

A 37

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JODHPUR BENCH  
AT JAIPUR

Date of decision: 13.2.90

T.A.2111 of 1986  
(C.A.No.129/84 / 55/84)

Union of India  
Mr. U.D. Sharma

Appellant  
Counsel for the appellant

VERSUS

Pannalal  
Present in person

Respondent

CORAM:

THE HON'BLE MR. J.P. SHARMA JUDICIAL MEMBER

The above Civil Appeal stood transferred to Central Administrative Tribunal, under Section 29(1) of the Administrative Tribunals Act, 1985, from the Court of Additional District Judge No.2, Kota, where the judgment and decree dated 21.2.84 passed by Additional Munsif and Judicial Magistrate, Court No.2 (South), Kota, <sup>was assailed by</sup> Union of India, who was defendant in the Civil Suit No.428 of 1977, filed by respondent Pannalal, on 19.10.77 in the Court of Munsif (North) Kota, for the following reliefs:-



- (a) The order No.Q 208/260 dated 9.1.76 passed by sub Divisional Officer Phones, Kota and the order No.Q 260/102 dated 2.4.77 and memo No.E-46/EBR/66 dated 14.6.77 passed by Divisional Engineer Telegraphs be declared null and void and ineffective and the aforesaid entries be got expunged.
- (b) The order passed by the SDO Phones Kota No. Q 205/150 dated 7.4.75 be up-held by which the EB was allowed to be crossed by 17.12.75 and again from 17.12.76 and so on.
- (c) The enhanced salary due to passing of EB from 17.12.75 and from 17.12.76 upto date amounting Rs.275/- be ordered to be paid.
- (d) Any other relief available may also be allowed.

TA 2111/86

2. The learned Munsif decreed the Suit of the plaintiff for all the reliefs by the impugned order dated 21.2.84.

3. Union of India preferred the Civil Appeal No. 129/84 / 55/84 on 25.5.84 on the following grounds :-

- (a) That the judgment and decree of the learned Lower Court is against law and facts.
- (b) That the Divisional Engineer Telegraphs Kota erred in stopping the order and cancelling the same of EB being allowed to be crossed by SDO Phones.
- (c) That the learned Lower Court did not give any consideration to the fact that earlier a suit had been instituted with regard to the same facts and the appeal against the same was pending with Additional District Judge, Kota.
- (d) That the learned Lower Court should have considered the fact that the plaintiff has availed of the departmental remedy and till the decision of that, the present suit was pre-mature.
- (e) That the learned Lower Court has erred that the industrial disputes do not come within the ambit of Civil Court and since this was an industrial disputes, so the jurisdiction of the Civil Court was barred.
- (f) The learned Lower Court has erred in declaring that the administrative orders were wrong.
- (g) The learned Lower Court has erred on the point that insufficient Court fee was paid.
- (h) The learned Lower Court has erred that the suit filed in the present form was barred by Order II Rule 2 of the Code of Civil Procedure.

4. Both, the Counsel and the respondent, were heard at length.

5. The learned counsel for the Union of India argued that SDO Phones was incompetent to pass an order for crossing the EB of the respondent. However he conceded that the respondent who was a Telephone Operator has been directly under the control and supervision of SDO Phones. Above SDO Phones is Divisional Engineer Telegraphs who is subordinate



TA 2111/86

to General Manager Phones. The learned counsel for the Union of India only pressed on the finding of issue No.1 and he did not press the findings of any other issue in the matter.

6. The learned Lower Court i.e., learned Munsif, Kota has framed the following issues in the original suit :-

- i.) Whether the Divisional Engineer Telegraphs Kota has wrongly cancelled the order of EB to the plaintiff ?
- ii.) Whether the suit of the plaintiff is barred under Order II Rule 2 of C.P.C. ?
- iii.) Whether the suit of the plaintiff is premature ?
- iv.) Whether the suit of the plaintiff has not been filed on paying proper court fee ?
- v.) Relief ?

7. It appears that two more additional issues have been carved out :-

- ib.) Whether the disputed adverse remarks in the service record of the plaintiff have been made illegally and in an unauthorised manner ?
- iib.) Whether the suit is not within the jurisdiction of the Civil Court ?

8. During the course of hearing before the learned Munsif, Pannalal examined himself as PW-I and the defendants examined Sarvan Kumar DW-I, Bhagwant Singh DW-2 and Balkishan Bhanwar DW-3.

9. The learned Munsif gave the finding of issue No. i, ib and issue No. ii, iib against the respondents now applicants before this Court.

10. The finding on issues No. ii, iib, iii and iv have not been pressed by the learned counsel for Union of India Mr. Sharma. Thus, these findings as such are confirmed as having not been assailed.

11. The appeal filed by the Union of India, ~~and others~~ who is applicant before this Tribunal, is now restricted



TA 2111/86

to the consideration of the findings of issue No.1 and ib.

12. Exhibit-1, dated 31.12.64 is the appointment order of Pannalal. Exhibit-2, dated 7.4.75 is the Memo issued by the SDO Phones Kota, which reads as follows :-

"The condition as laid down in Rule 458 of P&T Man Vol.IV having fulfilled and the work and conduct have been found satisfactory Shri Panna Lal Yadav T.O.C. TX Kota is hereby allowed to cross the EB at the stage of Rs.308/- in the scale Rs.260/- to 480/- w.e.f.25.1.75 and granted increment with from the same date."

