

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 423/91
T.A. No.

DATE OF DECISION 30 - 11 - 94

Shri Chandhulal B. Petitioner

Shri Y.V. Shah Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

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

CORAM :

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

The Hon'ble Dr. R.K. Saxena Member (J)

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

2. Briefly stated the facts of the case are that the applicant was engaged as ~~Substitute points~~-man on 8-6-1980. On satisfactory work, he was also given temporary status with effect from 29-7-1983. He, however, continued to work as ~~Substitute points~~-man. The applicant was also selected as against regular vacancies and was posted at Bhopalka where ~~he~~ ~~as~~ was already working as ~~Substitute points~~-man. This order of recruitment against regular vacancies and posting at Bhopalka was passed on 30-7-1991, Annexure A-2. Before this order could be intimated and complied with, the services of the applicant were terminated by oral order on 20-4-1991 with mala fide intention of accommodating another junior ~~Substitute~~-pointsman Shri Govind Vala. The apprehension of the applicant is that one ~~criminal~~ case was pending against him and for that reason he was not allowed to join duties. He drew presumption that services were orally terminated by the respondent no.4 but without adopting legal procedure. The competency of terminating the services by respondents no.4, has also been challenged.

3. The respondents on the other hand came with the case that respondent no.4 was Assistant Station Master Bhopalka but he was not in charge of the unit because Station-Master was there. The contention of termination of services of the applicant by oral order, has also been refuted. It has been averred that the applicant was absenting himself from duties from 20-4-1991 and manufactured the case of refusal about resumption of duties because of the criminal case. What is this

6. We have heard the ^{Learned} ~~counsel~~ for the applicant and respondents at great length and perused the record.

7. The applicant wants reinstatement in service through the intervention of the Tribunal because by not allowing to resume duties, he presumes that the oral order of termination of his services was passed. He also contended to have been deprived of the benefits of regular recruitment and posting given by order dated 30-7-1991, Annexure A-2. The question arises if there is any material to substantiate that the services were terminated orally or he was denied of the benefit of regular recruitment and posting. When the applicant has come with these pleas, the burden heavily lay on him to establish those facts. Admittedly, there is no written order either of termination of services or deprivation of benefits of regular appointment. In the absence of written order, those circumstances which may lead to this conclusion should be proved. We are afraid to observe that it is not done by the applicant.

8. What were the grounds of abrupt absence from duties and non-resumption of duties, are not disclosed. The respondents are categorically saying that the applicant is absent since 20-4-1991. The applicant did not dispute this date in point of time of controversy but simply averred that he was not allowed to resume duties with effect from 20-4-1991. In order to find ^{out} the importance of this date,

cannot be doubted. It also leads to the conclusion that there was no order of termination in existence otherwise this offer could not be given. The respondent are keeping the offer still open and this fact finds mention in their reply.

10. The contention of the applicant is that the Tribunal had passed the order on 17-2-1992 that the fitness certificate of Railway Doctor be produced but the respondents should direct the applicant to the Railway Doctor and this compliance could be done only in January 1994 when the applicant was sent for medical examination. It is really sad state of affairs that the departments of the Government, take the orders of the Tribunal casually. It may be deprecated. The question, however, is whether the applicant is seeking reinstatement on this order. This medical certificate was needed to join posting of regular recruitment intimated vide, Annexure A-2. When the applicant had not joined that post, the question of his reinstatement on that post does not arise. When posed this problem during arguments, the learned counsel for the applicant clarified that the reinstatement is sought on the post of Substitute points-man wherefrom the oral order of termination, was apprehended because of non-resumption of duties. In view of these facts, delayed compliance of the order dated 17-2-1994 does not help the applicant in either way.



Shri Chandulal B.
Station Master,
Western Railway
Bhopalka,
District Jamnagar.

Applicant.

Advocate Mr. Y.V. Shah

Versus

1. Union of India
through the General
Manager, Western Railway
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway, Rajkot.
3. Asst. Operating Superintendent
Western Railway, Rajkot.
4. Shri Saji Mathews,
Station Master, Western Railway
Bhopalka (BPKA)
District Jamnagar.

Respondents.

Advocate Mr. B.R. Kyada.

