

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 342 OF 1993

Date of Decision: 31.07.2001

Shri Arunn Kashinath Sirshalkar. Applicant(s)

Shri S.P. Saxena. Advocate for Applicant

Versus

General Manager, C.Railway. ... Respondents

Shri S.C. Dhawan. Advocate for Respondents

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN. VICE  
CHAIRMAN(J)

HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library

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(SHANTA SHAstry)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.342/1993

TUESDAY, THE 31ST JULY, 12001

CORAM: HON'BLE SMT.LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)  
HON'BLE SMT. SHANTA SHAstry. MEMBER (A)

1. Arun Kashinath Sirshalkar,  
having his address at Warangaon  
Ordinance Factory, Near Bus stand,  
Warangaon, Bhusawal, Jalgaon.
2. Vinod Murlidhar Jathar.
3. Ramesh Nainsingh Surti,  
both presently residing at  
Shanimandir Ward, Near Shanti  
Mandir, Bhusawal,  
Dist. Jalgaon. .. Applicants

By Advocate Shri S.P. Saxena.

Vs.

1. General Manager,  
Central Railway, Bombay V.T.
2. Divisional Railway Manager,  
Central Railway, Bhusawal.
3. The Chief Project Manager,  
Railway Electrification,  
Bhopal. M.P. .. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R (ORAL)

Hon'ble Smt. Shanta Shastry. .. Member (A)

The applicants in this OA have sought for the following reliefs:

- a) This Hon'ble Bench may be pleased to direct the 1st and 2nd respondents to permit the applicants to report for work to the post of TCM II in the Grade of Rs. 950-1500 in the office of DRM, Bhusawal and pay them their

regular monthly salary with all consequential benefits such as seniority, bonus, provident fund, gratuity, pension etc.,

- b) That this Hon'ble Bench may be pleased to give direction to the 1st and 2nd respondents to take appropriate and necessary action in accommodating the applicants to the post of TCM III by making necessary arrangement.
- c) That pending the hearing and final disposal of this application, the respondents may be directed to absorb the applicants in office of the 2nd respondent and to pay them their monthly salary in the grade of Rs. 950-1500 regularly with all consequential benefits.
- d) For such further and other reliefs as this Hon'ble Tribunal may award as the nature and circumstances of the facts of the case.
- e) This Hon'ble court be pleased to direct respondent No.2 to absorb the services of the applicants as TCM III in their establishments in proper scale as admissible to the post of TCM III and fixed their seniority accordingly in the grade of TCM III from the day they were relieved by the Western Railway from their establishment.
- f) This Hon'ble court may be pleased to direct respondent No.2 to pay salary & wages to the applicants for the period commencing from 01.03.1993 to 05.04.1994 and that the said period be treated as period on duty for all purposes.

2. The applicants were initially appointed as Telecom Maintainer III (in short TCM III) in 1983 at Bhusawal Division in the office of the Divisional Railway Manager (P) Bhusawal in the pay scale of Rs.260-400. Initially they were kept as trainee for one year period and on passing the examination conducted by the respondents, they were to be absorbed on regular basis. They completed the training and passed the examination in 1984. As there were no regular vacancies at Bhusawal, they were asked for their willingness to go

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to Baroda Division in 1985. The applicants gave their willingness and were transferred as TCM III to Western Railway Baroda Division. They were promoted as TCM II on adhoc basis in the same division in the pay scale of Rs.1200 - 1800, in June, 1988. Certain vacancies of TCM II became available in 1989 under Railway Electrification at Nagpur. The applicants applied to go to Nagpur and according to them they were sent on deputation to the Chief Project Manager (CPM) (electrification) Nagpur. On completion of electrification work at Nagpur, the applicants were asked for willingness to go to Divisional Manager (P) Bhusawal on reversion to TCM II and at bottom seniority in 1994. In 1991 they made a request for Inter Railway Transfer to Central Railway. Their request was accepted by the competent authority on 8.8.91/20.8.91. Till then the applicants were with RE Nagpur/RE Bhopal. Accordingly, they were relieved by the RE, Nagpur and the applicants reported at Bhusawal on 13.11.91. However, on that particular day only four vacancies were available. Therefore, the first four senior persons, out of seven who reported, were absorbed in Bhusawal and the balance three persons were asked to report back to RE Bhopal. The applicants continued to work in Bhopal till 28.2.93. Thereafter, the Central Railway, Bhusawal informed that there were certain vacancies and therefore, three applicants may be relieved and sent for absorption on regular basis in Central Railway as per their original inter railway request transfer.

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Accordingly, the three applicants came to the office of DCM (P) Bhusawal. However, they were not allowed to join on the ground that there was no relieving order or letter from the RE Bhopal. They were told that they could be taken on duty only if they have the relieving letter from RE Bhopal, where they were working. This was on 1.3.1993. The applicants, being aggrieved, thereafter approached this Tribunal on 19th April, 1993 by filing the present OA.