The copy of this memo was also sent to the Divisional Engineer Telegraphs, Kota with reference to the letter dated 17.1.75. Exhibit-3, is the memo dated 26.7.75 in which item No.(D) the following order is written :-

"The orders of granting the increment to the official at the stage of Rs.308/- w.e.f. 25.1.75 issued vide this Office Memo No. C-46/ECI/48 dated 18.4.75 are hereby cancelled."



A representation made by Pannalal to Divisional Engineer Telegraphs, Kota Division on 10.5.76 is Exhibit-4, Exhibit-5 dated 29.11.76 and Exhibit-6 dated 17.2.77. Instead of any Pannalal relief, / was served with a charge-sheet under Rule 16 of C.C.S.(CCA)Rules, 1965, along with the letter Exhibit-7 with a statement of imputation and the reply to this Charge-sheet by Pannalal / is Exhibit-8. This enquiry was dropped by Office Memo dated 21.10.76. Exhibit-10 dated 9.1.76 was communicated to Shri Pannalal in which at item No.6(ii) it was mentioned that he is indisciplined, attitude to superiors and subordinates not good, general behaviour not satisfactory and in item No.6(iii) Careless and very dirty, no improvement observed in his habit. Pannalal was again served with a memo, Exhibit-11, dated 30.9.75 that he had failed in attending the meeting for which he submitted the reply

TA 2111/86

Exhibit-12.

13. There appears to be some other allegations as Pannalal was put under suspension in 1970 for certain period and when he was reinstated, without any penalty, the salary of the suspension period was not allowed to him. For this he filed a Civil Suit and ultimately from the Hon'ble High Court the finding of the Lower Court in that case for the award of full salary of the suspension period was upheld. The photostat copy of the same has been filed.

14. It also appears that against the entries affected in the character roll of Pannalal, Civil Suit was filed which was decided in favour of the <sup>and</sup> employee by Munsif Magistrate, Kota: an appeal was made before the Hon'ble High Court and that was transferred before its decision to the Tribunal, Jodhpur Bench. The adverse remark given for the year 1974 & 1975 referred to above vide Exhibit-10, were ordered to be expunged and the Tribunal up-held the same judgment.

15. In nut-shell, the order of Divisional Engineer Telegraphs, Exhibit-3, passed on 26.7.75 may have been based on the entry of the relevant year 1974-75 by which the cross of EB allowed by Exhibit-2 was withdrawn by cancelling the order of SDO(P) dated 7.4.75. In any case there remains nothing on which any order of cancellation could have been passed by virtue of the ~~decision of the~~ final decision of this Tribunal. This is not disputed by the learned counsel for the Union of India. Only on this basis the finding on issue No.1 is to be up-held.

16. Besides the above, there is a judgment of Punjab State of Punjab v. Sri Duni Chand & others and Haryana High Court reported in 1980(2) SLR 608/where the cross of EB cannot be withheld on a minor punishment. Further the contention of the learned counsel that the



TA 2111/86

DPC held its meeting in 1977 and the DPC in that meeting vide Exhibit-22 did not find Pannalal eligible to cross the EB due to unsatisfactory record cannot be given any weight as the adverse entry of 1974-75 was expunged in toto.

17. Further in this connection no show cause notice was given to Pannalal which was necessary. No person can be condemned unheard. Secondly, Union of India or other respondents did not file any record to show that Pannalal was not fit for crossing the EB at the stage when it was due. Moreover, that adverse entry cannot be pressed by the learned counsel, as the entry of 1975, ~~which~~ has already been got expunged by the decision of Civil Court ultimately by this Tribunal when the pending matter was transferred under Section 29(1) of the Administrative Tribunals Act to the Tribunal. Regarding the other adverse entry of a subsequent period against Pannalal, the representation was made and that representation was allowed modifying the said adverse entry by striking down the word 'indiscipline' as is evident from Exhibit-A.3 which is dated 1.4.77. Still further Pannalal was duly confirmed in his posting and appointment from 1979 vide Exhibit-27. Had these entries being considered against him then his confirmation would have been delayed as the confirmation is only after a person is cleared of any adverse noting against him in the service record. Thus, the finding on issue No.1 has been rightly given by the learned Munsif Magistrate, Kota, who also based his decision on a vivid discussion of the oral evidence of Pannalal and of the defence witnesses DW-1 Sarvan Kumar, DW-2 Bhawant Singh and DW-3 Balkishan Bhanwar which is not necessary now to be discussed again.

18. The learned counsel for Union of India also did not show any relevant rule or any other service manual



TA 2111/86

S.R. or F.R. to lay force on the argument that DPC in 1977 was right in with-holding the EB. Be whatever may, the impugned order by Divisional Engineer Telegraphs was passed even before the meeting of this DPC on 26.7.75 and by the time Pannalal was also drawing salary at the enhanced rate from 25.1.75 and that could have been decreased only by giving a show cause notice which is mandatory in such cases.

19. No other point has been pressed by the learned counsel for the Union of India.

20. The applicant has appeared in person and explained the matter from the record. Going through whole of the matter, the judgment and the arguments laid by the respective parties, I agree with the findings of the learned Munsif Magistrate, Kota. On the considered opinion, I find that the impugned judgment and decree do not call for any interference. Consequently, the appeal filed by Union of India merits rejection.

21. In view of the above discussion this T.A. is hereby rejected with no order as to costs.



J. P. Sharma  
( J.P. Sharma ) 13.2.90  
Judl. Member