

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
AHMEDABAD BENCH

**O.A. NO.** 444/93  
**T.A. NO.**

DATE OF DECISION 10-3-1995

Shri Valji Kana	Petitioner
Mr. B.B. Gogia	Advocate for the Petitioner (s)
<b>Versus</b>	
Union of India and Others	Respondent
Mr. 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)

**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 Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Shri Valji Kana  
Western Railway  
P.O. Kapadvanj,  
Dist. Kheda.

Applicant

Mr. B.B. Gogia

Advocate.

Versus

1. Union of India  
Owing and Representing  
Western Railway,  
Churchgate, Bombay.
2. Dy. Chief Engineer (C)  
North, Western Railway,  
BG Railway Station Building  
2nd Floor, Ahmedabad.
3. The Executive Engineer (C)  
North, Western Railway  
BG Rly Station Building  
Ahmedabad.

Respondents.

Mr. B.R. Kyada

Advocate

J U D G M E N T

In

Date:

O.A. 444/1993

Per Hon'ble Dr. R.K. Saxena

Member (J)

This is the third round of litigation when this applicant has approached the Tribunal complaining about non-compliance of the judgment which was rendered by the Tribunal in <sup>3</sup> T.A. No. 426/86 decided on 2-12-1988.

2. The facts of the case are that the applicant was engaged as casual labourer in Survey Construction Department on Viramgam-Okha-Porbandar Project on 11-9-78.

He worked in the same capacity till 1-3-1985 when his services were terminated, at Jamnagar. The applicant challenged the order of termination by filing SCA 3146/85 before the Gujarat High Court. Because the Tribunal was created, the said SCA No.3146/85 was transferred to the Tribunal and was numbered as T.A. 426/86. The said T.A. was finally disposed of on 2-12-1988 holding that the order of termination did not conform to the provisions of Section 25 F of the Industrial Disputes Act and was therefore quashed. The applicant was held entitled to be reinstated in service with all consequential benefits. The respondents, i.e. the Railway administration was directed to reinstate the applicant within one month and to pay the back-wages within a period of three months from the date of the order.

3. It is contended on behalf of the applicant that he did not receive any response from the side of the respondents about his reinstatement. He, therefore, submitted the application dated 24-6-1989, Annexure A-2, to the Executive Engineer (C)-I, Western Railway, Jamnagar and PWI (C)-II Western Railway, Dwarka. Again nothing was heard and he then served notice, Annexure-A-3, on respondent No.1 as well as the Chief Engineer (C) Ahmedabad on 10-10-1990 through his advocate. It was then that the respondent No.2 Deputy Chief Engineer, (Construction) instructed the

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P.W.I. (C) Jamnagar, now at Rajkot vide letter dated 3-12-1990 to take the applicant on duty. In response to the said instructions, the applicant had submitted the report about resumption of duty on 28-12-1990 to PWI, Rajkot. Despite it, the applicant was not given any posting. Being fed up because of non-compliance of the judgment of the Tribunal, the applicant filed another O.A. 469/90 before the Tribunal claiming direction to the respondents to issue posting orders to the applicant, permit him to discharge his duties and to draw salary. It was also claimed that the back-wages be also directed to be paid with interest at the rate of 12%. This O.A. No. 469/90 was decided on 19-3-1991, holding the view that no fresh O.A. can be filed to seek the compliance of the judgment delivered on 2-12-1988 in T.A. 426/86. It is further averred on behalf of the applicant that the applicant had received communication dated 28-3-1991 from Deputy Engineer (C), Ahmedabad that he (the applicant) had not reported for duty and since he had shown willingness to resume duties, he was directed to report the Deputy Chief Engineer (C), North, Ahmedabad for further posting orders. It was then that the applicant joined duties on 9-4-1991 and since then he was working. It is also urged that he was reinstated on the basis that he was holding non-temporary status of employee, and the temporary status was not given to him. His grievance is also to the effect that he was paid starting salary which is payable to a fresh casual labourer. The period of service rendered by him prior to his termination, was not counted for the purpose of pay and regularisation.

It is also the grievance of the applicant that he was not paid salary as back-wages from the date of pronouncement of judgment on 2-12-1988 in T.A. 426/86 till the date of re-instatement. So far as the payment of back-wages prior to 2-12-1988 is concerned, an amount of Rs. 36,747 was paid in January 1992. This amount was paid to the applicant only when he approached the Labour Court for recovery of the money. The relief sought by the applicant on the grounds discussed above is that the respondents of the present O.A. be directed to re-fix the salary of the applicant in the scale of Rs. 750-940 (RP) and equivalent grade prior to that by adding the annual increments on the basis of the earlier services rendered by him. Further the relief claimed was payment of back-wages with interest at the rate of 18% for the period from 2-12-1988 to April 1991 when he was reinstated. The release of other benefits, such as leave salary, pass, medical treatment etc available to the casual labourer with temporary status is also required to be directed. The applicant had moved application for condonation of delay which was allowed by the Tribunal on 14-12-1993.

