

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

J/K
J/10

O.A. No. 144/2002
J.A. No.

199

DATE OF DECISION 6.11.2003

HASAM KHAN Petitioner

MR. S.K. MALIK Advocate for the Petitioner (s)

Versus

UOI & ORS. Respondent

MR. MANOJ BHANDARI Advocate for the Respondent (s)



The Hon'ble Mr. J.K. Kaushik, Judicial member

Hon'ble Mr. G.R. Patwardhan, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *NO*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

(G.R. Patwardhan)
Admiv. Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 144/2002
DATE OF DECISION : THIS THE 06TH DAY OF NOV., 2003

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. G.R. Patwardhan, Administrative Member

Hasam Khan S/o Sh. Fakir Khan
Aged about 42 years, R/o Vill. Masjid Ki
Dhanipipar Road, PO Malad, Dist. Jodhpur (Raj).
Presently working on the post of
Graded Scale of Gangman at Jaisalmer under the
AEN, Northern Railway, Jaisalmer.

(By Advocate Mr. S.K. Malik, for applicant)

...Applicant.

versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Engineer (II),
Northern Railway, Jodhpur.
3. Assistant Engineer/Asstt. Divl. Engineer,
Northern Railway, Jaisalmer.

(By Advocate Mr. Manoj Bhandari, for respondents)

....Respondents.

ORDER

BY J.K. KAUSHIK, JUDICIAL MEMBER:

Shri Hasam Khan, has entered into the second round of litigation in the matter involved in the instant case and has filed this OA primarily for seeking the following reliefs :-

(i) That by an appropriate writ, order or directions, impugned orders No. INN/170-1/Shri Hasam Khan/Graded Scale P-36. dated 20.10.2001 (Annexure A/1) passed by Respondent No. 3, impugned order No. WAP/170E/H Khan / MF - 5 dated 25.2.2002 (Annexure A/2) and impugned order No. WAP/170E/H Khan/SF-5 dated 22.03.2002 (Annexure A/3) passed by Respondent No. 2 be

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declared illegal and be quashed and set aside by the Hon'ble Tribunal;

- (ii) that the respondents may be directed to pay, pay and allowances to the applicant with effect from 01.07.1991 to 02.06.2000 along with interest @ 18% p.a.;
- (iii) that the respondents may be further directed to make payment to the applicant for the months of May and June 1991 for which he was on duty and not paid to him and also bonus for the year 1989 along with interest @ 18% p.a."

2. Skipping the un-necessary details, the undisputed facts of this case are that the applicant was initially engaged as Casual Labour on 24.5.1978 and was granted temporary status in the year 1982 as a graded scale Gangman. Subsequently, he was subjected to screening test for absorption and also he was medically examined and found fit in B-1 category. While working at Railway Station Samdari, he fell sick and remained under treatment of the Railway Doctor up to 10.1.1991. After his fitness, he reported for duties on 11.1.1991 at Marwar Mathania to the then Permanent Way Inspector Sri V.N. Atrolia, but, he was not allowed to join duty stating that he was under suspension. He reported the matter to the higher authorities and was told that he would be taken on duty only after finalisation of the criminal case.

3. The applicant was issued with a Charge-sheet for major penalty vide Memorandum dated 12.3.1992 containing three charges. He submitted the reply to the said charge-sheet giving full details but, no action was taken for taking him on duty. In the criminal case he was honourably acquitted on



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3.4.92 , a copy of which was made available to the respondents.

Lastly, he had to file a O.A. No. 79 of 1999 before this Tribunal which came to be disposed of on 9.5.2000 with the direction to take the applicant on duty on or before 31.5.2000 and also to decide the period from 7.1.91 according to law. The applicant was not paid subsistence allowance from 1.7.91 to 2.6.2000 and the disciplinary authority proceeded against him on the charge No. 3 i.e. the charge of absence w.e.f. 11.1.1991. An inquiry was conducted in the matter and the statement of one witness each was recorded on behalf of the department and applicant respectively. The inquiry was concluded and the brief note was submitted on behalf of both the sides. Subsequently, two more witnesses were examined at the back of the applicant, who were not the listed witnesses and the applicant was supplied with a copy of the inquiry report. A representation was made in the matter against the findings of the Inquiry Officer. The disciplinary proceedings culminated into imposition of penalty of reduction of pay for a period of one year reducing his pay from Rs. 2850/- to Rs. 2610/- per month temporarily vide order dated 20.10.2001.

