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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NxExWxxDxEIxKkK
New Bombay Bench

O.A. No. 759/87
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DATE OF DECISION 8-3-1990

Sh Mahendra Y Pandit

Petitioner

Sh Nerlekar

Advocate for the Petitioner(s)

Versus

Divisional Rly Manager, Bombay VT Respondent

Sh P.R.Pai

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S.Chaudhuri, Administrative Member

&

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? }
4. Whether it needs to be circulated to other Benches of the Tribunal? }

(11)

Before the Central Administrative Tribunal
New Bombay Bench, New Bombay - 400614

Date: 8-3-1990

Original Application No.759/87

CORAM

Hon'ble Shri P.S.Chaudhuri, Administrative Member
&
Hon'ble Shri A.V.Haridasan, Judicial Member

Shri Mahendra Yashwant Pandit
Indian Inhabitant, Asstt. Pointsman
Kurla Yard, residing at
C/o Y.V.Pandit, MS/RB/1/1001/34
Ambernath Road(Waldhuni),
Kalyan-421 304, Dist. Thane. - Applicant

Versus

The Divisional Railway Manager,
Central Railway, Bombay V.T. - Respondent

Shri L.M.Nerlekar - Counsel for the
applicant

Shri P.R.Pai - Counsel for the
respondent

JUDGEMENT

(Shri A.V.Haridasan, Judicial Member)

Shri Mahendra Yashwant Pandit, who has been working as Assistant Pointsman, Kurla Yard under the respondent, the Divisional Railway Manager, Central Railway, Bombay V.T. has filed this application under Section 19 of the Administrative Tribunals Act praying that the respondent may be directed to issue posting orders to him and to pay him salary and allowances with effect from 22.11.1986 till date with 50% interest on the amount of arrears of salary. In the application it is alleged that the applicant was selected for the post of Assistant Pointsman, that he was found fit

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in the medical examination held on 6th March, 1985, that he was appointed as Assistant Pointsman in Kurla Yard on 19.9.1986, that he was deputed for Refresher Course from 10th November 1986 to 21st November 1986, that after passing examination in the Refresher Course/when he reported for further posting before the respondent, he was not issued any posting orders and no reason was assigned for not doing so. The applicant claims that he is awaiting posting orders since 22nd November 1986 and that as the respondents has without any reason refused to issue posting orders to him, the same has to be considered as illegal termination of service and therefore he is entitled to the reliefs prayed for.

2. The application is resisted by the respondents.

In the reply statement it has been contended that the applicant was neither selected nor appointed to the post of Assistant Pointsman, that he and many other persons of the Bombay Division of the Central Railway produced fake appointment letters, that they were sent for training, that they were declared passed in the training examination, that while so on scrutiny of records it was found that these persons had obtained posting on production of fake appointment letters, that a C.B.I. enquiry in this regard is pending, that coming to know of it the applicant and some other persons absconded while some such persons reported for duty after training, that the applicant had never reported for duty and that as the applicant has not been appointed and as he has not

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reported for duty, he is not entitled to any relief as claimed in the application. It has been further contended that the application is barred by limitation.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents produced. The learned counsel for the applicant argued that the denial of the employment to the applicant when he returned from training on 22.11.1986 is arbitrary and illegal since it amounts to termination of service without following the procedure prescribed for terminating service of a person holding a civil post and that therefore the applicant is entitled to an order for reinstatement in service forthwith with full back wages as claimed by him. In this connection, the learned counsel referred us to an order of this Tribunal passed on 17.8.1988 in a batch of petitions - OA-247/87 - Shri Jaitu T. Tiwari V. Divisional Electrical Engineer and 33 other petitions wherein this Tribunal has held that the termination of the services of the Railway employees without issuing a show cause notice to them and without conducting an enquiry on the ground that while for securing appointment in the Railways, they had produced forged casual labour card was illegal and void and had ordered their reinstatement forthwith with back wages. But we find that the facts and circumstances of this case are entirely different from the facts and circumstances in the bogus service card cases referred to above. In those cases it was admitted that the

applicants were appointed. But the complaint was that they secured a ppointment by producing bogus service cards. But in this case, the very fact of appointment is in dispute though it has been admitted that the applicant joined duty on production of a fake appointment letter. Further, the applicant has averred that when he returned after training before the respondent, he refused to issue him a posting order. But the case of the respondent is that the applicant has never returned to him after training probably knowing that a C.B.I. enquiry was pending. If as a matter of fact the applicant had returned after training and if he had not been given a posting, the normal reaction of a workman would be to make a request for posting in writing or to approach the higher authority. Refusal to give salary and allowances is a matter against which an appeal would lie to the appointing authority. In this case by reason of the alleged refusal of the respondent to issue him posting order as contended by the applicant he is being ^{denied} salary and allowances from 22.11.1986 onwards. He could have filed an appeal or a representation in this matter to the appropriate authority. Since the respondent has contended that the applicant has not reported after training as claimed by the applicant, and as the applicant has not produced any evidence to show that he has so reported, we are of the view that the interest of justice will be met if the applicant is

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directed to report to the respondent in writing and if the respondent is directed to pass a speaking order on his report according to law.

4. In view of the facts and circumstances of the case, the application is disposed as follows:

The applicant is directed to report to the respondent in writing requesting for a posting within a period of one month from this date.

The respondent is directed to consider his ^{up so made} request and to dispose of the same in a speaking order in accordance with law within a period of two months from the date of receipt of the request from the applicant. If the applicant feels aggrieved by the outcome of the request, he will be at liberty to approach the appropriate forum for proper relief. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(P.S. Chaudhuri)
Admve. Member

8-3-1990

8/3/1990

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