24.4.1974, presumably on the basis of acceptance of his resignation. Nearly 5 long years after the acceptance of the applicant's resignation and his being relieved pursuant thereto, the applicant filed a writ petition (Spl. C.A. No.601 of 1979) challenging the legality of the acceptance of his resignation. The case put up by the applicant in this Spl. C.A., it appears, was that it was in a moment of exasperation and helplessness that he had addressed the resignation letter dated 18.3.'74 because some subordinate officer had assaulted him or misbehaved with him and he was disgusted with such a state of affairs prevailing in the Railway Establishment. The applicant perhaps also stated that the acceptance of his resignation, after its withdrawal by him, was illegal. The Spl. C.A. was summarily rejected on the ground of gross delay (delay of more than 5 years after the acceptance of the resignation). However, it was

observed, while summarily rejecting the Special C.A., that the applicant's letter of resignation was more a communication about his grievance than a letter of resignation in the real sense of term. The applicant then carried the matter further by filing L.P.A. No. 601 of 1979 and this L.P.A. came to be disposed of on 16.6.1982 by an order passed by Their Lordships M.P. Thakkar, CJ (as he then was) and A.S. Qureshi, J. The L.P.A. was disposed of as the applicant himself withdrew the Spl. C.A. whereby he had challenged the legality of the acceptance of his resignation. However, while permitting the Spl. C.A. and also the L.P.A. to be withdrawn, Their Lordships expressed their feeling that the applicant must have sent in the resignation letter as he must be feeling exasperated at the misbehaviour towards him by some subordinate officer. Their Lordships, considering this fact and the further fact that the applicant had put in about 20 years of service by the time he tendered his resignation, they suggested a formula and the said formula was accepted by both the sides. This formula was that, if the petitioner made a representation, it will be forwarded to the competent authority and, having regard to the facts and circumstances of the case, the Railway Administration "may well make" a humane and sympathetic approach having regard to the fact that the petitioner seems to have acted in a moment of tension when he was threatened with violence by his subordinate. This part of the order of Their Lordships in the L.P.A. shows that the applicant was required to make a representation to the competent authority urging for revocation of the acceptance of his resignation

(S)

and further praying that the break in service may be regularised by granting him leave without pay, so that the applicant does not lose the benefit of provident fund, gratuity, etc. and he is able to work till the ^{his normal} date of superannuation. It is also clear from the order ^Lpassed by Their Lordships that this suggestion or appeal was made to the Railway Administration taking into consideration the fact that the petitioner had put in about 20 years of service and his record appeared to be free ^{from} of blemish. It is necessary to emphasise ^{at} this stage that one of the considerations which ^{weighed} ~~made~~ with Their Lordships in recommending to the Railway Administration to treat the service of the applicant as continuous was their impression that the record of the applicant appeared to be free of any blemish. It is also necessary to mention that, while recording their impression that the service record of the applicant was without any blemish, Their Lordships left that fact to be verified by the Railway Administration. This means that if the Railway Administration felt that the service of the applicant was not without blemish, it may not reverse its order of acceptance of the applicant's resignation. Their Lordships strongly recommended to the Railway Administration to consider the representation to be made by the petitioner with sympathy and to do the needful in the matter as they had a strong feeling that the applicant, who had put in a service of 20 years without any blemish, had tendered his resignation not voluntarily but under some mental stress. It may be mentioned that, while recommending that the representation of the applicant may be treated sympathetically, Their Lordships also observed that in the circumstances of the case the Railway Administration "can permit" the petitioner

to rejoin duty on humane considerations. It is abundantly clear from the order passed by the High Court in the L.P.A. that the applicant was required to make a representation to the authorities for revocation of acceptance of his resignation. However, there is nothing whatsoever on *the* record to show that the applicant had made any such representation. Be this as it may, the applicant was reappointed in service in the lower scale of Rs.330-569 at the minimum stage of Rs.330/-per month purely as a temporary measure and was posted as Assistant Station Master against a vacancy which then existed. Since the re-appointment of the applicant pursuant to this order dated 14.10.1982 (Annexure-A3) and his resumption of duties accordingly as Assistant Station Master, he was on that post till his retirement on 31.7.1991. It appears that the applicant had made Civil Application No.963/83 in the aforesaid L.P.A. presumably because nothing was done about the recommendation of the High Court for consideration whether the acceptance of the applicant's resignation may not be revoked. This C.A. was disposed of by an order dated 4.3.83 by the High Court again reiterating its feeling that the resignation was not voluntary but was tendered in a moment of exasperation. The High Court again strongly recommended to the Railway Administration not to treat the applicant as a fresh entrant but to treat ~~as~~ his service as continuous treating the break as leave without pay as initially recommended. The C.A. was then posted to 21.3.1983 to see the reaction of the Railway Administration but it appears that the recommendation for not treating the applicant as a fresh

