

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J O D H P U R.

Date of Order : 15.5.2000.

O.A. No.191/1996

Munir Khan S/O Shri Peeru Khan, Ex. Motor Driver,
Ticket No.2445, Shop No.4, Dy. Chief Mechanical Engineer
(Workshop) Office, Northern Railway workshop, Jodhpur R/O
C/O Plot No. 137, Kamla Nehru Nagar, Jodhpur.

... Applicant

vs

1. Union of India through the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Chief Workshop Engineer, Northern Railway, Hqrs. Office, Baroda House, New Delhi.
3. The Deputy Chief Mechanical Engineer (W), Northern Railway, Workshop, Jodhpur.
4. The Assistant Personnel Officer, Northern Railway workshop, Jodhpur.

... Respondents

Mr. G.K. Vyas, Counsel for the Applicant.

Mr. R.K. Soni, Counsel for the Respondents.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O R D E R

(PER HON'BLE MR. JUSTICE B.S. RAIKOTE)

This application is filed for quashing the order dated 22.11.1982, issued by the respondent No.3, i.e., Deputy Chief Mechanical Engineer (W), Jodhpur. The applicant also further prayed for final settlement of pension accruing on the basis of quashing of the order.

Contd...2

2. The applicant stated that he was appointed as Motor Driver on 01.11.1957 in the Northern Railway Workshop, Jodhpur and when he was discharging his duties he became mentally disturbed and on the advice of the Doctors, the applicant applied for leave from 11.3.1978 to 01.7.1979. During that period, he proceeded abroad for performing 'Haj'. Again, in the year 1981, the applicant applied for six months leave on the ground of treatment and the same was sanctioned, by the competent authority, and after the completion of six months, again the applicant applied for leave for six months, as an extra-ordinary leave that too, was sanctioned by the competent authority. Thereafter, when the applicant wanted to report to duty in the month of November, 1991 to the Deputy Chief Mechanical Engineer (W), Northern Railway Workshop, Jodhpur, he was not allowed to resume his duties. The applicant was told that his services were terminated in November, 1982 due to long un-authorised absence from duty but he has not received any notice in that behalf. In those circumstances, the applicant made an appeal to the Hon'ble Minister for Railways in 1991 but nothing was heard from him. Hence, the applicant has approached to this Tribunal with this application.

3. By filing counter, the respondents have denied the allegations of the applicant. It is stated in the reply statement that the application is barred by time and on this count only, the same is liable to be dismissed. The averment of the applicant that he did not receive the communication on 12.5.1996, and hence, the application is in time, is denied. They have further stated that after sanctioning the leave, when the applicant remained absent un-authorisedly departmental proceedings were initiated against him by servin

Contd...3

✓

a chargesheet for major penalty. But the same was returned back by the postal department by mentioning that, in spite of repeated visit to his house, the applicant was not present. Thereafter, another registered letter was sent to the applicant at his home address, but the same was also returned. Thereafter, the inquiry proceedings were sent with a bearer but the same was returned with the remark that applicant was not traceable and the said endorsement was made in presence of two witnesses. On the basis of these proceedings, a final order was passed removing the applicant from service vide Annexure R/13 dated 29.10.1982. It is further stated that only in the year 1991, the applicant appeared before the authorities of the Railway department. The applicant filed a representation before the Hon'ble Minister for Railways and the said representation was marked to the Deputy Chief Mechanical Engineer (W), Jodhpur. On the basis of the said representation, the applicant was personally called by the Assistant Personnel Officer (W), Jodhpur, and ~~applicant~~ ~~in the~~ personal discussion, was asked about his whereabouts during the last 14 years but the applicant could not explain the reasons why he was absent for all these years. Thereafter the applicant has filed the present O.A. On the basis of these allegations, the respondents have submitted that applicant has been rightly removed from service vide order dated 03.11.1982. The said order does not call for any interference nearly after 14 years and as such, the application also is barred by time.

4. From the pleadings of both the parties, one thing is clear that the applicant went for pilgrimage to perform 'Haj' and thereafter, he did not report to the concerned authority for nearly 14 years and he made his appearance only with a representation to the Minister for Railways in the year 1991

Contd....4

Since the applicant himself was not available in India, the authorities proceeded ex-parte against him. Since the notice could not be served upon him. The fact remains that, an ex-parte order was passed against the applicant only in the circumstances that notice could not be served on him, nor the applicant made any representation in the departmental proceedings. The further fact also remains that even after the impugned order dated 22.11.1982, the applicant did not report for duties any time till the year 1991. From his pleadings it is clear that it is his explanation that he was mentally disturbed and at the same time, his admission is that he went to perform 'Haj'. From this fact of his pilgrimage it is clear that his statement that he was mentally disturbed, is not acceptable. For the sake of argument we presume that he could not challenge the impugned order of 1982 till the year 1991 due to lack of notice but nothing prevented him to approach this Tribunal in 1991, on the other hand, he made a representation to the Hon'ble Minister of Railways in 1991 only. Thereafter, he filed the present application on 02.2.1996, about 4-5 years thereafter. From the records, it is clear, that the applicant himself was absent from duties without being any sanction of leave. The fact also remains on the record that he came to know of the impugned order in 1991, he did not challenge the same within a period of one year. In terms of Section 19 of the Administrative Tribunals Act, 1985, the period of limitation is only one year. If that is so, neither the law of equity can come to the rescue of the applicant. Since the application itself is barred by time, per se, it is liable to be dismissed on that count. We find that he himself remained absent from duties for nearly 14 years and even in equity he is not entitled to any relief. In these

Contd...5

circumstances, we do not think that this Tribunal can grant him any relief at this juncture. For the above reasons, we do not find that there is any merit in this application. Accordingly, we pass the order as under :

5. The application is dismissed, but in the circumstances without costs.

(Gopal Singh)

(GOPAL SINGH)
Adm. Member

(B.S. RAIKOTE)

(B.S. RAIKOTE)
Vice Chairman

J