

ZK 78

CENTRAL ADMINISTRATIVE TRIBUNAL

Jodhpur Bench, Jodhpur

O.A.No. 74/2004

December 9, 2004.

CORAM: HON'BLE MR. KULDIP SING, VICE CHAIRMAN

Girdhari Lal S/o Sh. Gheesa Ji, aged about 45 years. R/o House No. E-5 Railway Colony, Near Running Room, North Western Railway, Marwar Junction, Distt. Pali. (Rajasthan). Presently working on the post of Senior Gang man, under PWI, North Western Railway, Marwar Junction, Distt. Pali, (Rajasthan).

Applicant

By : Mr. Daya Ram, Advocate.

V E R S U S

1. Union of India, through the General Manager, North Western Railway, Jaipur, (Rajasthan).
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer. (Rajasthan).
3. Divisional Personnel Officer, North Western Railway, Ajmer Division, Ajmer. (Rajasthan)

By : Mr. Salil Trivedi, Advocate.

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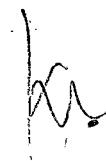
Respondents

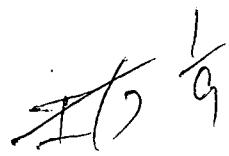
O R D E R (ORAL)

KULDIP SINGH, VC

The applicant has filed this Original Application seeking the following reliefs:-

"(a) By an appropriate order, writ or direction, respondents may be directed to release the Payment and Allowances w.e.f. 16.05.2002 to 25.03.2003 and Bonus for the year 2002-2003, of the applicant along with the interest @ 9% P.A."





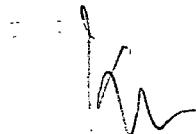
The facts in brief, as alleged by the applicant, are that on 1.05.2002 he was working on the post of the Senior Gang man at Marwar Junction. On that date an order was issued by the respondents vide which the applicant was transferred. The applicant challenged that order by filing an O.A 133/02. The Tribunal passed an order on 16.05.2002 to the effect that if the applicant has not been relieved, he shall continue to work at Marwar Junction till the next date and the order of transfer shall not be given effect to.

2. It is further submitted that the respondents contested the said O.A. However, the same was disposed of vide order Annex. A/2 wherein it was observed in paragraph 4 thereof as under:-


"It is seen from the record that on 16.5.2002 an interim stay was granted and the applicant is continuing on the post."

3. Further the Tribunal came to the conclusion that it was not necessary on its part to decide the question of transfer involved in the case and the respondents may consider the case of the applicant for promotion to the post of Key Man at the earliest and if found suitable he should be given promotion to the post of Key Man. Respondents were further directed not to give the promotion to the persons who were in the panel till the applicant's case is considered.

4. It is further submitted that the respondents paid the applicant salary upto 15.05.2002 but he was not paid any salary



10

from the date of passing of the interim order by this Hon'ble Tribunal though he was continuously going for duty. It is further submitted that vide order dated 21.03.2003 his transfer had been cancelled and the applicant had been transferred again to his original place at Marwar Junction vide Annex. A/3.

5. It is further stated that the applicant had been making verbal request to the respondents for making the payment of pay and allowances for the period w.e.f 16.05.2002 but the respondents kept on assuring the applicant that everything will be paid after settlement of the case but no payment has been released even after cancellation of his transfer order. Hence the applicant has been left with no alternative except to approach this Hon'ble Tribunal for redressal of his grievances.

6. The respondents in their reply plead that the applicant cannot be granted pay and allowances for period 16.05.2002 to 25.03.2003 because he was transferred on administrative grounds to join his duty under CPW I/New Bhuj vide order dated 1.05.2002. In pursuance of the order dated 05.05.2002 the applicant was relieved on 03.05.2002 by CPW I/Sojat Road, which was received by the applicant under his own signatures, vide Annex. R/1. However, the applicant did not join his duty at New Bhuj and filed an O.A.NO.133/02. It is further submitted that the applicant at the time of filing of the O.A did not bring the true facts before the Tribunal and on the contrary mislead

10/11

this Tribunal inasmuch as he concealed the material facts with regard to his being relieved on 03.05.2002 and the Tribunal passed an ad interim order wherein his transfer was stayed subject to the condition that he has not already been relieved of his duties. If that is so, the applicant shall continue to work at Marwar Junction till the next date fixed but the fact is that the applicant had already been relieved on 03.05.2002 but he did not report at his transferred place of posting. So it is stated that the applicant had not been paid salary rightly from 15.05.2002 onwards because he did not join his duty at New Bhuj after having been relieved on 03.05.2002. It is further stated the order of transfer has been cancelled because of formation of new zones and the applicant's services had to be brought back to the original zone from where he had been transferred since the place where he had been transferred had fallen into another zone. It is further stated that the applicant is not entitled for the payment of bonus for the year 2002-03 because he has not worked.

7. I have heard the learned counsel for the parties and perused the records.

8. As regards the stay of transfer order is concerned, the documents placed on record by the applicant itself show that the Tribunal while granting interim relief had specifically observed that if the applicant has not been relieved of his duty then he shall continue to work at Marwar Junction. The fact that the applicant had been relieved under his own

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signatures/acknowledgment in the letter dated 03.05.2002 is apparent from the documents on record and cannot be disputed.

6. The observations of the Tribunal in Paragraph 4 that the applicant is continuing on the post appear to be contrary to the record since the letter dated 03.05.2002, which has been placed on record, clearly shows that the applicant had been relieved on 03.05.2002 under his own signatures. The relieving order also shows that the employee's salary is being charged to the transferee office till 28.05.2002 i.e. even after the relieving order but the fact remains that the applicant had been relieved on 03.05.2002. The record is other way round which goes to show that the applicant had been relieved from 03.05.2002. He should not have worked at the place where from he had been transferred. It is also pertinent to mention that the applicant though this O.A does not mention as to where he has been reporting for duty during the intervening period for which he is claiming salaries and wages in this O.A. Even in his representation the applicant does not mention as to where he had worked during this period. The O.A itself was decided on 06.09.2002 but the applicant did not join duty at Marwar Junction, the place from where he was transferred, since according to the applicant himself, his transfer order had been quashed. There is no explanation in the O.A itself as to why he did not join his duty even after the disposal of his O.A. Thus, I am of firm opinion that the applicant had not been performing



any duty during the period in question, thus, he cannot be granted the relief as claimed by him.

7. The O.A. is, therefore, found to be without any merits.

The same is liable to be dismissed and is dismissed as such.

8. However, before parting with the judgement, I may further mention that if the applicant makes a comprehensive representation to the respondents to treat the period as duty and for leave of the kind due and for release of pay and allowances for the period from 16.05.2002 to 25.03.2003 and Bonus for the year 2002-2003 the respondents may consider the same and pass a speaking order within two months. Else, they may take action in accordance with rules and instructions on the subject. The O.A. is dismissed with no order as to costs.



(KULDIP SINGH)
Vice Chairman

December 9, 2004.

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Part II and III destroyed
in my presence on 31/10/13
under the supervision of
section officer () as per
order dated 18/10/2013

S. K. Shrivastava
Section officer (Record) 31.10.2013