entrant was not accepted by the Railways and the C.A. again came up before the High Court on 2.5.1983 when, once again, the High Court reiterated what was stated in the order dated 4.3.1983 and expected the Railway Administration to take a decision in the matter on or before June 30, 1983. It appears that, despite these orders containing the recommendation of the High Court, the applicant was continued on the lower post of Assistant Station Master from which he retired on 31.7.91. It may once again be repeated that there is nothing on record to show that the applicant had made a representation for revocation of the acceptance of his resignation and it may be stated in this connection that such revocation was a condition precedent to treating the service of the applicant as continuous and to ^{giving} ~~give~~ him all the benefits of such continuity. The applicant was thus re-appointed on the lower post and since October, 1982, then approached this Tribunal as late ^{on} as 20.11.1989 by filing OA No.537/89 for the same reliefs namely revocation of the acceptance of his resignation and treating of his service as continuous with the break being regularised as leave without pay. This OA was disposed of on 30th January, 1990 directing the Railways to consider the memo of the OA as a representation made by the applicant for counting of his past services for retiral and other benefits taking into ~~considera~~ account the circumstances under which the applicant had tendered his resignation and also the recommendation made by the Hon'ble High Court in L.P.A. No.36/82. The Railway Administration

was directed to dispose of the representation within a period of 3 months from 30.1.1990 and liberty was reserved to the applicant to approach appropriate forum for proper relief if the applicant felt aggrieved by the decision that may be taken on his representation. After this order passed on 30.1.1990, the applicant made a representation in February, 1990 and the said representation has come to be rejected by the speaking order dated 20th April, 1990 (Annexure-A8) passed by the respondent No.2 and it is this order which is being challenged before us by the applicant.

3. The relief which is claimed by the applicant is already reproduced by us at the outset and it is obvious therefrom that what the applicant seeks in reality is a declaration of the illegality of the acceptance of his resignation, because it is only if the acceptance of his resignation is declared as illegal that the applicant will be entitled to the same post with all benefit of continuity of service except for the break period which was to be regularised as leave without pay.

4. In the reply filed by the Railways, it is categorically denied that any letter of withdrawal of resignation dated 1.4.1974 was received from the applicant before the issue of the order dated 24.7.1974 by which the applicant was retired from service. In this connection, it is, however, stated that one telegram was received from the applicant whereby he purported to withdraw his resignation, but it is added that that telegram was received by the office of the respondent No.2 on 7.5.1974 i.e. well after the acceptance of the applicant's resignation and his retirement with effect

(2)

from 24.4.1974. It is stated that still, however, in deference to one of the suggestions or recommendations of the High Court, the applicant was allowed to join service but by way of re-appointment as Assistant Station Master pursuant to the order dated 14.10.1982 and he had actually rejoined duty as such with effect from 16.10.1982. But the most important contention taken up in the reply filed by the respondents, the Railway Administration, is that the applicant had not presented a correct and full picture before the High Court at the stage of the Special C.A. or even at the ~~as~~ stage of the L.P.A. or even when he filed the earlier OA No.537/89. It is stated in this connection that, in fact, when the applicant tendered his resignation and the resignation was accepted, there were two cases of major penalty proceedings pending against the applicant for serious misconduct. It is stated that in one case he was charged for misbehaviour with the Divisional Superintendent who was the highest authority in the division and, in the second case, he was charged with dereliction of duty (As Station Master) for leaving station without permission which caused dislocation of rail movement. It is stated that pursuant to the acceptance of the applicant's resignation the proceedings in both these cases were dropped. It may be noted here that this is the main ground on which the impugned order dated 20th April, 1990 is based pointing out that if the applicant had not resigned, the disciplinary action initiated against him might have led to his removal or dismissal from Railway service. In the speaking order, it is also mentioned

13

that the Railway Administration had already considered the case of the applicant with compassion, as desired by the High Court, in giving a fresh appointment to the applicant in Railway service, albeit on the lower post of Assistant Station Master and that too at the minimum stage in the pay-scale prescribed for that post.

5. The sum and substance of all this is that the applicant had made a very material suppression of fact through out the pendency of the Spl. C.A. and L.P.A. before the High Court as also through out the pendency of his earlier OA No.539/89 filed before this Tribunal.

