

Central Administrative Tribunal, Lucknow Bench, Lucknow
CCP No. 56 of 2008 in O.A. No. 52/2008

This the 8th day of October, 2010

Hon'ble Shri Justice Alok Kumar Singh, Member (J)
Hon'ble Sri S.P.Singh, Member (A)

Shatrohan aged about 49 years son of Sri Ram Autar, Carpenter, senior Section Engineer, Locl Shop, Northern Railway, Charbagh, Lucknow.

Applicant

By Advocate: Sri Amit Sharma and Sri R.N.Shukla

Versus

1. Mr. Jogesh Singh Sondhi, Divisional Rail Manager, Northern Railway, Hazratganj, Lucknow..

Respondents

By Advocate: Sri S. Verma

ORDER

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

Heard the learned counsel for applicant and learned counsel for respondents and perused the material on record.

2. This contempt petition has been filed u/s 12 of the Contempt of Court Act, saying that O.A. No. 52/2008 (Shatrohan Vs. UOI and others) has been decided by this Tribunal on 9.5.2008, directing the Opposite Party No.2 to take an early decision regarding wages for the period 25.7.2000 to 9.2.2006, and regularization etc. in the light of the Tribunal's earlier order dated 22.3.2004 and letters dated 26.4.2007 and 8.7.2007 in accordance with rules within a period of 3 months from the date copy of this order is produced before him. It is said that the copy of the order was got received to opposite party No. 2 on 20.5.2008 vide receipt No. Annexure No. 2. But the compliance has not been made till date and hence this contempt petition.

3. Briefly stated the facts of the case are that the vide order dated 21.7.2000, the Assistant Divisional Engineer, Headquarters, Northern Railway, Charbagh, Lucknow declared the applicant as surplus who at

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that time, was working on the work Charged Post as Casual Carpenter Grade III on ELA basis under ADEN/HQ/LKO. Simultaneously, he was re-deployed as Gangman. But the applicant did not join as Gangman and remained absent from duty from 25.7.2000 to 9.2.2006. Meanwhile, he filed one O.A. No. 458/2000 for setting aside the aforesaid order. This O.A. was finally disposed of vide order dated 22.3.2004 in favour of the applicant saying that the order dated 21.7.2000 was unjustified hence quashed. The respondents was further directed to allow him to continue on the post which he had been holding prior to his relieving on 25.7.2000. Consequently, the applicant was permitted to joint on that post and he is still serving.

4. Then the applicant filed another O.A. No. 52/2008 for directing the respondents to pay him back wages from 25.7.2000 to 9.2.2006 and also to regularize him on the post w.e.f. the date Sri Lal Verma, junior to him was regularized. This O.A. was also allowed with a direction to the respondents to take an early decision as regards the wages for the aforesaid period and also for regularization in the light of the Tribunal's order dated 22.3.2004 within 3 months from the date a copy of this order is produced.

5. The respondent has filed two compliance reports in this case. In the first compliance report, it has been said that as the period of absence was more than 5 years, it was only the Railway Board who was competent to take decision under the relevant rules. Therefore, a letter was issued on 29.1.2009 to the Railway Board forwarding the applicant's case for regularization through proper channel vide Annexure C-1. Thus the compliance of the order of this Tribunal has been made by the respondent i.e. the Divisional Railway Manager, Northern railway, Hazratganj, Lucknow at his end, it was asserted. Along with this

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compliance report, a delay condonation application has also been filed in Feb., 2009, which has been opposed by the applicant.

6. In the second compliance report filed by the respondent Sri Jogesh Singh Sondhi, DRM, Northern Railway, Lucknow on 4.5.2010, it has been said that in the wake of subsequent developments, the General Manager (P) Northern Railway, New Delhi has issued a direction that this matter be decided in the light of the Supreme Court's judgment in the case of Somesh Tiwari Vs. UOI and others reported in (2009) 2 Supreme Court Cases, 592. Accordingly, the matter was considered by the respondents and the applicant's period of absence was regularized as "Leave due" by means of letter dated 30.4.2010/ 3.5.2010 (Annexure SC-1). In the last, it has also been said that the delay in deciding the applicant's period of absence and the matter of regularization was neither intentional nor deliberate but was beyond the control of the respondents, and deeply regretted. The relevant portion of the order dated 3.5.2010 by means of which the compliance is said to have been made is extracted herein below:-

"Upon perusal of your case, I found that while you were working on Work Charged post as Casual Carpenter Gr. III on ELA basis under ADEN/HQ/LKO, was declared surplus ;and redeployed as Gangman, but you did not join the said Group 'D' post and remained absent from 25.7.2000 till 09.02.2006. Further in compliance of direction of the Hon'ble Tribunal, you were retained to work as Work Charged Carpenter on ELA basis w.e.f. 10.2.2006 and till then you are working on the said post.

