

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No OA 467 of 1996

Date of Order: 14.12.2004

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

SHRI KHURSHED ALAM

VS.

UNION OF INDIA & OTHERS (EASTERN RAILWAY)

For the applicant : Mr. A.K. Banerjee, Counsel

For the respondents : Dr. Ms. S. Sinha

ORDER (ORAL)

Mr. Mukesh Kumar Gupta, JM:

By the present application, the applicant seeks direction to respondents to permit him resume duty as Gateman under Station Master, Jaugram under Howrah Division, Eastern Railway.

2. On an earlier occasion, the applicant had instituted OA No. 918/ 1994 which was disposed of vide order dated 29.3.95 with the following observations:

"6. For the reasons given above, we are inclined to allow the application. The application is, therefore, disposed of at the admission stage itself with the direction that the respondent railway shall allow the applicant to join his post of 'Gateman' as per appointment letter given to him. If the railway respondents feel that for the purpose of preparation of service book he is required to furnish the particulars to them, they are at liberty to take action for that purpose the applicant may be given one month time to furnish the particulars after he resumes duty. If, however, the applicant fails to furnish those particulars, the railway respondents will be at liberty to take action against him as per rules. The payment of arrear wages as prayed for by the applicant shall be governed by the extant rules. We pass no order as to costs."

(emphasis supplied)

3. The applicant's contention is that he was not allowed to join duty since 2.8.95, though pursuant to the above order he was initially permitted to attend office for some days. It is contended that this action of the respondents in keeping him out of service and duty since 2.8.95 is most unfair, illegal, arbitrary and in violation of Fundamental Rights including Articles 14, 16 & 21 of the Constitution of India.


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4. The respondents in their reply para 25 specifically averred that pursuant to aforesaid order dated 29.3.95 the applicant was verbally instructed to submit all the documents within seven days from 19.6.95. He did not appear at Jaugram for duty. On 3.7.95, he was once again directed to submit all the documents, required for opening his service book on the terms of aforementioned issue by this Tribunal. It is contended that the major penalty charge sheet for unauthorised absence had to be handed over to the applicant, which could not be handed over till 16.8.95 as he had not reported for duty. Ultimately, the said charge sheet was handed over to the applicant on 17.8.95, and he was not allowed to join duty till the finalisation of the said charge sheet.

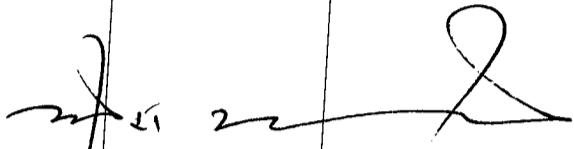
We heard both sides & perused the pleadings. It has not been explained to us how the respondents granted only seven days time to submit particulars, especially when this Tribunal granted one month's time. Further the respondents were unable to explain as to what happened to the said charge sheet issued in the year 1995. Upon hearing both sides and perusing the records produced before us we find that the directions of 29.3.95 in OA 918/ 1994 under which the applicant was permitted to attend office, though were complied with for some period but not fully. We were not explained as to whether the order dated 17.3.98 directing the respondents to allow the applicant to continue functioning in the concerned post, subject to the order that he was not terminated, was complied with or not. However, we may note that unless and until a person is placed under suspension, the respondents cannot keep him out of duty. It is not the case of the respondents that the applicant was placed under suspension.

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Accordingly, the application is allowed. The respondents are directed to permit the applicant to continue functioning in the said post unless and until he was placed under suspension or terminated by any valid order. Accordingly, the application is disposed of. No costs.



(M.K. Misra)
Member (A)



(Mukesh Kumar Gupta)
Member (J)

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