3. When the matter came up for hearing on 17.9.93 this Tribunal held that there was no justification for the action of the respondents in sending away the applicants from joining at Bhusawal. The Tribunal observed that Railway Administration should have contacted the RE Bhopal if they had any doubt as to whether the applicants had been properly relieved or not or at least should have given some time to the applicants to produce the relieving order. Nothing of that sort was done and the vacancies were filled up. The respondents were directed to file an affidavit explaining the position regarding the relief of the applicants from Bhopal Division and also availability of the vacancies in Bhusawal Division. Thereafter, a further order was passed by this Tribunal on 29.3.94 that "all applicants to report at Bhopal and there upon they shall be relieved by RE, Bhopal immediately so as to enable them to join at Bhusawal. The applicants to join at Bhusawal Division within a week of their relief

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by the RE. This will not prejudice any other move by the respondents in respect of alleged absence at Bhopal." Thereafter, the applicants finally joined on 5.5.94 at Bhusawal and have been absorbed there.

4. The contention of the applicants is that even though the vacancies existed when they were asked to join on transfer at Bhusawal, they were not taken on duty on 1.3.93 only on the ground that they had not brought or produced the relief order from Bhopal. The applicants have further contended that they have sacrificed their higher posting and seniority to go to Bhusawal. They had accepted the terms while taking inter railway transfer, that, they would go in the grade of TCM III i.e. lower grade and would be given ~~at the~~ bottom seniority. Having sacrificed so much they were again made to suffer by not allowing them to join on 1.3.93 at Bhusawal Division.

5. The first prayer of the applicants was to allow them to absorb them at Bhusawal. This has already been fulfilled in the sense that they have now joined at Bhusawal with effect from 5.5.94 in pursuance of the Tribunal's order. Therefore, the prayer clause 11 (a) has now become infructuous.

6. The applicants are now concerned with the consequential benefits regarding salary and seniority. The salary is for the period from 1.3.93 till 4.5.94.

The applicants had not joined back at Bhopal on being told that they could not be absorbed in Bhusawal without the relief orders. Thus, they had remained absent during the aforesaid period. The applicants have contended that they did not go back to Bhopal because the work at Bhopal was over. More over they have approached the Tribunal immediately within one month of the refusal of the respondents to take them at Bhusawal.

7. The applicants have, therefore, claimed that there is no negligence on their part. Since the Tribunal's direction was given to report at Bhopal first before joining at Bhusawal, they had complied with the same and therefore they are within their right to get the salary for the period from 1.3.93 to 4.5.94. They have also claimed the seniority from 1991 in Bhusawal Division.

8. The respondents have opposed the claim of the applicants for salary to be paid during the period from 1.3.93 to 4.5.94. According to them this period has been treated as unauthorised absence by the respondents. Further, the same has been regularised vide order dated 31.1.95 by treating the aforesaid period as leave without pay. This has been done during the pendency of this OA. According to the respondents when the applicants were not allowed to join at Bhusawal on 1.3.93 the applicants had been told categorically to go back to RE Bhopal. However, the applicants had not done

so and had neither joined at Bhopal nor worked anywhere else during the period from 1.3.93. Thus, the respondents rightly treated this period as unauthorised absence and therefore no salary can be paid to the applicants.

9. In regard to the seniority the respondents maintain that the applicants can be given seniority only from the date they were actually absorbed in Bhusawal Division i.e. from 5.5.94. The request to grant them seniority from the day their seniors joined i.e. in 1991 is not acceptable.

10. We have heard the learned counsel for both the parties. The limited question now is, payment of salary for the period from 1.3.93 to 4.5.94 and the seniority of the applicants. We find that when the applicants came to join on 1.3.93 at Bhusawal they were not allowed on the ground that they had not got the relieving order as has already been observed by this Tribunal on 17.9.94 (in which one of us (Hon'ble Smt. Lakshmi Swaminathan, the then Member (J) was also present). The Tribunal had observed that the respondents could easily have contacted Bhopal Division to ascertain as to whether the applicants have been relieved or not and the respondents have done nothing of that sort. Therefore, the Tribunal held responsible the respondents for the applicants' plight. At the same time the blame cannot be put entirely on the respondents alone. The applicants were

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also not innocent. They too could have gone back to Bhopal and obtained the relieving order. Instead, the applicants rushed immediately to the Tribunal without exhausting the remedies available to them. Thus, the applicants are also to be faulted for not doing any work admittedly during the period from 1.3.93 to 4.5.94. However, the applicants have submitted that they had in fact sacrificed their earlier position in order to go to Bhusawal. They have lost their earlier seniority and also they had gone to a lower post. Having suffered so much they should not be penalised further by the inaction of the respondents. It is also relevant to note further that during the pendency of the OA the applicants have been taken on duty at Bhusawal and their period of absence has been regularised by the respondents vide their order dated 31.3.95. Thus, having taken a lenient view of the unauthorised absence, in our considered view, the respondents can also consider granting salary to the applicants, as it was not entirely of the applicants' doing. We, therefore, in the facts and circumstances of the case, hold that the applicants are entitled to salary during this period. However, considering that there is some fault with the applicants also, we direct the respondents that they shall pay 50% of the salary admissible to the applicants during the period from 1.3.93 to 4.5.94 in the grade of TCM III without any interest on the arrears.

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11. Coming to the seniority, no doubt the applicants lost some seniority. However, we agree with the respondents that the applicants cannot be given any seniority until they actually joined at Bhusawal Division on 5.5.94. However, we order that this intervening period from 1.3.93 to 4.5.94 shall count for qualifying service for all other purposes such as pension etc., in accordance with the rules. This shall be done within a period of three months from the date of receipt of copy of this order. The OA succeeds partly. No order as to costs.

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(SMT. SHANTA SHAstry)  
MEMBER (A)

Lakshmi S. S.

(SMT. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN (J)

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