

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH :CUTTACK.

Original Application No.169 of 1989

Date of decision 16th May, 1989

1. Nidhi Bhuja Bala S/o Nimain Bala,
At-Quarter No.T.I./D
Tapang Railway Station,
P.O.Narangarh, Dist.Puri
Last employed as Trolleyman,
under the D.R.M.S.E.Railways,
Khurda Road, Puri. Applicant

- V e r s u s -

1. Union of India, through
the General Manager, South-Eastern
Railways, At-Garden Reach,
Calcutta-43.

2. Divisional Railway Manager,
At-South Eastern Railways,
Khurda Road, P.O.Jatani,
Dist.Puri. Respondents

For the Applicant M/s. S.Misra-1
S.N.Misra and
S.K.Nayak-2, Advocates

For the Respondents ... N o n e

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN
AND
THE HON'BLE MR.K.P.ACHARYA, MEMBER(JUDICIAL)

1. Whether reporters of local papers may be allowed
to see the judgment ? Yes

2. To be referred to the Reporters or not ? N

3. Whether Their Lordships wish to see the fair
copy of the Judgment ? Yes

JUDGMENT :-

K.P.ACHARYA, MEMBER (JUDICIAL) In this application under section 19 of the Administrative Tribunal's Act, 1985, the Petitioner prays for a direction to be issued to the authorities to enquire regarding illness of the petitioner and allow the Petitioner to join in a post suitable to his present state of health and to allow him all arrear money which is due to the Petitioner.

2. Shortly stated, the case of the Petitioner is that he was working as a Trolley-man under the South Eastern Railway, posted at Khurda Road. The Petitioner suffered from Tuberculosis and was under treatment for a long time. After recovery the petitioner reported to duty on 27.1.1989 and he was given ^{the} job of a Gang-man which involves heavy physical exertion for which he made a representation before the Competent authority praying to give some light stationary work so that his health would not be affected in any manner. His representation was turned down. Hence, this application with the aforesaid prayer.

3. This case came up for admission on 2nd May, 1989. We did not admit & the case directed issuance of notice on the ^{and} _{AL} question of admission & hearing and notice be served ^{to} _{on} Opposite party no.1 and 2. Notice was sent to the Opposite Party No.1 i.e. General Manager, South-Eastern Railways by speed post and notice was served on Opposite Party No.2, _{by} Divisional Railway Manager, through a special Messenger and it's

was reported that service of notice on opposite party no.2 was held sufficient. Despite this direction given, no counter has been filed and none appeared for the Railway Administration for the reasons best known to Opposite Party no.1 and 2. However, we have heard this case on merits and there is no response from the Opposite Parties.

4. We have heard Mr.S.N.Misra, learned Counsel for the Petitioner at some length. We are in complete agreement with Mr.Misra that in view of the health condition of the Petitioner he should be given a job in any office which should be stationary in nature, so that his Health would not be affected. Therefore, we direct that the O.P.No.2 should give some light stationary job to the petitioner without affecting his scale of pay and status at Khurda Road and this may be done within one month from the date of receipt of a copy of this judgement. Mr.S.N.Misra, contended that the Petitioner reported to duty on the above mentioned day but the Petitioner was not given any work. His representation to give back wages, having not been acceded to, the petitioner prays that all back wages from the date on which he reported to duty should be given to him. We are unable to readily accept this submission of Mr.Misra. The Petitioner should file a representation before the Divisional Manager & we hope the Divisional Manager will sympathetically consider the

prayer of the petitioner and dispose of the matter as deemed fit and proper.

5. In case any adverse order is passed against the Petitioner he may approach the Bench.

Thus the application is accordingly disposed of leaving the parties to bear their own costs.

K. J. S. 16.5.89.

..... MEMBER (JUDICIAL)

B.R.PATEL, VICE-CHAIRMAN

I agree.



Ramya 16.5.89

..... VICE-CHAIRMAN

Central Administrative Tribunal
Cuttack Bench, Cuttack
16th May, 1989/Mohapatra

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, : CUTTACK.

ORIGINAL APPLICATION NO:169 OF 1989.

Date of decision:October, 12 , 1990.

Nidhi Bhujabal

.. Applicant

Versus

Union of India and others

.. Respondents

For the applicant

: M/s. S.S.Misra-1,
S.N.Misra &
S.K.Nayak-2,
Advocate.

