

1/9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 19/05/2002

O.A. No. 70/2002.

with

M.A. No. 38/2002.

Prem Kumar Rajpurohit, s/o Shri Bhawar Lal Jee Rajpurohit, at present working as C.M.A. II under the Loco Foreman, Diesel Shed Jetalsar.

... APPLICANT.

v e r s u s

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer.
3. Divisional Personnel Officer, Western Railway, Ajmer
4. Divisional Audit Officer, Western Railway, DRM Office, Ajmer,
5. Senior D.M.E.(Diesel) Western Railway, Diesel Shed, Abu Road,

... RESPONDENTS.

Mr. N. K. Khandelwal counsel for the applicant.
Mr. R. K. Soni counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. A. P. Nagrath)

In this application, the relief prayed for by the applicant has been stated in the following terms :-

"(i) that the impugned order communication Annexure A/1 dated February 5, 1995, may kindly be declared as illegal and the same may kindly be quashed.

1

(ii) by an appropriate writ, order or direction the respondents may kindly be directed to refund the amount of Rs.8,500/- or actual recovered amount along with accrued interest at the rate of 18%p.a. may kindly be allowed to the applicant.

(iii) by an appropriate writ, order or direction grant any other relief, which is considered just and proper in the interest of justice in favour of the applicant.

(iv) The costs of this O.A. may kindly be awarded to the humble applicant.

The factual matrix relevant in this matter is very brief.

The applicant while working as Laboratory Assistant in the pay scale of Rs.975-1540 had been selected for the post of JCMA in the pay scale of Rs.1320-2040. The charge of the post of JCMA, under the rules, can only be taken after the Railway Servant, so selected, completes the prescribed period of training successfully. The pay scale of the post of JCMA at the relevant time was Rs.1320-2040. During the period of training, the applicant was paid Stipend of Rs.1320/- which is minimum of the pay scale of Rs.1320-2040. As per the averments of the applicant the Divisional Audit Officer, Ajmer, vide Audit dated 31.02.1995 pointed out that the applicant's pay during training should have been fixed at Rs.1025/- i.e. the pay which he was drawing while working as Laboratory Assistant and that permitting him to draw stipend of Rs.1320/- per month was erroneous. The Audit Officer is stated to have recommended recovery of the over payment made to the applicant for the period from 6.12.1993 to 4.1.1995. It was admitted before us at the Bar by the Learned counsel for the applicant that this recovery has already been made and was completed in the year 1997. By filing this application, the applicant is seeking directions to the respondents to refund the amount recovered on account of this alleged over payment.

2. The respondents have raised a preliminary objection in



respect of jurisdiction of this Tribunal in entertaining the applicant who is admittedly posted at Jetalsar in Diesel Shed in Bhavnagar in the Western Railway. The respondents' plea is that since Bhavnagar Division falls within the territorial jurisdiction of Ahmedabad Bench of the Central Administrative Tribunal, the applicant can legitimately file an application only before that Bench. The respondents have also opposed this application on the ground of limitation and for non-joinder of necessary party respondents.

3. We have heard the arguments by the learned counsel for the either side on this aspect of jurisdiction. Learned counsel for the respondents submitted that when the recoveries were made from his salary, at that point of time the applicant was posted at Jetalsar. Even this application has been filed when the applicant once again is posted at Jetalsar only. Since Jetalsar is in Bhavnagar Division of Western Railway, Learned counsel asserted that the only appropriate bench of this Tribunal, before which this application could be filed is Ahmedabad.

4. Learned counsel for the applicant, Shri N. K. Khandelwal, strongly urged that the cause of action was a recurring one and that for some period the applicant had been posted in Diesel Shed, Abu Road, in Ajmer Division. It was during the period when the applicant was posted at Abu Road, Dy. Chief Chemist & Metallurgist, Ajmer had written to Senior Divisional Mechanical Engineer, Diesel Shed, Abu Road, that no recovery could have been made from the salary of the applicant as his pay during the period of training from 6.12.1993 to 3.12.1994 had been correctly fixed and paid, and that there should have been no reason for making any recoveries



notwithstanding the Audit Report. Learned counsel contended that when this letter was written, the applicant was posted at Abu Road in Ajmer Division. Since Ajmer Division falls within the territorial jurisdiction of Jaipur Bench of the Tribunal, the applicant is well within his rights to approach this Bench for the relief.