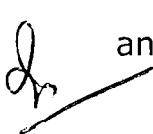
4. An appeal was preferred against the aforesaid order of penalty and the appellate authority issued a notice of enhancement of the punishment. Reply was submitted pointing out the infirmities committed by the inquiry officer as well as the disciplinary authority. The punishment was enhanced to

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that of permanent reversion of the applicant to the lowest stage of 2610 per month vide order dated 22.3.2002.

5. The salient grounds on which OA has been filed are many and have been narrated in Paras 5 (A) to (I). However, we shall be dealing with the grounds which have been stressed during the arguments on behalf of the applicant, in the later part of this order.

6. The respondents have taken certain preliminary objections regarding the maintainability of this O.A. on the ground of availability of alternative remedy and also the scope of judicial review. It has been averred that the applicant reported to Permanent Way Inspector Marwar Mathania on 11.10.1991 and was directed to attend the Assistant Engineer, Jaisalmer Office to receive SF-1-suspension memorandum but instead of attending said office, he absented himself from duty and did not turn up to receive SF-1 and SF-5. He remained absent from 11.1.1991 to 3.6.2000 and since he has not worked during the said period, the question of making of payment of any pay or subsistence allowance does not arise. The proper procedure has been adopted and he participated in the inquiry without any objection regarding the examination of the witnesses subsequently produced. The complete aspect of the matter has been considered by the disciplinary authority and appropriate orders have been passed. The grounds raised



in O.A. have been generally refuted. The applicant does not have any case in his favour.

7. We have heard the learned counsel for the parties at a considerable length and have given anxious thought to their submissions, pleadings and the records of this case.

8. Before examining the case on merits, it would be expedient to deal with the preliminary objection. The preliminary objection is regarding maintainability of the OA on the ground of availability of alternative remedy of revision. We find that vide Order sheet dated 8.9.2003, OA has been admitted and the Tribunal has ample powers to entertain an Application and once the application has been admitted, the ground of alternative remedy does not survive. As regards the judicial review in the matter is concerned, this could not have been found place as a preliminary objection and we shall examine the same at appropriate place in the order. Thus, the preliminary objections are not sustainable and stand repelled.

9. While both the learned counsel for the parties have reiterated their pleadings, we cut short the controversy and come to the main issue involved in the matter. The main issue involved in the matter is that as per the learned counsel for the applicant, the applicant was not taken on duty for the period of alleged absence on the pretext that he was placed under suspension. As per the defence of the respondents, the

applicant did not report for duty inasmuch as he was asked to collect the suspension order as well as the chargesheet from the Assistant Engineer, Jaisalmer, but, he did not collect the same. The question to be decided could be formed in a simple way to determine the main controversy. The first question would be as to what was the status of the applicant i.e. whether he was under suspension or not ? The second question would be that if he was under suspension, whether he was not required to attend the duty ? The third question comes if the applicant was under suspension, can the charge of absence stand against him for the period during which he was kept under suspension. After hearing the learned counsel for some time, a query was raised to the learned counsel for the respondents regarding this aspect specifically asking him as to whether the applicant was under suspension or not during the period in question. The learned counsel for the respondents was in dilemma since in reply at Para No. 6 it has been very specifically indicated that applicant reported for duties on 11.1.1991 but, was directed to receive the suspension memo from the Assistant Engineer, Jaisalmer. Similar position is borne out from the statement of the prosecution witness Shri V. N. Atrolia, who refused to take the applicant on duty on the ground that applicant was under suspension. This is borne out from the Annexure A/6 also. Thus, the inescapable conclusion is that applicant was under suspension. Incidentally, suspension order is a very sensitive order and it comes into effect the



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movement it is issued and even its service is not essential for making it effective.

