

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 37 OF 1998
Cuttack this the 15th day of February/2001

Babaji Sahu ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
S.d. 2001

10

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 37 OF 1998
Cuttack this the 15th day of February/2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

Sri Babaji Sahu (Painter)
aged about 47 years,
Son of : Late Sagar Sahu,
At - Khapuriapada, PO: Bandala
Via - Manjuri Road, Dist-Bhadrak

...

Applicant

By the Advocates

Mr.Niranjan Panda

-Versus-

1. Union of India represented through the General Manager, South Eastern Railway, At - Garden Reach, Calcutta
2. Chief Project Manager, South Eastern Railway At - Chandrasekharpur, Bhubaneswar, Dist-Khurda
3. District Signal Telecommunication Engineer, South Eastern Railway, At/PO/Dist - Khurda

...

Respondents

By the Advocates

Mr.R.C. Rath,
Addl. Standing Counsel
(Railways)

ORDER

MR.SOMNATH SOM, VICE-CHAIRMAN: In this Application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to Respondents 1 to 4 to allow him to join his duties. In order dated 21.1.1999, Divisional Railway Manager, S.E.Railway (Res. 3) was deleted from the cause title and now the Union of India represented through its General Manager, S.E.Railway, Chief Project Manager, S.E.Railway, Chandrasekharpur, Bhubaneswar and District Signal Telecommunication Engineer, Khurda are Respondents 1, 2, and 4 respectively.

S. J. M.

11

2. The case of the applicant is that he got appointment as casual Khalasi on 5.12.1972 under the S.E.Railways and in 1976 he was assigned the duty of a Semi skilled Painter in the S.E.Railways. Applicant has stated that in the same year, i.e. 1976 he was treated as Skilled Painter drawing the salary on casual basis. It is stated that the applicant was drawing salary in the scale of Rs.950 - 1500/- till 1988. He has stated that, according to rules he was entitled to and he was availing C.P.C. scale of pay from the year 1981 as per 4th Pay Commission Report. It is further stated that the applicant was treated as Permanent Construction Reserve (P.C.R.) staff in pursuance of Circular dated 26.8.1989. It is further stated that in 1976 he was working at Kendrapara and he was transferred to Kuakhai. He was allotted duties under District Signal Telecom Engineer (D.S.T.E.) (Res.4) and worked as Signal Operator. It is stated that the applicant in 1988 suffered from paralysis and he was on sick leave in 1988 and the said sick leave was duly approved by the appropriate authority. It is further stated that he was on sick leave from 1988 to 1992 and in 1992 he filed representation before the Chief Project Manager, S.E.Railway (Res. 2) to allow him to resume his duties, but no orders were passed on this representation. In Para 4.8 of the Application the applicant has stated that he had obtained a fitness certificate in the year 1994, but the Chief Project Manager, S.E.Railway did not allow him to resume the duties. Applicant has stated that no disciplinary proceeding is pending against him and/or initiated by the Department. In the context of the above he has come up in this O.A. with the prayers referred to earlier.

3. Respondents in their counter have stated that Res. 2 and

4 are not necessary parties in this case, because the applicant
 Signal
 has never worked under the District/Telecommunication Engineering
 (Res.4), much less as a Signal Operator. The second point taken
 is that cause of action in this case has arisen in 1987 and the
 applicant has approached the Tribunal after delay of 11 years
 in 1998. As regards service particulars, Respondents have stated
 that one Babaji ~~Singh~~ son of Sagar ~~Singh~~ was initially engaged
 as casual Khalasi in 1972 and was treated as casual Painter in
 1976. He got the C.P.C. scale from 1.1.1981 and he was conferred
 with Temporary Status w.e.f. 1.1.1984. Respondents have denied
 that the applicant was ever regularised in service as P.C.R.
 staff. They have also stated that the applicant had never
 applied for sick leave from 1988 till to-day. He had not reported
 his illness to any departmental authority at any point of time.
 Respondents have stated that the applicant had absented himself
 from duties from 28.1.1987. He has along with the O.A. not
 submitted any certificate either from the Railway Doctor or
 Private Doctor in support of his illness. Respondents have
 denied that the applicant has ~~never~~ been granted sick leave.
 Respondents have stated that applicant was actually working
 under the D.S.T.E. (Development) and ~~had~~ unauthorisedly
 absented himself from duty w.e.f. 28.1.1987. They have stated
 that Chief Project Manager is in no way concerned and the
 supposed representation addressed to the Chief Project Manager
 is totally absurd as there is no reason why it should have been
 addressed to the Chief Project Manager, who is in no way
 concerned with the applicant's case. It is further submitted
 that a major penalty proceeding under Rule-9 of the Railway
 Services (Discipline & Appeal) Rules, 1968 was initiated ~~and~~

the charge sheet thereof was issued to him on 8/19.9.1987, but this charge sheet could not be served on the applicant. However, treating the earlier charge sheet as cancelled, a fresh charge sheet has been issued to the applicant on 12.5.99 and this has been received by the applicant vide Postal Acknowledgement of the Registered letter. It is further stated by the respondents that the disciplinary proceedings will take its own course and the applicant having absented himself from duties for more than 11 years cannot claim that he should be immediately taken back in service. On the above grounds respondents have opposed the prayer of the applicant.

