

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

17

Tr. No. 62/88

- | | | |
|---|---|-----------------------|
| 1) The General Manager
Central Railway,
Bombay V.T. Bombay-400-001. | : | |
| | : | |
| | : | |
| | : | Appellants |
| 2) Union of India | : | |
| through | : | (Original Defendants) |
| The General Manager, | : | |
| Central Railway, | : | |
| Bombay V.T. | : | |

V/s

Arun Ganesh Kulkarni	:	Respondent
	:	(Original Plaintiff)

Appearances:

Shri J.G.Sawant Adv. for the
Appellants (Original
Defendants)
Shri D.V.Gangal, Adv. for the
Respondent (Original Plaintiff).

Coram: Hon'ble Shri M.B.Mujumdar , Member(J)

Hon'ble Shri M.Y.Priolkar, Member(A)

Dated 28-9-1989.

Tribunal's Order

Heard Mr.J.G.Sawant, Adv. for the Appellants (Original Defendants) and Mr.D.V.Gangal , Adv. for the respondent (Original plaintiff).

2. The brief facts for the purpose of disposing of M.P.No.675/89 are these:-

The Plaintiff, A.G.Kulkarni, was serving as Electric Fitter at Bhusawal in Central Railway. He was served with a chargesheet dated 6-12-1974 for having remained absent during the period 13-6-74 to 20-11-1974. After holding a departmental Enquiry, he was removed from service by order dated 29-9-1975 with effect from 1-10-75. At that time he was serving as Electric Fitter at Alternate Current Loco Shed,

18

Bhusawal. He challenged that order by filing Regular Civil Suit No.542/76 in the Court of the Civil Judge, Junior Division, Bhusawal. By Judgement dated 26-2-82 the Suit was decreed. The court passed the following order:-

"It is hereby declared that the plaintiff is in continuous service from 1-10-1975 on the same post as held by him on 30-9-1975 in the Railways.

The plaintiff is hereby ordered to be reinstated by the Defendant to the same post as held by him on 30-9-1975.

The Defendants to bear their own cost and the cost of the Plaintiff in the Suit."

3. The Defendants preferred an appeal (Civil Appeal No.223/82) against this Judgement on 7-6-1982 in the District Court at Jalgaon. By the order dated 4-4-1986 the appeal was transferred to this Tribunal and numbered as Tr. No.62/88.

4. On 12-7-1989 we rejected the Plaintiff's Misc. Petition No.360/89 for amendment of the Plaint. However, since the earlier order dated 8.6.1989 passed by this Tribunal had not been implemented and Advocate Shri J.G. Sawant was unable to clarify the position for what of instructions, we allowed ^{him to do so} ~~the order dated 8.6.1989~~ ^{to be} ~~implemented~~ on or before 1-9-1989.

5. Instead of clarifying the position, Advocate Shri Sawant has filed M.P.No.675/89 for stay of the operation of the Judgement dated 26.2.1982 of the Learned Civil Judge, Junior Division, Bhusawal. It is pointed out in para 5 of the petition that the Railway Advocate, Jalgaon by his letter dated 29-5-1982 had stated that the appeal would be filed on 7-6-1982 and requested to depute any Senior Clerk


19

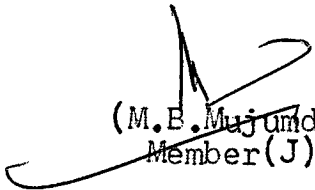
to swear an affidavit for stay application. It is, however, mentioned that no further action for filing stay application was taken probably due to oversight.

6. But it may be noted that the Civil Court had decreed the plaintiff's suit declaring that he was in continuous service from 1-10-1975 on the same post which he was holding on the previous day in the Railways. Not only this, but an order was passed for reinstating the plaintiff to the same post which he was holding on 30-9-1975 and costs were also awarded. This order shows that it was the duty of the respondents to reinstate the plaintiff. They should have informed the plaintiff to join duty. Mr. Sawant, learned Advocate for the defendants submitted that it was the duty of the plaintiff to start execution proceedings or to report for duty. We cannot agree with this view. It was primarily the duty of the defendants to implement the order of the ^{Civil} District Court. ^{It is true that} If the respondents failed to implement the order for a long time, the plaintiff could have initiated the execution proceedings. But the defendants have neither implemented the order nor made any prayer in the appeal for staying the order. It is mentioned in the petition that it was due to oversight that no stay application was filed. But, for this, the plaintiff should not be made to suffer.

7. Mr. Gangal, Advocate for the plaintiff, submitted that the plaintiff had given a notice on 3-8-1989 to the respondents stating that he was ready to join the duty at any moment. The respondents have not even cared to reply to this notice. On the contrary they have filed this M.P. on 1-9-1989.

8. In view of the above facts we are not inclined to grant stay. The M.P.No.675/89 is dismissed. The respondents ^{should} atleast now implement the order as early as possible.


(M.Y. Priolkar)
Member(A).


(M.B. Mujumdar)
Member(J).