6. It was vehemently contended by Mr. Vin, the Railway learned counsel, that if the applicant had presented a full and correct picture before the High Court by disclosing that two major penalty proceedings were pending against him when he tendered his resignation and that those cases were dropped pursuant to the acceptance of the applicant's resignation, the High Court would have outright rejected the Spl. C.A. and the L.P.A. without making any recommendations as done by it. It was contended that if the acceptance of the applicant's resignation is now quashed, the applicant would get an unintended advantage of the dropping or closure of the two disciplinary cases which were pending against him in 1974. We have no hesitation in accepting this contention of Mr. Vin. Assuming that the applicant had withdrawn his resignation before it was accepted, the least that the administration would have done would be to continue the two disciplinary cases against the applicant. If this fact of the pendency of the two disciplinary cases against the applicant was brought to the notice of the

(14)

High Court, as was the duty of the applicant ~~was~~ to do, or if this fact had come to the notice of the High Court by being mentioned by the Railway Administration, the High Court would certainly have ordered that, in the event of the acceptance of the resignation being revoked, it will be open to the Railway Administration to revive the disciplinary proceedings against the applicant. The applicant has created a situation whereby it is rendered impossible to revive disciplinary cases against him. As already seen, the applicant had challenged the legality of the acceptance of his resignation five years after it was accepted and he was retired. This delay was not the only circumstance to be considered, but it was a circumstance that required to be considered coupled with the fact that, pursuant to the acceptance of the resignation, the two disciplinary cases against the applicant were dropped in 1974 and it would very probably have been ^{an} exercise in futility to resurrect those cases in 1979. In fact, if the fact of the pendency of such disciplinary cases against the applicant was brought to the notice of the High Court by the respondents or had come to the notice of the High Court in any way, the Special C.A. would very probably have been rejected on this additional ground of suppression of a material fact also. It requires to be pointed out that, even in the present OA, this material and ~~vital~~ vital fact was not disclosed by the applicant but it came to light only from the reply filed by the Railway Administration and, that too, because the impugned order is based on that ground. As we have pointed out earlier, the real relief which

the applicant seeks in the present case is a declaration of the illegality of the acceptance of his resignation because granting of that relief will be a condition precedent to the declaration of continuity of service of the applicant in the two spells namely from 4.5.1954 (when he joined the service) to 24.4.1974 (when he was relieved from duty pursuant to the acceptance of his resignation) and the second spell from 16.10.1982 (the date when he rejoined service on his reappointment as Assistant Station Master) to his superannuation on 31.7.1991.


7. We have no hesitation in refusing to quash the impugned order dated 20th April, 1990 for the reasons mentioned by us above. There is then no question of grant of any declaration as prayed for by the applicant in the OA. In the relief clause, it is said that the impugned order was passed in total disregard of the orders of the High Court in the L.P.A. and the orders of this Tribunal in the earlier OA No.537/89. We are unable to accept the contention that the impugned order is in any way in disregard of the orders of the High Court or of this Tribunal. Those orders were procured by suppressing a material fact. Neither the High Court nor this Tribunal had quashed the order of acceptance of the applicant's resignation but had only recommended that the applicant's prayer for revocation of the acceptance of resignation may be considered in a spirit of compassion. It was left to the Railway Administration to take its own decision in the matter. Even the


(14)

recommendation to decide the applicant's representation in a compassionate way was made because the only picture which the applicant had presented was that his resignation was not voluntary but was a product of his exasperation at the way his subordinate had behaved with him and in a moment of depression. He did not present the other vital dimension before the Court inasmuch as he suppressed the fact of the pendency of two departmental cases against him at the relevant time. It may also be repeated that the applicant had never made a representation for a long time as was required of him by the High Court. It was only ^{after} the earlier OA was filed that he made a representation and otherwise also this Tribunal had directed the memo of the applicant's OA (OA No.537/89) to be treated as a representation. These facts would of course have been ignored as not very significant, provided the fact of the pendency of the two departmental proceedings against the applicant was not there to be considered. As already seen, the applicant has retired ~~on~~ with effect from 31.7.1991 during the pendency of this OA and that is one more reason why there is now no possibility left ~~now~~ for reviving or continuing the disciplinary cases against the applicant. Grant of any relief without any imposition of the condition of continuance or revival of disciplinary proceedings against the applicant would result in ^{the grant of} unintended and undeserved advantage to the applicant.

(12)

8. For the reasons mentioned above, we find that the impugned order passed by the respondent No.2 is not liable to be quashed. There is no illegality about it and it cannot be said to be in disregard of any orders of High Court or this Tribunal. The OA is, therefore, dismissed. However, there will be no order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

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