

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 75 of 2005

This the 23rd day of January, 2008

Hon'ble Shri Justice Khem Karan, Vice Chairman

Matadin, aged about 43 years son of Sri Ram Saran, Resident of Gaiber Jot Mouja Chillbila Khutipur Post- Chandravapur, Distt. Gonda.

Applicant

By Advocate:- Sri Sailk Ram B/h for Sri Rakesh Yadav

Versus

1. The Union of India , through Ministry of Railways, Baroda House, New Delhi.
2. The Divisional Railway Manager, North Eastern Railway, Lucknow.
3. The Senior Section Engineer, (P-Way), North Eastern Railway, Gonda.
4. The Assistant Divisional Engineer , B.G. North Eastern Railway, Gonda.

Respondents

By Advocate: Sri Azmal Khan

ORDER

BY HON'BLE SHRI JUSTICE KHEM KARAN, VICE CHAIRMAN

The applicant is praying for directing the respondents to allow him arrears of salary from 8.7.2001 to 26.6.2004 and is also praying for quashing order dated 10.2.2005 (Annexure- 3 to the counter affidavit).

2. While being posted as Chowkidar in the year 2001, applicant was served with an order dated 10.7.2001, directing him to take the charge of Railway material with the help of Store Keeper. It appears, he was not inclined to obey these orders dated

10.7.2001, as it was not the job of Chowkidar to take the charge of Railway material. He filed one O.A. No. 534/2001, challenging the order dated 10.7.2001. Vide interim order dated 24.9.2001, operation of order dated 10.7.2001 was stayed. While the O.A. was still pending, he filed one CCP No. 115/2001 saying that in spite of the interim order dated 24.9.2001, the respondents were not allowing him to discharge his duties as Chowkidar and were not paying his salary. The O.A. was finally disposed of vide order dated 30.4.2004 (Annexure 2). The order dated 10.7.2001 of the respondents was quashed. The contempt petition was also disposed of saying that interim order dated 24.9.2001 merged into the final order. Thereafter, he was posted at another place where he joined on 27.6.2004. It appears, his salary for the period from 8.7.2001 to 25.6.2004 has not been paid, in spite of representation having been given to the authority concerned. While this O.A. was pending, the respondents passed order dated 10.2.2005 (A-3 to reply) whereby the claim for salary for the period from 8.7.2001 to 26.7.2004 after bonus etc., has been rejected. Therefore, the applicant got his O.A. amended, so as to challenge order dated 10.2.2005.

3. According to the respondents, the salary for the period 3.7.2001 to 9.7.2001, from 10.7.2001 to 16.7.2001 has already been paid in 2001 but the salary for the period from 17.7.2001 to 4.10.2001 and from 7.10.2001 to 25.6.2001 has not been paid as he unauthorizedly absented from duty. Attempt has also been made to say that the applicant never informed them about interim order dated 25.9.2001, nor reported for duty, prior to 4.10.2001, when

He was spared to report for duty to S.S. Eng. (P.Way), Basti. It is averred in para 9 that the applicant was relieved on 5.10.2001, so as to join under SS Engineer (S.P.Way), Basti and after joining there on 6.10.2001, he absented from duty right from 7.10.2001 to 26.6.2004.

4. I have heard Sri Salik Ram B/h for Sri Rakesh Yadav for applicant and Sri Azmal Khan for respondents.

5. The applicant has created as lot ^d ~~of~~ confusion. While according to the respondents, the applicant remained under suspension from 3.7.2001 to 9.7.2001, was given notice of minor punishment on 13.7.2001 of stoppage of increments for 35 months, vide order dated 1.10.2001 (see para 9 of reply), was transferred to Basti, was relieved on 5.10.2001 and he joined there on 6.10.2001, the applicant has not even whispered a word about all this in O.A., while putting claim for salary and bonus for 8.7.2001 to 26.6.2004. What ^{surprising} ~~surprised~~ is that he is saying nothing satisfactory in his rejoinder. His stand is that since the order dated 10.7.2001, was stayed vide interim order dated 25.9.2001, in earlier OA of 2001 and the same was finally quashed and since he was always ready to discharge his duties but the respondents did not allow him to do so, so he is entitled to salary and bonus etc. For substantiating the pleas that he was always ready to discharge his duties, he is referring to contempt proceedings. On the other hand, the respondents say that the applicant never reported for duty after joining on 6.10.2001, at Basti and remained absending till he joined on 27.6.2004. Thus according to them, the applicant worked only on 5.10.2001 and

6.10.2001, in the months of October and absented from duty thereafter. They say salary for the period from 3.7.2001 to 9.7.2001, 10.7.2001 to 16.7.2001 was paid along with the ^{pay} for month of July 2001 and since he remained absent from 17.7.2001 to 4.10.2001, so he was not entitled the same. Copies of letter dated 10.8.2001 (CR-1), 01.2.2002 (CR-2), written by the officer concerned, have been annexed with a view to substantiate the pleas taken in reply.

6. In absence of proper enquiry into the rival claims, it is difficult to say anything. Since the claim relates to salary for a considerable period, so it seems just and proper to direct higher authorities namely DRM, NER, Lucknow to enquire into or to get the matter enquired into through some responsible officer, whether the applicant avoided to discharge his duties or the authorities concerned did not allow him to discharge his duties, during the period from 17.7.2001 to 4.10.2001 and from 7.10.2001 to 26.6.2004. He may be asked to pass suitable orders as regards the claim of the applicant for salary and bouns. I may observe, that no govt. servant or servant of the Railway, can claim salary for the period or days, he is unauthorizedly absent. I am also constrained to remark, that employees, should avoid unnecessary litigation, as it wastes their time, energy and money. They should first try to get their grievance redressed from the level of higher authorities. IN his O.A., applicant refers to only one representation dated 16.12.2004 (A-3), (copies of which were endorsed to as many as 7 authorities, including Hon'ble Minister, The General Manager, Chief Engineer, but without reasonably

waiting ^{for} its outcome, O.A. was filed on 27.1.2005. He nowhere alleges in O.A. that he gave any application to any authority of the department, putting his grievance that he was not being permitted to discharge his duties nor was being paid his salary. I think, application dated 16.12.2004 (A-3) was not a genuine and honest effort to get the assistance of higher authorities towards redressal of grievance but was given ^{for} aimed at facilitating filing of O.A. If he was really serious in redressal of his grievance from there, he ought to have waited for some time and would have sent reminder etc. So, it was not a genuine effort ⁱⁿ his part, to get his grievance redressed, on the departmental side. The approach of officers concerned, right from 2001, has also not been appreciable one. I have not been able to understand, as to how the authorities concerned felt content, only in sending letters (CR-1, CR-2), if the applicant was unauthorizedly absending since long. What they did after CR-2 dated 1.2.2002 till 26.6.2004. In the circumstances, I have no option but to ask the DRM to get the matter enquired ^{with} and pass suitable orders in regard to the claim of the applicant.

7. So, the O.A. is finally disposed of with a provision that in case the applicant gives a self contained representation to respondent No.2 together with the copy of this ^{order} ~~order~~ within a period of one month from the date of this order, the respondent No. 2 will enquire or get the same enquired into by a responsible officer and pass suitable orders accordingly, as regards the claim of the applicant for salary and bonus, within a period of three months from the date such representation is so given. Order dated 10.2.2005

will not come in the way of respondent No.2, in passing suitable orders on the basis of result of the enquiry. No costs.

J. C. Durran
23.1.08

Vice Chairman

HLS/-