5. Before proceeding with the merits of the case and before taking up other objections raised by the respondents, we consider it essential to first examine the aspect of jurisdiction of this Bench in respect of this OA. Admittedly the applicant is posted at Jetalsar at the time of filing of this OA. When the recoveries were made, at that point of time also, the applicant was posted at Jetalsar. Rule 6 of the CAT (Procedure) Rules, 1987. determines the jurisdiction of the Bench in respect of any application filed. It has been laid down as follows :-

"[6. Place of filing applications.-(1) An application shall ordinarily be filed an applicant with the Registrar of the Bench within whose jurisdiction -

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.]"


In view of applicant's posting at Jetalsar he could not have filed this application before this Bench in terms of Clause 6(1) (i). Learned counsel for the applicant vigorously convassed that the cause of action had partly arisen in Ajmer, for the reason that the impugned letter Annexure A-1 had been issued by Divisional



Audit Officer, Ajmer, and also that when the applicant was posted at Abu Road in Ajmer Division, Deputy Chief CMT had specifically written to Senior Divisional Mechanical Engineer, Diesel Shed, about refunding the amount of recovery made from the applicant. He contended that this gave cause of action to the applicant.

6. On careful perusal of the records and the impugned letters, we find Annexure A-1 i.e. Audit Para, is not a communication which is addressed to the applicant. Section 19 of the Administrative Tribunals Act, 1985, provides that a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal can make an application to the Tribunal for redressal of his grievance. Annexure A-1, in no way can be considered as in order. This is merely an Audit Note, on which a final view is required to be taken by the competent authority of the concerned department. If the authority concerned, accepts the contents of the Audit note then such authority takes a decision in the matter and also determines the manner in which the comments/recommendations/observations of the Audit note are required to be implemented. The applicant has not brought before us any order which might have been communicated to him based on this Audit note. Since Annexure A-1 is not an order communicated to the applicant in our view, he cannot bring this note under challenge before this Tribunal.

7. Learned counsel for the applicant strongly urged before us that based on this Audit Note, the respondents had started making recoveries, without passing any formal order. If that was the case, then the applicant was required to place before us some documents to establish as to which authority had actually acted



upon this Audit Note. From the facts stated in the application and from Annexure A-6 brought on record by the applicant, we find that at the relevant time, the applicant had been working in the Workshop at Bhavnagar. The recoveries were made when the applicant was posted in the Geographical area within the jurisdiction of Bhavnagar division of Western Railway. There is no merit in the arguments advanced on behalf of the applicant that the part of cause of action can be stated to have arisen at Ajmer for a reason that on 7.12.1998 when Deputy CMT wrote to Senior Divisional Mechanical Engineer, Abu Road, requesting him to refund the amount already recovered. The cause of action in this case, can be taken to have arisen at the place where the authority ordering recovery was to catch or where the applicant was posted, when such recovery was ordered. Present place of posting of the applicant is Jetalsar in Bhavnagar Division. When the recoveries were effected, at that time also he was at Jetalsar. Thus, it cannot be said that the cause of action can be taken to have arisen also when the applicant was posted at Abu Road. Under the circumstances, we are of the considered view that this Bench cannot exercise jurisdiction in so far as this application is concerned and the only appropriate place would be Ahmedabad Bench in whose jurisdiction Bhav Nagar Division falls. Since we do not have jurisdiction in this matter, we are not considering other aspects, as brought before us by either party.

8. The applicant has filed MA No. 38/2002 seeking condonation of delay. Since we are not adjudicating the matter in this OA for want of jurisdiction, it is not necessary for us to consider this MA. The same stands disposed of.