With regard to the regularization of period from 25.7.2000 to 09.02.2006, it is intimated that since the matter of regularization of subjected period was of 5 years, 6 months and 17 days and vested within the jurisdiction of Railway Board, it was referred through letter

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dated 29.1.2009, followed by it's reminder dated 15.3.2010 and ultimately, the General Manager (P), Northern Railway, New Delhi has decided to pass orders with regards to your said absence from duty in the light of judicial citation of Hon'ble Supreme Court of India as reported in (2009) to Supreme Court Cases 592 titled as Somesh Tdiwari V. U.O.I. and Others. Accordingly, the said period from 25.7.2000 to 09.02.2006 is decided as Leave Due.

In view of the above mentioned facts, reasons and circumstances coupled with the fact of events and eventuality taken place in the matter, I feel that interest of justice would be subserved if your period of absence from 25.7.2000 to 09.02.2006 is decided as Leave Due. And as such, the same is decided accordingly. In this way, the Hon'ble Tribunal's judgment and order has been complied with in accordance with relevant rules, instructions of the headquarter office on the subject and judgment of Apex Court. Here, it will be very relevant to mention that some delay has taken place in making compliance of the judgment, which is deeply regretted with a further assertion that neither the same was intentional nor deliberate, but ;;was beyond control of the under signed and it occurred due to official procedure, application of statutory rules and involvement of several offices/departments of this division and as well as Headquarters office of Northern Railway, New Delhi."

7. The aforesaid case law of Somesh Tiwari (Supra) was thoroughly perused by us. In that case, there was an anonymous complaint against appellant, which was investigated by departmental authorities but nothing adverse was found against appellant, yet he was transferred from Bhopal to Shillong . He resisted his transfer and did not move out of Bhopal. Subsequently, another order dated 28.12.2005 was passed

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transferring appellant to Ahmedabad. He contested this order also. The Administrative Tribunal dismissed his application but the High Court found that transfer order dated 28.12.2005 was not a bona fide exercise of power and therefore declared it invalid.

The Supreme Court considered validity of appellant's transfer out of Bhopal as well denial of salary to him. The Supreme Court also took note of internal notings in official files which showed that Government itself admitted that appellant's transfer to Shillong was a harsh posting and his second transfer to Ahmedabad was considered as "less harsh posting". The question was whether appellant's transfer in the facts and circumstances of the case, was a bona fide exercise of power. Second issue was whether appellant should have been denied salary for the period he did not obey second transfer order."

8. The Hon'ble Apex court allowed the appeal with cost of Rs. 50,000/- and modified the High Court order. Hon'ble Apex court held that ordinarily, a transfer is an incidence of service which should not be interfered with, save in cases where inter alia mala fides on the part of the authority is proved. It was further observed that the order in question attracted the principle of malice in law and it was not based on any factor germane to passing of an order of transfer and based on an irrelevant ground i.e. of anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of, or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal. It was also found no vigilance enquiry was initiated against the appellant and the transfer order was passed on material which was non-existent. Similarly, the second transfer order, transferring the appellant to Ahmedabad station, suffered from non -

application of mind because it proceeded on the premise that the appellant had already joined his post at Shillong and it was quite clear that Shillong was considered to be a harsh posting. In the last, the Hon'ble Apex Court laid down that mechanical application of normal rule 'No work No pay' may in a case of this nature, be found to be wholly unjust. Though, no absolute proposition of law in this behalf can be laid down, the Hon'ble Apex Court observed that interest of justice would be subserved if during the period from 28.12.2005 till appellant's joining in Bhopal, the appellant is treated to be on leave and respondents are directed to pass an appropriate order invoking the leave rules applicable in this behalf. The relevant paragraph 34 of the judgment rendered by the Hon'ble Apex Court is also necessary to be mentioned, which is as under:-

"34. We are conscious and mindful that even in absence of statutory provisions, normal rule is 'no work no pay. In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected. "

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9. On behalf of the respondent, it is said that it is the aforesaid case law in the light of which the above compliance of order dated 3.5.2010 has been passed by DRM, N.R., Lucknow. On the other hand the learned counsel for applicant says that this case law is in his favour and in the light of this judgment, he should have been given the pay for the period in question.