10. As regards the next question as to whether a person who is placed under suspension is required to attend the duties. The answer is emphatically no and we have not come across any rule which provides or compels an employee to attend to his duties during the suspension period. The provisions of the Railway Servants (Discipline & Appeal) Rules, are no exception to the same. Third question that once a person is not required to attend his duties during suspension, can the charge of absence be levied against him. The very purpose of suspension is that one is not required to attend his duties and if such person is asked to attend the duties during the suspension period, the purpose of very suspension gets defeated. In the present case it is very strange and astonishing that one side applicant was placed under suspension and other side, a charge of absence has been levied against him. Both these conditions are diametrically opposite and very plea put forward by the respondents is a plea of volte-face. One cannot remained under suspension as well as on duty and out of this only one can exist. Admittedly, applicant was under suspension so the charge of absence can have no legal existence. In this view of the matter, the very chrgesheet is misconceived and cannot be sustained.

11. The learned counsel for the respondents has with his full vehemence submitted that the scope of judicial review

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by the Courts including the Tribunal, is very limited and in this connection he has drawn our attention to the decisions of Hon'ble the Supreme Court in Commissioner and Secretary to the Government and Ors. Vs. C. Shanmugam reported in (1998) 2 SCC 394 and in case of Union of India and Anr. Vs. B.C. Chaturvedi reported in (1995) 6 SCC 750. In these cases, their Lordships of Hon'ble the Supreme Court has held that the Tribunal cannot re-appreciate the evidence and substitute its own findings. While, there is no quarrel on the statement of law on the scope of judicial review, we are very clear in our mind regarding the scope of judicial review that we do not have any power to appreciate or reappreciate actual aspect and to substitute our own judgement for that of the competent authority. It is only when the conclusion upon consideration of evidence reached by the authorities concerned is perverse or suffers from patent error on the face of record or based on no evidence at all than the intervention of the Court may be warranted. In the present case, we find that applicant has not at all committed any misconduct and the whole episode is the genesis on the peculiar action of the respondents. The so called evidence against the applicant also shows that it is a case of no evidence also, therefore, the judicial intervention is necessary.

12. The learned counsel for the respondents Shri Bhandari, also stressed that this Tribunal will not examine the order of suspension which is also not under challenge in the instant case. As discussed above, we have not touched the

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suspension order rather we have moved on the premises that applicant was under suspension and have examined the controversy that since the applicant was under suspension whether the charge of absence could stand. Thus, the apprehension of Mr. Bhandari, is ill founded.

13. Before parting with this case, we are constrained to observe that the respondents have neither placed the order of suspension on record nor they have given the details regarding the revocation of order. As per the rules in force, the suspension order remains effective till it is revoked by specific order but, in the present case, respondents have withhold this vital information. As per Rule 30 of the Railway Servants (Discipline and Appeal) Rules, all orders passed under this rule, are to be served in person or through registered post. It has not been indicated as to why the applicant was asked to collect the suspension order and if, he did not collect, it could have been very much sent to him by registered post but, no efforts seems to have been made in this respect. However, the matter relating to revocation of the suspension still remains a mystery.

14. Since we have come to a positive conclusion that applicant has not at all committed any misconduct as alleged against him, we do not feel any necessity of examining the other grounds taken and numerous case laws cited in support of the contentions on behalf of the applicant.

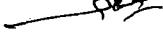


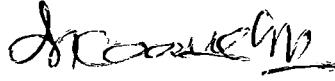
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15. In the result, the O.A. must succeed. The same stands allowed. The impugned order at Annexures A/1, A/2 and A/3 dated 20.10.2001, 25.2.2002 and 22.3.2002 are hereby quashed and the applicant shall be entitled to all consequential benefits as if none of these orders were ever in existence. The respondents are saddled with a cost of Rs. 5,000/- which shall be paid to the applicant and may be recovered from the officer/official who may be responsible for the episode.

16. The aforementioned directions shall be complied with within a period of three months from the date of receipt of a certified copy of this order.




(G.R. Patwardhan)
Admv.Member


(J.K. Kaushik)
Judicial Member


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