

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 28/2011

Jodhpur this the 17th November, 2014

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Khem Chand aged about 55 years S/o Sh. Som Pal, B/c Kohli (SC), R/o Taar Baag Jhoonpri, Rajiv Colony, Sojat Road, Tehsil Sojat, District Pali (Raj).

Presently working on the post of Loco Pilot (Shunting) at N.W.R., Abu Road.

....Applicant

By Advocate: Mr Narpat Singh.

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur (Raj).
2. The Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer (Raj).
3. The Senior Divisional Mechanical Engineer, North Western Railway, Ajmer (Raj).
4. The Senior D.M.E. (DL), North Western Railway, Abu Road (Raj.).
5. The Chief Crew Controller, North Western Railway, Abu Road (Raj.)

.....Respondents

By Advocate : Mr Salil Trivedi.



ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The applicant has filed this OA not against any specific order but against action of the respondents to disallow the applicant to discharge his duties on the post of Loco Pilot (Shunting) at his present place of posting i.e. North Western Railway, Abu Road and deny him salary.

2. The brief facts of the case, as stated by the applicant, are that the applicant is posted and working Loco Pilot Shunting (LPS) in the respondent-department. In the month of June, 2010, the applicant has been sent for training to Diesel Training Centre (NWR), Bhagat Ki Kothi, Jodhpur and he completed his training w.e.f. 07.06.2010 to 19.06.2010 without any break. The principal work of the applicant is shunting of the powers/diesel engines at the stations/yards which he has been discharging best of his efficiency and without committing any accident or derailment. In the second week of Sept., 2010 the respondent No. 4 got annoyed with the applicant and threatened him for dire consequences resulting in issuing a communication dated 10.09.2010 with the threatening that respondent No. 4 would see how the applicant pass this training. The applicant successfully completed the training just before a short period in pursuance of the order passed by the competent authority i.e. the respondent No. 3. As a matter of fact, vide order dated 10.09.2010 the applicant has been directed to undergo the same training which he had successfully completed just before a period of two and half months

from the date of issuance of order dated 10.09.2010 (Annex. A/2). In pursuance to aforesaid order dated 10.09.2010 the respondent No. 5 has also issued the compliance order dated 11.09.2010 (Annex. A/3) directing the applicant to undergo the same training. Being aggrieved from the impugned orders dated 10.09.2010 and 11.09.2010 the applicant filed OA No. 290/2010 before this Tribunal and the same is pending till date. On account of approaching to the Hon'ble Tribunal, the respondents further annoyed with him and decided to spoil the career of the applicant, the respondents are deliberately not allowing the applicant to work on his post and inasmuch as the respondents have not assigned any work to the applicant since 11.09.2010 by passing any kind of written order or verbal instruction too and even not allowing the applicant to mark his signature in the attendance register at Abu Road although the applicant has regularly been attending the office of Railway at Abu Road since 11.09.2010 till the date and requesting the authority to discharge his duties on his post at Abu Road but all in vain. The respondents clearly told that applicant that unless Court/Tribunal passes any order in favour of the applicant, they would not allow him to discharge any duty on the post of LPS. Under these compelling circumstances the applicant sent applications dated 08.10.2010 & 12.11.2010 (Annex. A/4 & A/5) by registered post to respondents to allow him to work. Consequently, in a calculated manner and with malafides a memorandum dated 03.01.2011 (Annex. A/6) has been issued against the applicant for imposing minor penalty for remaining absent w.e.f. 11.09.2010 which was replied by the applicant vide

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reply dated 27.01.2011 (Annex. A/7). Therefore, the applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- a. By an appropriate order or direction the respondents may kindly be directed to allow the applicant to work on the post of Loco Pilot (Shunting) at Abu Road and pay him salary month by month since 11.09.2010 till date with all consequential benefits.
- b. That, the respondents may kindly be directed to treat the applicant on duty w.e.f. 11.09.2010 till the date with all consequential benefits and pay him salary and cost of litigation.
- c. Any other relief, which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the application, may kindly be passed in favour of the applicant.
- d. The cost of this application may be awarded in favour of the applicant.

3. By way of reply, the respondents denied the averments made by the applicant and have averred that the applicant was sent for training by the competent authority vide order dated 10.09.2010 and in pursuance of this order he was relieved for training on 11.09.2010 but the applicant instead of carrying out his training remained unauthorizedly absent from 11.09.2010 and filed an OA bearing No. 290/2010 before this Tribunal while assailing the validity of the order dated 10.09.2010 and 11.09.2010 and the respondents filed reply in this OA in detail and explained as to under what circumstances the applicant was sent for training under the rules. However, the applicant withdrew the said OA on 04.02.2011 and as such the same was dismissed as withdrawn (Annex. R/2). Thereafter, the applicant

presented himself for joining the duties on 05.02.2011 and since then he is working at Abu Road, therefore, on the date when the notices of the OA were issued by the Tribunal on 11.02.2011, the applicant was already discharging his duties from 05.02.2011 at Abu Road. The allegations of the applicant against the respondent No. 4 in respect of order dated 10.09.2010 and 11.09.2010 are ill-founded and baseless. The work of the applicant belongs to the safety category and during the discharge of duties whenever it is found that the employee concerned is making certain mistakes or not discharging the duties properly then by virtue of instructions issued by Railway Board, the employees are sent for training and the applicant was sent for training which in no case affects his status adversely. The applicant remained unauthorizedly absent from duty since, 11.09.2010, therefore, the respondents issued the charge-sheet under Railway Servants (Discipline & Appeal) Rules, 1968 and after considering the reply, competent authority issued the penalty of stoppage of one set of privilege pass upon the applicant vide order dated 15.03.2011 (A/3), therefore, the respondents have prayed to dismiss the OA.

4. Heard both the parties. Mr Sailesh Trivedi, counsel appearing on behalf of respondents submits that the applicant has been promoted to the post of Loco Pilot (Goods) and in view of this development the prayer sought by the applicant to allow the him to work on Loco Pilot (Shunting) has rendered infructuous as he has already been promoted to next higher post vide Annex. R/1 dated 18.02.2011 and name of the applicant is placed at S.No. 2. He further submits that

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without challenging the order of the competent authority how can relief No. 2 can be claimed by the applicant.

5. In view of this submission the OA is disposed of being rendered infructuous. However, if any cause survives to the applicant in respect of prayer No. 1, the applicant will be at liberty to file fresh OA or avail of other remedies available to him as per law. So far as relief No. 2 is concerned, the applicant can approach appropriate forum, if so advised, as per law.

Accordingly, OA is disposed of with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member
Ss/



(JUSTICE K.C. JOSHI)
Judicial Member

Copy received

for Narpat Singh
A.S.

~~25/11/17~~