

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 648/88
~~XXXXXXXXXX~~

198

DATE OF DECISION 27.9.1989Shri S.B.Parab PetitionerShri L.M.Nerlekar Advocate for the Petitioner(s)

Versus

Divisional Rly.Manager,C.Rly.Bombay Respondent
V.T.Shri P.R.Pai Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.S. Shah, Vice Chairman

The Hon'ble Mr. P.S. Chaudhuri, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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?

Yes

No

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA.NO. 648/88

Shri S.B.Parab,
R/o Krishna Gavali Chawl,
G.P.Baug, Kolsewadi, Kalyan,
Dist. Thane.

... Applicant

Vs.

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

... Respondent

Coram: Hon'ble Vice Chairman Shri P.S.Shah
Hon'ble Member (A) Shri P.S.Chaudhuri

Appearances :

Mr.L.M.Nerlekar
Advocate
for the Applicant

Mr.P.R.Pai
Advocate
for the Respondent

JUDGMENT

Dated: 27.9.1989

(PER: P.S.Chaudhuri, Member (A))

This application was filed on 26.8.1988 under Section 19 of the Administrative Tribunals Act, 1985. In it the applicant prays that the respondents be directed to pay full back wages from 5.11.1984 (sic) till 5.11.1987, the date on which he was allowed to resume duty, along with interest on the arrears.

2. The facts may be briefly stated. The applicant was working as a Khalasi on Central Railway. His services were terminated w.e.f. 30.11.1984. Being aggrieved at this, he filed Writ Petition No. 279/85 in the Bombay High Court challenging the order of removal from service. This was decided on 23.1.1985 with the following order :-

"Respondents will issue a proper show cause notice specifying the grounds on which the petitioners are alleged to have secured their original employment on false representations and hold a regular enquiry. If in such enquiry, the Respondents come to the conclusions that the original employment was secured by the petitioners on false representations, they are at liberty to discontinue them from services.

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The Respondents will also be at liberty to terminate the petitioners services for any other lawful reasons open to them.

Rule absolute as above. No orders as to costs."

In pursuance of this order, the applicant was allowed to resume his duty on 6.11.1987. The applicant was, however, not paid the arrears of salary for the intervening period from 30.11.1984 to 5.11.1987. Being aggrieved at this he filed the present application.

3. We have heard Mr.L.M.Nerlekar, learned advocate for the applicant and Mr.P.R.Pai, learned advocate for the respondents.

4. In their written statement the respondents have opposed the application on the ground that during 1985 to 1986 some Steam Locomotive Sheds were closed and subsequently a number of staff were rendered surplus and that, further, some more Khalasis were rendered surplus due to reclassification of artisan staff. It is the respondents' statement that it is as a result of this that the applicant's services became surplus and hence were terminated. Mr. Pai argued that the applicant had left and abandoned the service of his own accord when he came to know that certain inquiries against him by the Railways Vigilance Department and CBI were in progress. It was his contention that since the applicant has abandoned the service of his own accord he was not entitled to reinstatement. Mr. Pai's further argument was that there was no evidence whatsoever that the applicant had not worked anywhere else during the period for which he was claiming back wages. He also contended that the applicant was not entitled to back wages on the principle "no work no pay". We do not see how any of these arguments can help the respondents. The order of the High Court was that the services of the applicant should be continued. It was, however, open to the

respondents to issue a proper show cause notice and take appropriate action to discontinue his services. But this has not been done. Instead he was initially not taken back on duty and was, thereafter, taken back on duty on 6.11.1987.

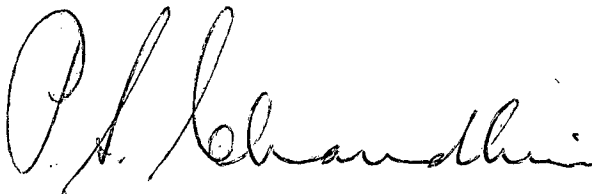
5. Mr. Pai's final contention was that an employee can claim wages only when he actually rendered services or when he is ready and willing to perform his part of the contract but was not allowed to do so by the respondents. But this is the very point urged by Mr. Nerlekar, namely, that the applicant was willing to work but was not allowed to do so by the respondents and, as a result, was compelled to fend for himself.

6. The point at ~~the~~ issue thus is a short one, viz. how the period between the termination and reinstatement should be treated. It is now well settled law that when the order of termination of service is held to be a nullity, the employee is entitled to be paid salary on the footing that he has always continued in service and the void order was never in existence in the eye of law - see Union of India and another v. Sri Babu Ram Lalla, AIR 1988 SC 345. This has also been dealt with in several judgments of this Tribunal. These were cited by Mr. Nerlekar. In the case of Jaitu T. Tiwari v. Divisional Electrical Engineer, Central Railway - O.A.No. 247/87 - and 33 other matters before this Bench, it was held that :-

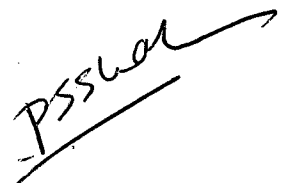
"Group III is with respect to Original Applications Nos. 542/87, 543/87, 544/87, 545/87, 546/87, 588/87 and 589/87. It seems that these applicants have taken the matter to the High Court. The High Court by its order dtd. 23-1-1985 set aside the termination. The Department, however, took no action to reinstate the applicants. The applicants then filed their application before the Tribunal. The Department reinstated the applicants with effect from 6-11-1987. However, backwages have not been paid. Obviously the applicants would be entitled to all backwages."

(It may be mentioned that the applicant in this case was one of the 7 petitioners before the High Court in Writ Petition No. 279/85. 5 of the remaining 6 petitioners were covered by O.As. No. 542 to 546/87. The 7th petitioner before the High Court, viz. Anand Dattu Salunke is not covered by this judgment of the Tribunal.) In these cases, the respondents were directed to pay each of the applicants full back wages from the date of termination of their services till their reinstatement along with other perquisites admissible under rule. We are in respectful agreement with this judgment and propose to pass a similar order.

7. In the result, the application succeeds. The respondents are directed to pay the applicant full back wages from the date of termination of his service (viz. 30.11.1984) till the date of his reinstatement (viz. 6.11.1987) along with other perquisites admissible under the rules. This entire period shall be treated as if spent on duty for all purposes. All payments due shall be made within a period of two months from the date of receipt of a copy of this order. No interest will be payable on the amount due. In the circumstances of the case, the respondents to pay to the applicant costs, which are quantified at Rs.500/- (Rupees Five Hundred only).



(P.S. CHAUDHURI)
MEMBER (A)



(P.S. SHAH)
VICE CHAIRMAN