

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA.

O.A. No. 384 of 2005

Date of order : 20 January, 2011

C O R A M

Hon'ble Mrs. Justice Rekha Kumari, Member [ Judicial ]  
Hon'ble Mr. A.K. Jain, Member [ Administrative ]

Subodh Kumar Mishra, S/o Shri H.D. Mishra, Supervisor , P. Way, E.C. Railway, Patna under A.E.N. [ Line], E.C. Railway, Patna.

.... Applicant

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India, through the General Manager, E.C. Railway, Hajipur.
2. The Sr. Divisional Engineer [ Co-ordination ] , E.C. Railway, Danapur.
3. The Divisional Engineer [ 1 ] , E.C. Railway, Danapur.
4. The Assistant Engineer / Tr. 1 , E.C. Railway, Danapur.
5. The Assistant Engineer , E.C. Railway, Patna Junction, Patna.
6. Shri A.N. Ghose, PWI , E.C. Railway, Jahanabad.

.... Respondents.

By Advocate : Shri Mukund Jee.

O R D E R

A.K. Jain, Member [ A ] :- This application has been filed for setting aside the order dated 07.09.2001 passed by Sr. Divisional Engineer [ Co-ordination], Eastern Railway, Danapur, in compliance of the order of this Tribunal dated 11.04.2001 in OA 157 of 98 [ Annexure A/13], whereby the appeal of the applicant for treating the period of his absence from 31.01.1998 to 15.12.98 as on duty was rejected. In OA 157 of 98, the issue as to how to treat the period of applicant's absence from duty from 31.1.1998 to 15.12.1998 was examined. The Tribunal took note of some significant events during the relevant period, and made some observations, as enumerated in para 4 of the order. In view of the said observations about the significant events, the Tribunal noted in para 5 as follows:- *" we are constrained to observe that respondents authorities have not yet taken definite decision in regard to the period of so-called absence of the applicant i.e. , from 30.1.1998 to 15.12.1998. This may be for the reason that the applicant was forbidden by circumstances not to resume his duties. It goes without saying that unless there is any appropriate order, the salary of the*



*incumbent cannot be denied orally."*

2. The Tribunal, therefore, remitted the case back to respondent No. 2 to take appropriate decision in regard so-called applicant's so called absence from duty in the light of his representation dated 09.02.1998, and other attending circumstances, as noticed above.

3. The case of the applicant is that on his request, he was transferred from Arrah to Patna Junction vide order No. 239 of 1996 dated 13.06.1996. While working at Patna Junction, he received a letter dated 13.12.1996 issued by PWI, Patna Junction, wherein it was stated that as per the verbal order of the Divisional Engineer [ 1 ] DNR [ respondent No. 1 ], he was spared to work under PWI, Jahanabad [ respondent No. 6 ], and he was directed to report there on 15.12.1996. Accordingly, he reported for duty there on the said date. It is the contention of the applicant that this spare order was bad in law and against the rule, as it was beyond the jurisdiction of respondent No. 3 [ DEN [ 1 ] as laid down in Rule 3 [ 2 ] [ ii ] of R.S. [ Conduct ] Rules, 1966, and schedule of power as per SOPEST dated 10<sup>th</sup> August, 1987. It appears that there was some misunderstanding created between the applicant and respondent No. 6, Shri A.N. Ghose, PWI, Jahanabad.

4. The respondent No. 6 appears to have taken the plea that the applicant had violated his instruction to join at the appropriate place. But the same has been squarely denied by the applicant. This led to stalemate regarding the applicant's joining duty on 30.1.1998. Immediately thereafter, the applicant filed representation dated 03.02.1998, addressed to Assistant Engineer / Track/Gaya through the Section Engineer /P. Way/Jahanabad, followed by another representation dated 09.02.1998, addressed to the Section Engineer / P. Way/ Patna Junction. In the second representation, he has stated that the AEN / Track Gaya, had verbally asked him to report to Sectional Engineer, Patna Juction. In response, the AEN, Patna Junction, asked the applicant to come with appropriate spare letter from PWI/Jahanabad, but no spare letter was issued by PWI, Jahanabad. The controversy regarding joining of the applicant seems to have continued. The applicant, then, filed OA 157 of 98, and during the



pendency of the OA, in pursuance of interim order dated 12.10.1998, the applicant was finally allowed to join duty by the respondents on 16.12.1998.

5. The case of the applicant is that his so-called absence from 30.1.1998 to 15.12.1998 was not because of his lapses, but because the authority did not allow him to join despite his best efforts, and as such, the entire period should be treated as on duty. It was submitted by the learned counsel for the applicant that the respondent No. 2, while passing the impugned order in pursuance of the order of this Tribunal in OA 157 of 98, has not taken into consideration all these facts and observations made in the order by the Tribunal. Instead, he has simply relied upon the absentee statement submitted by PWI, Patna Junction. The respondents have not passed any order specially in view of the fact that there was specific observation by the Tribunal in OA 157 of 98 that the applicant was forbidden by circumstances not to resume his duty.