JUDGMENT

In

Date: 30-11-94

O.A. 423/ 1991

Per Hon'ble Dr. R.K. Saxena

Member (J)

The applicant has approached the Tribunal for seeking direction to the respondents to reinstate him and to grant consequential benefits of wages.

criminal case is neither spelled out in the application nor in rejoinder filed by the applicant, nor in the reply brought on record by the respondents. With the rejoinder, however, the copy of report, Annexure A-8, lodged by Shri Saji Mathews, respondent no. 4 against the applicant under section 332/504 I.P.C., has been filed. It speaks of an occurrence on 19-4-1991 in which the applicant was arrested and released on bail.

4. The respondents also averred that the applicant was advised on 23-7-1992 to report for duties but he failed and the blame was thrown on the respondents. In para 7 at page 3 of the reply, the respondents offered the duties to the applicant, if he was willing. It is also clarified that the period of absence in the event the applicant joins duties, shall be dealt with according to rules applicable in the matter.

5. In rejoinder, the applicant repeated the facts and doubted correctness in the offer of joining duties either by letter dated 23-7-1992 referred to in the reply or subsequent offer in the reply itself. It is denied if letter 23-7-1992 was ever written and served on the applicant. The bonafides of the respondents in offering duties are doubted by saying that if the offer were true, the respondents would have complied with the order dated 17-2-1992 passed by the Tribunal for medical-examination of the applicant by Railway Doctor at the behest of the respondents.

we will have to refer to the report , Annexure A-8, which was lodged at the Police Station by Shri Saji Mathews, respondent No.4; and on the basis of which a case under section 332/504 of Indian Penal Code was registered on 20-4-1991. The certificate of Police attached with this report and forms part of Annexure A-8, speaks that the applicant was arrested and was bailed out. This is the back-ground for absence from duties by the applicant. Since the alleged occurrence, as the report goes on, had taken place between the respondent no.4 and the applicant, there may have been reluctance on the part of the respondents to allow the applicant join duties. As there is no evidence to this effect, we find this conclusion only imaginary but based on behavioural psychology. Anyway, it was for the applicant to have established this fact through cogent evidence but it could not be done.

9. The respondents came with the plea that there was no order of termination of services of the applicant who was directed to join duties along with duty fitness certificate on different occasions particularly on 23-6-1992 and 22-7-1992. Both these letters have been filed by the applicant himself as part of Annexure A-8 along with rejoinder. If the applicant had no knowledge of this offer, as is contended in the rejoinder, he (the applicant) could not have possessed them and produced in this case. It means that the offer of the respondents

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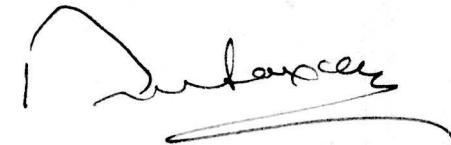
11. Assuming for the sake of argument that the services as substitute pointsman of the applicant were terminated by oral order on 20-4-1991, there could have been no problem to the applicant to have approached concerned authorities on receipt of order of posting on regular appointment for joining the post. If the concerned authorities did not oblige, he could have approached the higher authorities but it was not done. Even opting for relief from Tribunal, it was not urged ^{that} posting on regular recruitment be directed to be complied with. It shows his own avoidance of resuming duties.

12. On the survey of the facts and circumstances, it transpires that there was no oral order of termination of services as substitute pointsman of the applicant. Because of criminal case being instituted against him, followed by his arrest and subsequent release on bail, the applicant had been avoiding resumption of duties and chose serving notice through lawyer. He also did it for the reason that departmental action culminating in formal charge-sheet, was initiated. He did not care even for the posting on the basis of regular recruitment. Since the respondents had been offering resumption of duties and clearly mentioned the said fact in the written reply, we take the view that the applicant should resume duties first as substitute pointsman; and then as regular pointsman in accordance with the letter of appointment Annexure A-2. The period of absence should be dealt with according to the rules on the matter.



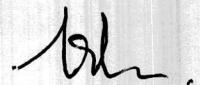
13. The stay of operation of departmental charge-sheet passed on 21-10-1993, stands vacated.

14. The application is disposed of accordingly. No order as to costs.



(Dr. R.K. Saxena)

Member (J)



(V. Radhakrishnan)

Member (A)

*AS.