4. The respondents contested the case on the grounds that the applicant was recruited as daily rated casual labourer on 11-9-1978 and continued up to 1-3-1985. Since project was completed, the applicant was directed for medical examination about his medical fitness of B-I category but the

applicant failed in all categories. Therefore, he was served with notice of retrenchment. It is admitted that the applicant had filed SCA No. 3146/85 in the Gujarat High Court which turned into T.A. 426/86 and was decided by the Tribunal on 2-12-1988 directing reinstatement of the applicant alongwith back-wages. According to the respondents, the back-wages from 1-3-1985 to 2-12-1988 i.e. from the date of termination till the date of pronouncement of the judgment, were paid by cheque of Rs. 36,747/- through Labour Court at Jamnagar in Recovery Application No. 9/90. It has also been averred on behalf of the respondents that the applicant is under obligation to furnish Medical Certificate before the temporary status is granted. He was however, granted temporary status. The respondents denied entitlement of other benefits to the applicant because he was not a permanent employee and the same benefit, may be available to him as and when he goes in regular cadre. It is, therefore, contended that the application be rejected.

5. We have heard the learned counsel for the applicant and the respondents and have also perused the record.

6. In this case the main question for determination is whether the applicant who was granted ~~xx~~ relief of reinstatement and payment of back-wages in T.A. 426/86 decided on 2-12-1988, can approach this Tribunal again and again for non-compliance of the judgment. It is an admitted fact that despite the

the judgment rendered in T.A. 426/86, on 2-12-1988, the respondents dragged its feet and took no action either to reinstate or to make payment of back-wages. The respondents did not even challenge, the judgment dated 2-12-1988. It was therefore, quite clear that the judgment delivered on 2-12-1988 became final between the parties. There was <sup>5</sup>no other option to the respondents but to obey and comply with the directions given in the judgment. What appears from the facts is that the applicant did not approach the Tribunal by way of Contempt Application. According to him, he had been giving applications to the respondents but complete deaf ear was turned towards those applications. The contention of the respondents, on the other hand, is that the reinstatement was subject to the medical fitness of the applicant by the Medical Officer of the Department. It is argued by the learned counsel for the respondents that since the applicant had failed in earlier <sup>tests, &</sup> he avoided to face the medical test and for that reason the respondents cannot be held responsible for delayed reinstatement. In this connection, our attention has been drawn about the observation of the Tribunal made in para 10 of the judgment. It speaks <sup>e</sup>that;

" We are clearly of the opinion that the impugned action on the part of the respondents in terminating the service of the petitioner is bad in law and we direct reinstatement of the petitioner but that will not preclude the respondents in passing fresh orders in accordance with law, in case, it is found that the petitioner is physically unfit to hold the

post. But before doing so it is expected that the respondents shall furnish a copy of each medical certificate declaring him unfit either on the basis of the past or fresh medical examination, and the petitioner will be at liberty to redress his grievance, if any, under the relevant rules. "

7. The reading of this portion speaks that the respondents were required to establish on the basis of the medical certificate that the applicant was physically unfit to hold the post. The Tribunal had left to the discretion of the respondents either to rely on the past certificate of medical test or on getting him medically examined afresh. In view of these observations, the contention of the learned counsel for the applicant that the respondents ought to have reinstated the applicant on their own, cannot be said to be without merits. The Tribunal had directed about reinstatement and simultaneously gave discretion to pass fresh orders in case it was found that the applicant was unfit. What emerges is that the reinstatement was unconditional in the first part of direction. The exercise of discretion about the use of earlier medical certificate or of having fresh medical examination for the purposes of passing orders in the event the applicant having been found medically unfit, was second part of direction. The respondents cannot be allowed to confuse the issue and take the plea that the order of reinstatement was not passed because the applicant

failed to appear for medical examination. We may reiterate at the cost of repetition that reinstatement had nothing to do with the medical examination of the applicant. What appears is that the respondents had been dilly-dallying <sup>with</sup> the matter of reinstatement. When the second O.A. 469/90 was filed by the applicant, the process of reinstatement started and order were passed despite the fact that the said O.A. 469/90 was dis<sup>e</sup>missed on 19-3-1991. We fail to understand as to why the applicant was reinstated on 9-4-91 if according to the respondents the medical examination of the applicant was a condition precedent because neither the applicant has averred about such medical examination before reinstatement nor is pleaded by the respondents. Clearly the respondents took the judgment of the Tribunal in T.A. 426/90 casually.

8. The applicant filed second O.A. 469/90 which was decided on 19-3-1991 on the same grounds and claiming the same relief which were taken and sought in T.A. No.426/86. The Tribunal, therefore, rightly rejected the second O.A. 469/90 because for non-compliance of judgment, no fresh O.A. can be brought.