For the Respondents

: Mr. Ashok Mohanty, learned
Counsel for the
Railway Administration

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

AND

THE HON'BLE MR. N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

N.SENGUPTA, MEMBER (J), The case of the applicant is that he was working as a Trolley-man in the Khurda Road Division under the South Eastern Railway. In 1983 he suffered from Tuberculosis and on the advice of the Railway doctor, he (the applicant) underwent treatment in the B.M.Swasthya Nivas, Chandrapur. After discharge from that Swasthya Nivas he reported to duty and thereafter he was examined by the Railway doctor who found that there was a relapse of the disease. As such he again continued to be under treatment. On 27.1.1985 he reported to duty submitting Medical Certificates with leave applications covering all the periods of his absence but the Assistant Engineer, ^{was to} the persons who assigned him duty, refused to allow him to join as Trolley-man but directed him to work as a Gang-man, for which he was not physically fit, his lungs ^{having} ~~have~~ been damaged. As the Assistant Engineer did not allow him to work as a Trolley-man, he approached the Divisional Railway Manager, Khurda Road on 29.7.1986 for relief. The said Divisional Railway Manager directed for an enquiry to be made regarding the facts stated by him (the applicant). The Assistant Engineer though verbally assured for looking into the matter, did not make any enquiry which obliged him (the applicant) to file another appeal on 15.4.88 to the Divisional Railway Manager, Khurda Road which had not been replied to till the filing of the application on 2nd February, 1989. On

Mr. & Mrs. 12/10/90

these allegations the applicant has prayed for a direction to ~~direct~~ the Respondents to enquire into ^{him} the allegations of illness made by (the applicant) and consider his leave applications where after to pay him the salaries.

2. The Respondents in their counter have stated that the applicant was working as a Trolley-man under P.W. 1-III, Tapanga but due to a misbehaviour he was to be under suspension, later taken back to duty. Thereafter from 15.6.83 he was absent from duty and subsequently came with certificates from the T.B. Sanitarium, Chandipur showing to be ill from 24.6.83 to 26.11.1983 but absence for the period from 15.6.83 till 23.6.83 remained unexplained. Thereafter the applicant remained absent from 27.11.1983 for which a major penalty chargesheet was framed on 28.3.1984. The applicant avoided to receive the notice of the charge. After that an inquiry officer was appointed, notice of appointment of enquiry officer was sent by Registered Post and that returned undelivered. As the applicant avoided to receive the notice of charge, an order of compulsory retirement was passed under Rule 14(11) of the Railway Servant Discipline and Appeal Rules. After passing of the order of compulsory retirement, the applicant came to join his duties with a medical certificate covering the period from 26.4.83 to 25.11.84. As the applicant produced medical certificate and there was some material to hold prima facie that the applicant

*Met & Enq'd
12/10*

was ill, a enquiry was ordered. But once ^{again} he (the applicant) avoided to receive the Memo of charges and again on 21.4.86 an order of compulsory retirement was passed under Rule 14(11) of the Railway Servants (Discipline and Appeal) Rules.

3. After the counter, the applicant has filed a rejoinder stating that in fact no notice of the Disciplinary Proceeding was ever served on him and so the entire proceeding was void. He has also annexed copies of some medical certificates which are at annexures-3 and 4 to the application.

4. The matter came up for hearing on 22.2.90 when the applicant asked for production of some documents and on that day by the order passed by the Tribunal, Railway Administration was directed to produce the records of the disciplinary proceeding for our perusal and also the Acquittance Roll from 27.4.83 to 21.4.86 as the applicant on that day submitted that he had been drawing pay during that period.

5. Heard Mr. S.N. Mishra learned Counsel for the applicant and Mr. Ashok Mohanty learned Standing Counsel (Railway Administration) for the Respondents and persued the Annexures to the application and also the record of the disciplinary proceeding and the Acquittance Roll produced by the Railway Administration in pursuance of order passed on 22.2.1990. Two questions arise in this case namely whether the application is in time and

*After Enq
12-10-90*

secondly, whether the entire disciplinary proceeding can be said to be void. Since we are going to find that the application is not in time we would not like to enter into a detailed discussion about the procedure adopted by the Railway Administration in dealing with the disciplinary proceeding started against the applicant. On his own admission the applicant was not allowed to work as a Trolley-man in 1985 and he made a representation on 26.7.86. The cause of action, an application to this Tribunal would ordinarily have arisen on the date the applicant made a representation which under the Rules, we would take the date of application as the starting point for limitation. Under the provisions of Section 21 of the Administrative Tribunals Act, 1985, if a representation is not disposed of within six months of making of the representation, the aggrieved person has to come within one year from the date of expiry of the said period of six months. If one year and six months is added to 26.7.86, the last date would be 25.1.1988 but the application was filed in February, 1989 i.e. more than a year after the expiry of the period of limitation.

Ansir 12/10

6. It has been indicated above that we would not enter into the detailed discussion about the legality or propriety of the procedure followed in the disciplinary proceeding but, however, as the records of the disciplinary proceeding and the acquittance roll were called for, we would only say that *prima facie* no illegality appears to have been committed in the conduct of the disciplinary proceeding as the applicant was noticed by the registered

post which he refused to accept and there is no entry in the Acquittance Roll of the applicant having received the pay during the period from 27.4.1983 to 21.4.1986. In view of what has been stated above, it is not possible to grant the applicant the reliefs that he has asked for but however, we would add that the Railway being an employer of a large work force and the applicant being a sickly person, we hope the Railway Administration will sympathetically consider if the applicant can otherwise be given some employment.

7. The case is accordingly disposed of and in view of the ill health of the applicant we don't pass any order as to costs.