4. We have heard Shri N. Panda, the learned counsel for the applicant and Shri R.C.Rath, the learned Addl. Standing Counsel appearing for the Railway Administration and also perused the records.

5. From the averments of the respondents made in their counter, which have not been denied by the petitioner by filing any rejoinder, it is clear that the petitioner has never worked under the Chief Project Manager, S.E.Railway, Chandrasekharpur, also Bhubaneswar. In his Original Application/the petitioner has made no averment that he has ever worked under the Chief Project Manager. As regards his averment that he was working under the District Signal Telecommunication Engineer, Respondents have stated that the petitioner was actually working under B.S.T.E. (Development). From this it is clear that Respondent No.4 is not a necessary party in this Original Application. So far as service particulars are concerned, the petitioner has nowhere averred that he was regularised in service. In para 4.4 of the O.A. he has stated that in 1972 he was appointed as casual Khalasi

and in 1976 he was assigned the duties of semi skilled Painter. He does not say that he was promoted and/or appointed as semi Skilled Painter. Further he submits that in the same year, i.e. in 1976 he was treated as Skilled Painter. He also does not say that he was appointed as Skilled Painter. Railway rules are very clear that for promotion from semi skilled to Skilled grade an incumbent has to pass a trade test. There is no mention in the Original Application that the petitioner has passed a trade test and was appointed as Skilled Painter. He has merely used expression like 'assigned' and 'treated', which are no substitutes for regular appointment to regular post. Respondents have stated and this has not been denied by the applicant that he has never been regularised in service. In view of this we hold that the averment of the applicant with regard to his being a regular employee of the Railway is without any basis and we accept the averment of the Respondents that in 1987 he was only a casual worker with temporary status.

S. J. M.

The next aspect of the question is about the applicant's absence from duties from 1988 to 1992, according to petitioner and from 1987 till date according to Respondents. Applicant has stated that he was on sick leave from 1988 to 1992. He has also stated in Para-4(f) of the O.A. that his sick leave was duly approved by the competent authority. Respondents have denied this and the applicant has not enclosed any medical certificate either from the Railway Doctor or from the Private Doctor in support of his contention that he was at all sick. He has stated in Para-4(g) of the O.A. that in 1992 he became all right and wanted to join the duties, but he was not allowed.

15
But in Para-4(h) of the O.A. he has mentioned that he obtained a fitness certificate in the year 1994, i.e. two years after he wanted to join, i.e. in 1992. On the basis of all these, we come to the inescapable conclusion that the averments made by the applicant with regard to sick leave and his becoming fit in 1992/94 cannot be relied upon and it would not be correct to act upon such averment and issue direction to Respondents.

Respondents have stated that initially a disciplinary proceeding was initiated against the applicant in 1987, but treating the same as cancelled, a fresh disciplinary proceeding has been initiated in May/1999. In course of his submission, the learned counsel for the petitioner has made several averments with regard to legalities involved in drawing up the disciplinary proceedings against the applicant after a delay of more than 12 years. He has also made submissions with regard to the manner in which the Inquiring Officer is conducting the inquiry. As in this present O.A. the petitioner has not challenged the departmental proceedings, it is not necessary for us to consider the same. But the fact of the matter is that disciplinary proceeding has been initiated against the applicant in November, 1999 and his period of absence starts from 1987, according to averments made by the respondents. In view of this we direct the departmental authorities to complete the inquiry in the departmental proceedings against the applicant within a period of 60(Sixty) days from the date of receipt of this order, if not completed already, and pass final orders on the report of the Inquiring Officer within a period of 30(Thirty) days thereafter. We make it clear that in case the applicant does not cooperate in the inquiry without sufficient reasons,

15
JFM

then the inquiry should be concluded ex parte. If at the instance of the applicant, for sufficient cause time is taken by the applicant, then the time allowed to him will get added to the time as fixed by us above. *S. S. W.*

The last question that arises for consideration is as to how the applicant is to be treated till the period of passing of the final order on the disciplinary proceedings initiated against him. The applicant is not a regular employee and therefore, he could not have been suspended. He was a casual employee and a casual worker is not a railway servant as defined under the Railway Code. In view of this we hold that the applicant is not entitled to any direction to respondents ^{the duties} to allow him to join/immediately in view of his long absence and also in view of his unreliable averments made in this Original Application. The period of absence will be determined on the basis of final orders to be passed by the disciplinary authority on the report of the Inquiring Officer for which we have already issued direction.

In the result, O.A. is disposed of in terms of observation and direction made above, but without any order as to costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K. SAHOO//

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
15.2.201