6. The respondents, in their written statement, have denied the allegations made by the applicant that he was not allowed to join duty. As regards competence of the DEN to transfer him, it has been submitted by the respondents that due to exigency of work, which requires immediate attention, the employees are sent to perform duty on verbal order. In the instant case, it was followed by formal letter also. On 30.1.1998, when PWI, Jahanabad inspected the site of welding work, which was being attended to by the applicant, it was found that the applicant had not gone for taking traffic block. It was also found on verbal inquiry that he had not consulted any body, and had gone to site late by 11.00 hours. He had become habitual of doing such work and intentionally used to come late to the site. It is further contention of the respondents that it is wrong to say that the applicant was not allowed to join duty. He was on leave from 4.2.1998 to 6.2.1998, but did not turn up for duty on 7.2.1998, after availing leave. Therefore, AEN/Track/Gaya, vide letter dated 17.2.1998, informed AEN / Patna about the unauthorized absence of the applicant. From the absentee statement it is clear that he was absent from 31.1.1998, 1.2.1998 to 03.02.1998, 7.2.1998 to 24.2.1998 and 1.4.1998 to 15.12.1998. For the period from 25.2.1998 to 31.3.1998 he performed duty for



which he was paid salary. It is, therefore, clear that the authorities have only treated the period for which he did not perform duty as unauthorized absence, and not the entire period from 31.1.1998 to 15.12.1998 as unauthorized absence. The period of absence has been treated as unauthorized absence as he did not perform any railway work during the said period, and was absconding without any sanction of appropriate leave. As regards treating his  $\frac{1}{2}$  day absence as full day duty, it was submitted by the learned counsel for the respondents that the applicant was habitual late comer. Moreover, he has not initialed any date of such late marking.

7. We have perused the record and considered the rival submissions made by learned counsel for both the sides.

8. We note that the issue of absence of the applicant from 31.1.1998 to 15.12.1998 was examined by the Tribunal in OA 157 of 98, and some significant observations have been made. Some of the important observations made are as follows. :-

*"Para 3 :- the most striking feature obvious on the record is that till date no order has been passed by the respondents authorities, taking final decision that the period in question would be deemed to be an unauthorized absence. Not only that, no action has been initiated against the applicant for the alleged unauthorized absence."*

*Para 4 [ iv ] :- x x x x x x x x Here it would not be out of place to observe that the authority concerned should have taken serious view of the situation so as to pass specific order in regard to applicant's representation as at annexure A/4. Instead, we find that the controversy raised was allowed to continue.*

*Para 4 [ v ] :- It is further significant to note that respondent No. 2 i.e., the Senior Divisional engineer, Co-ordination, Danapur, being the administrative head of the department in question was apprised of the situation, but he simply directed the applicant to report under the PWI, Jahanabad for duty with instructions also to the PWI, Jahanabad to give him [ the applicant ] duty. Even as against such instructions issued by the respondent No. 2, it appears that the applicant was probably not provided any duty there, and this led to*



*the filing of the instant OA, during the pendency of which there was necessity to pass an interim order, as already referred to above. Respondent No. 2 did not choose to determine the absence as unauthorized.*

*Para 5 :- Regard having had to the facts and circumstances of the case as noticed above, we are constrained to observe that respondents authorities have not yet taken definite decision in regard to the period of so-called absence of the applicant i.e. , from 30.1.1998 to 15.12.1998. This may be for the reason that the applicant was forbidden by circumstances not to resume his duties. It goes without saying that unless there is any appropriate order, the salary of the incumbent cannot be denied orally.*

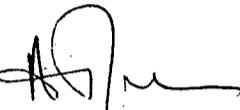
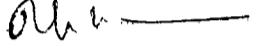
9. It is, therefore, apparent from these observations that the respondent No. 2, while passing the order, should have gone into the question whether the applicant was deliberately absenting himself unauthorizedly , or whether the circumstances prevented him to do so, specially when there is allegation that he was not being allowed to sign on the attendance sheet, and was being marked late. No inquiry has been made on this count. Instead, the respondent No. 2 simply relied on the absentee statement submitted by AEN [ Line], Patna , which, in any case, are prepared by the respondents against whom allegations of not marking attendance or not allowed to join, have been made. It is also significant to note that in spite of controversy continuing even during the pendency of the OA, the authorities did not choose to pass any order to treat the period as authorized. The observations made by this Tribunal in OA 157 of 98 clearly indicate that the Tribunal was not very much convinced about the respondents version about unauthorized absence of the applicant. However, the matter was remitted back , because no decision was taken by the respondents in regard to the period of " so called absence of applicant from 30.1.1998 to 15.12.98." The direction of the Tribunal was " to take an appropriate decision in regard to the so called applicant's absence from duty in the light of his representation dated 09.02.1998 [ Annexure A/4] and other attending circumstances , as noted above."

10. In view of the above discussions, we find that the impugned order has not been passed, taking into consideration all the facts and circumstances of



the case, including the observations made by the Tribunal in OA 157 of 98, and hence, the same is quashed and set aside. We further direct that the respondents regularise the period of absence of the applicant from 31.1.1998, 01.02.1998 to 03.02.98, 07.02.98 to 24.2.98, and 01.04.98 to 15.12.1998 either by treating it as on duty with full salary or by granting admissible leave, as deemed appropriate in terms of rules, within a period of three months from the date of receipt / production of certified copy of this order.

11. This OA is disposed of with these directions. No order as to costs.

  
[ A.K. Jain ] M [ A ]  
[ Rekha Kumari ] M [ J ]

/cbs/