9. The development took place thereafter. The applicant was reinstated on 9-4-1991 and the payment of back-wages to the tune of Rs. 36,747<sup>00</sup> was made to the applicant from the date of termination till the date of judgment i.e., for the period 1-3-1985 to 2-12-1988. The applicant

through the present O.A. demands that the compliance of the earlier judgment is still in complete and therefore direction be given by this Tribunal for the payment of remaining back-wages. For the convenience sake, the entire period starting from the termination of the services of the applicant till the filing of the third round of litigation i.e. the present O.A., can be divided into four parts. First part relates to the period from 1-3-1985 (the date of termination of service of the applicant) to 2-12-1988 (when the judgment in T.A. 426/86 was delivered). Whatever relief was sought for this period, was granted by the Tribunal and therefore no fresh ground may be raised about the said period. The second part starts from 3-12-1988 i.e., soon after the judgment was delivered in T.A. 426/86 and runs upto 19-3-1991 when second O.A. 469/90 was disposed of. The applicant had prayed for payment of back-wages and about the reinstatement but the same was rejected by the Tribunal because for non-compliance of the earlier judgment, fresh O.A. was not permissible. This judgment has not been challenged either by way of filing review application before the Tribunal or by challenging in Appeal. Thus the question of payment of back-wages for this period cannot be allowed to be agitated.

10. The third period starts from 20-3-1991 soon after the judgment was delivered in O.A. 469/90 and ends up to 9-4-1991 when the applicant was reinstated. The fourth period starts from 9-4-1991 and subsequent thereto. The applicant has no grievance

with respect to this period because he is paid salary. The only question that remains with respect to this period is that he has not been given increments and other benefits. The contention of the learned counsel for the respondents on this count is that the applicant was reinstated as casual labourer and therefore, the benefit of increment and other facilities shall be available only when he is regularised in the service. The contention of the counsel for the respondents appears to be correct.

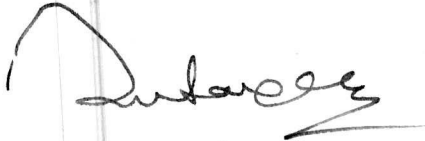
11. Now we take up the third period because it is that part when the compliance about payment of back-wages was made and the reinstatement was in process. Anyway, we are not concerned with reinstatement because ultimately it took place and the applicant joined the post on 9.4.1991. The only question remains for consideration is if the applicant should be held entitled to get the back-wages or salary for the period. It is undoubtedly clear that back-wages were ordered to be paid in T.A./426/86 within three months of the date of judgment i.e. 2.12.1988. It is for this reason that the Tribunal had allowed three months time to make payment. The respondents, therefore, did not prepare the bill and make payment of back wages of subsequent period because by that time the order of reinstatement had not taken place. As is already pointed out, the payment of back-wages for the second period i.e. from 3.12.1988 to 19.3.1991 has been denied by the Tribunal. But it does not mean



that the applicant shall also be denied the wages for the subsequent period.

12. The learned counsel for the applicant relied on the case Kumari Sarita Thakor vs. Union of India 1994 SCC (L&S) 1014 in which it was observed by their lordships of Supreme Court that in compliance to the order of reinstatement the Union of India could take reasonable period of time but by not complying by the end of 1992 when the judgment of reinstatement was passed on 24-7-1991, was not held reasonable. On the basis of this observation, the learned counsel for the applicant contends that there can be no justification for the respondents to have allowed to be reinstated the applicant on 9-4-1991 when the judgment of reinstatement was passed as early as on 2-12-1988. We have already discussed the contention of the respondents about the medical examination and found no substance therein. As a matter of fact, the applicant could be held entitled for the judgment of 2-12-1988 but the second OA being rejected, we cannot interfere and validly too till the date of judgment in second OA 19-3-1991. We have also held that the respondents had been avoiding reinstatement for no valid reasons. In such a situation, he could be allowed wages from 20-3-1991 and not from 9-4-1991. Since the applicant had to undertake this third round of litigation for non-action on the part of the respondents, we order special costs of Rs.2000/- to be paid ~~to~~ by the respondents to the applicant.

13. On the consideration of the facts as discussed above we ~~xxx~~ allow the wages to the applicant with effect from 20-3-1991 in place of 9-4-1991 and also award costs of Rs.2000/- The application is disposed of accordingly.



(Dr. R.K. Saxena)  
Member (J)



(V. Radhakrishnan)  
Member (A)

\*AS.

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

Application No. 04/444/93 of  
Transfer Application No. \_\_\_\_\_ of

CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided).

Dated : 22.03.95

Countersign :

Section Officer.

*ceelaf*  
Signature of the Dealing  
Assistant

