CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

RA/05/1999 in
O.A.NO. 398/91
~~**T.A.NO.**~~

DATE OF DECISION 25.3.1999

Union of India & Others — Petitioner

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

Versus

Kanji Jivraj — 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. Asstt.Engineer
   Western Railway
   Kothi Compound
   Rajkot.

3. Inspector of Works
   Western Railway
   Hapa.

Applicants
(Original
Respondents)

Advocate: Mr. N.S. Shevde-

Versus

Kanji Jivraj
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. 05/1999

IN

O.A.No. 398/91

Dated 25.3.1999

//BY CIRCULATION//

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:
M.A./199/99 may be allowed.

I have seen RA/05/1999 which seeks review of our orders in OA/398/91 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 views.

(V.Ramakrishnan)
Vice Chairman

pmr

Review Application No.5/99

ORDER

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 somewhere else. Accordingly, I agree with the view as expressed by learned Vice-Chairman Shri V.Ramakrishnan that the Review Application be rejected. Order accordingly.

21.6.99

(Lakshman Jha)
Member (Judicial)

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

RA/05/1999 in
O.A.NO. 398/91
~~T.A.NO.~~

DATE OF DECISION 25.3.1999

Union of India & Others _____ Petitioner

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

Versus

Kanji Jivraj _____ Respondent

-- _____ Advocate for the Respondent [s]

CORAM

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

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

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.

Applicants
(Original
Respondents)

Advocate: Mr. N.S. Shevde-

Versus

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

Opponents
(Original
Applicant)

REVIEW ORDER

IN

R.A. NO. 05/1999

IN

O.A.No. 398/91

Dated 25.3.1999

//BY CIRCULATION//

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:
M.A./198/99 may be allowed.

I have seen RA/05/1999 which seeks review of our orders in OA/398/91 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

..3

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 views.

Sd

(V.Ramakrishnan)
Vice Chairman

pmr

Review Application No.5/99

ORDER

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 somewhere else. Accordingly, I agree with the view as expressed by learned Vice-Chairman Shri V.Ramakrishnan that the Review Application be rejected. Order accordingly.

Sd

(Lakshman Jha)
Member (Judicial)

Prepared by: 23-07-99

Compared by:

True Copy

अनुभाग अधिकारी (न्या.) 23.7.99
Section Officer (J).
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
अहमदाबाद न्यायपीठ,
Ahmedabad Bench.

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 398/91 with MA/278/92
~~**T.A.NO.**~~

DATE OF DECISION 03.08.98

Kanji Jivraj — **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)

Kanji Jivraj,
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./398/92
with
M.A./278/92

Dated: 03.08.1998

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 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

Contd..3/-

to continue as a Khalasi and that he should be regularised at that level. We are told that he continued to function as a Khalasi till 20.6.91 from which date he had not been working. Subsequent to filing of the OA, the applicant was taken back on duty as a Khalasi with effect from 13.11.91 in compliance with the instructions of the Tribunal dated 24.10.91, and we are informed that he has been regularised at that level since then. However, the applicant now contends that he should be regularised as a Khalasi as per his seniority in that cadre and that he should be paid backwages for the period from 21.6.91 to 13.11.91 during which time he stated that he reported for duty but was not allowed to function as Khalasi.

3. Mr. Pathak for applicant submits that the applicant alongwith four others had approached the Tribunal in OA/202/91 impugning the same order. In that case, the Tribunal directed that they should file separate applications and restricted the prayer only to the first applicant therein who is one Shri Mahesh Devji. This was disposed of by the Tribunal by its order dt. 17.7.91 where it was held that if the applicant did not want to function in a higher scale, there is no bar for him to continue in the lower scale. The Tribunal also had directed the respondents not to implement this order of 22.4.91 in so far as Mahesh Devji was concerned who was initially the first applicant and later on the sole applicant in that OA. Mr. Pathak further says that some developments took place in respect of Mahesh Devji and that he was taken back on duty and was also regularised 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

Contd..4/-

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 the OA/202/91 was filed in May, 91 by various parties including the first 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 benefit including with 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 developments which has taken place, the main relief sought for namely that the applicant should not be made to work as a Gangman has, in fact, been granted, on the basis of

Contd..5/-

the interim orders of the Tribunal and subsequently by 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 immediately 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 duty but refused to work as a Gangman. It is also seen fromPPara 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

Contd..6/-

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~~ dated 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 Railways 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 to 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

Contd..7/-

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.

-/ps

sd/-

(Laxman Jha)
Member (J)

-/ps

sd/-

(V. Ramakrishnan)
Vice Chairman

hki

तैयार करनेवाला
Prepared by: BKSL 13/8/98
मिलाने वाला
Compared by: RSC 13/8/98

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अधिकरण
Tribunal
Bench