10. We are of the considered view that the facts of the aforesaid case law were quite different from the present one. In that case, it was found that the transfer was not an 'incidence of service. Rather it had attracted principle of malice. In other words, it was passed in lieu of punishment which was based on irrelevant grounds. In the case before us The applicant was working merely on work charged basis as casual Carpenter Grade III, which was declared surplus in routine course. Nevertheless the respondents did not oust him from the job. They rather re-deployed him as Gangman and possibly this was the best gesture which could have been shown by the Department. But the applicant himself chose not to join as Gangman. He rather absented himself from duty for a long period of about 6 years. In fact the applicant must thank to the Department for not initiating any departmental enquiry against him. Be that as it may. In the case of Somesh Tiwari (Supra), the person was willing to work but he was illegally and unlawfully not allowed to do so while in the present case, the applicant was not willing to work on the post of Gangman on which he was redeployed in routine course after he was found surplus on the post of work charged casual carpenter. The order of re-deployment was passed bonafidely and there is no allegation of malice or any such thing. In such circumstances, the applicant who was merely a casual labour, should have joined the duties of Gangman and subsequently he could have represented before the Department or before court of law. Therefore,

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the respondents has rightly adhered of normal rule of 'no work no pay' in his case. It is not a case in which the normal rule of 'no work no pay' may need dilution. In compliance of the judgment and order of the Tribunal, the respondent^{At} did regularize his long period of absence of about 6 years as 'leave due'. It is specifically mentioned in compliance order that the interest of justice would be sub served, if his aforesaid period of absence is treated as 'leave due'. Further it is mentioned that this exercise has been done in accordance with relevant rules as directed by this Tribunal. As a result of this, the applicant would surely get the benefit of continuous service for retrial benefits etc. when he retires. Though, he was only a casual worker on work charged basis, but in spite of being found surplus, he was not ousted from the job. Rather he was given the job to work as Gangman. But probably because the work of Gangman required some more labour or for some other reasons best known to him, he restrained himself from joining and doing that job and thus absented for long period of six years.

11. As far as payment of wages is concerned, in a proceeding of contempt petition, we are not supposed^{At} to go into the merits and demerits of the aforesaid order dated 3.5.2010. There was a direction to pass appropriate orders regarding wages and regularization and it was accordingly passed. The directions given by the Tribunal in O. A. No. 52/08 cannot be construed to have meant that wages ought to have been necessarily paid at every cost. Besides, the proposition of law laid down by the Apex Court is the law of land, which has been duly followed by the respondent. Therefore, we find that substantial compliance has been made in this case.

12. But before parting with the case, a short discussion is also required to be made in respect of delay which has been made in compliance of the order, for which the respondent has also sought condonation.

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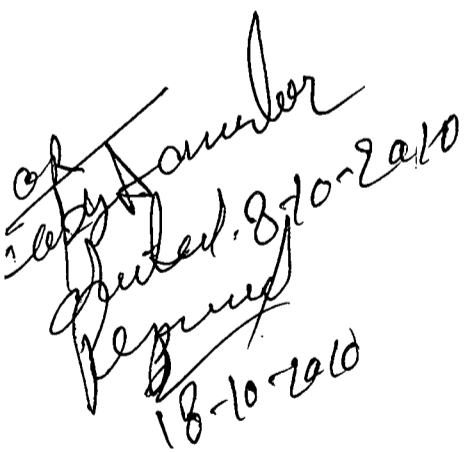
There is no denial that the respondent could not pass the orders within the reasonable time. It appears that matter was referred to the Railway Board unnecessarily. Ultimately, the order was passed by the respondent[^] himself. It took about 2 years to the respondents to comply with the orders. As a consequence of this, the applicant not only suffered substantial financial loss on account of litigation expenses etc. but also suffered mental agony, for which he is entitled to be duly compensated. Therefore, the delay in making compliance by the respondents is condoned subject to payment of cost of Rs. 25,000/- to be paid to the applicant within 45 days from the date, a copy of this order is served upon the applicant.

13. With these observations, having regard to the fact that substantial compliance has been made by the respondent, this contempt petition is disposed of accordingly. No costs.


(S.P. Singh)
Member (A)

 8.10.10.
(Justice Alok Kumar Singh)
Member (J)

HLS/-


of copy number
dated 8/10/2010
18-10-2010