

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH, JODHPUR.
(AT JAIPUR.)

Date of Decision: May 8, 1939.

T.A. No. 2388/86

11

SHRI L.J.TOKI

... Plaintiff/Petitioner.

Shri J.K.Kaushik

... Counsel for Petitioner.

VERSUS

UNION OF INDIA & OTHERS

... Defendants/Respondents.

Shri G.P.Sorai

... Counsel for Respondents.

CO&AM:

THE HON'BLE SHRI B.S.SEKHON, VICE CHAIRMAN.

THE HON'BLE SHRI G.C.SINGHVI, ADMIN. MEMBER.

G.C. SINGHVI

The facts necessary to be noticed for the adjudication of the instant Suit, since rechristened as Transferred Application, consequent upon its having been transferred to the Tribunal by virtue of the operation of Section 29(1) of the Administrative Tribunals Act, 1985, are set out in the succeeding paragraphs.

2. The plaintiff, on 15.1.1982, filed a Civil Suit (No.36/1982) in the Court of learned Munsif, Kota (North). The case of the plaintiff, as set out in the plaint, is that he was appointed as a Cleaner in the Western Railway on 16.11.1957 and was then promoted as M.W.Khalasi and M.W.Fitter. In 1965 he was transferred to Kota. In 1973 his category was changed and he was appointed as W.M.Fitter. Because of hard work the plaintiff developed a chronic back disease and got medical treatment. When his condition deteriorated, he was hospitalised in the Divisional Railway Hospital, Kota from where he was referred to Jagjivan Ram

B/2

Hospital, Western Railway, Bombay. They wrote on 16.4.1980 to Divisional Medical Officer, Kota and he in turn wrote to Senior Divisional Mechanical Engineer, Kota recommending assignment of light duties to the plaintiff on ground of ill health. The Senior D.M.E. did not respond. The plaintiff in May, 1980 wrote to Loco Foreman Kota seeking assignment of light duties saying that with effect from May 20, 1980 he had joined his duties but he was not in a position to perform the duties, and as such he had applied for 15 days leave from 21.5.1980 to 4.6.1980. He submitted a second letter dated 21.5.1980 seeking six months' leave between 22.5.1980 & 21.11.1980. On 5.6.1980 the plaintiff wrote to D.R.M., Kota for assigning him a light job but did not get any response. He was however, told that no leave was due to him. On 16.10.1980 the plaintiff wrote through proper channel to D.M.E.(E), Kota requesting him for allotting a light job to him and if allotment of light job was not possible, then he be granted voluntary retirement. He issued a reminder on 15.2.1981. Loco Foreman wrote on 1.11.1980 with reference to the plaintiff's application dated 30.10.1980 saying that the D.M.E.(E) had not acceded to his request vide his letter dated 30.10.1980. The plaintiff again wrote letters on February 20, 1981 and July 20, 1981.

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3. Despite all that has been set out in the preceding paragraph a charge-sheet dated 31.8.1981 was issued to the plaintiff on the allegation that he had been absenting himself unauthorisedly since 29.9.1980. The plaintiff has assailed the chargesheet inter alia on the following grounds:

(a) The plaintiff being a civil servant enjoys the protection of the Constitution of India. No D.A.R. proceedings can therefore be held against him except under law.

133

(b) The very basis of the charge-sheet was wrong.

(c) The chargesheet was against the principles of natural justice, as the plaintiff could not be forced to serve when he had applied for voluntary retirement.

(d) It has also to be seen whether the plaintiff had to be absent because he was compelled by his officers to do so or he absented on his own.

(e) There was no question of holding any D.A.R. proceedings against the plaintiff as he was entitled to seek voluntary retirement. Denial of granting him voluntary retirement was itself illegal.

The plaintiff asserted that he was, thus, entitled either to a light job as recommended, or voluntary retirement. A notice under Section 80 of the C.P.C. was issued by the plaintiff to the General Manager, Western Railway on 28.9.1981. The reliefs sought in the Suit comprised declaring the charge-sheet dated 31.8.1981 and all actions taken in pursuance thereof as illegal and malafide and either providing the plaintiff with a light job in consonance with medical opinion or granting the plaintiff conditional voluntary retirement. On the basis of the above declaration, the plaintiff prayed, no action be taken in pursuance of the charge-sheet dated 31.8.1981 and he be provided with a light job with full pay to which he is entitled.

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4. In the written statement the defendants refuted the assertions of the plaintiff. The plaintiff, according to them, was appointed as a temporary cleaner in Loco Shed Shamgarh, Western Railway on 16.11.1957. On 25.2.1962 he was designated as Mill Wright Khalasi. On 22.1.1964 he was transferred as Mill Wright Khalasi, Loco Shed, Kota. On 17.4.1964 he was promoted as M.W.Fitter and transferred to

13
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Sawaimadhopur. On 26.8.1984 the plaintiff was transferred back to Loco Shed, Kota as M.W. Fitter. The defendants conceded the plaintiff's being sick and hospitalised in Railway Hospital, Kota. Being on the list of sick employees since 12.11.1979 the plaintiff was sent to Jagjivan Ram Hospital, Western Railway, Bombay. When he came back to Kota, the Divisional Medical Officer, Kota on 22.11.1980 wrote to Senior D.M.E.(E), Kota (Annexure R-1) asking him if he could be put on light duty for three months keeping in view his weak health. The latter replied on 26.4.1980 (Annexure R-2) regretting it. On return from Bombay the plaintiff remained on sick leave, obtained fitness certificate from DMO Kota on 7.9.1980 and joined duties. He worked upto 9.9.1980. He remained on leave between 10.9.1980 and 18.9.1980. He again worked between 19.9.1980 and 21.9.1980. He remained on leave between 22.9.1980 and 28.9.1980. Since 29.9.1980 he had been absenting himself without leave.

5. On the issue of voluntary retirement the Senior DME vide his letters dated 28.10.1980 (Annexure R-4) and 17.3.1981 (Annexure R-6) wrote to the plaintiff in response to his applications dated 16.10.1980 (Annexure R-3) and 10.3.1981 (Annexure R-5) respectively that his request for voluntary retirement being conditional could not be acceded to. Vide letter dated 17.10.1981 (Annexure R-3) the plaintiff was informed with reference to his letter of 21.9.1981 (Annexure R-7) that if he wanted voluntarily to retire from service, he should submit a fresh application without any condition. The plaintiff vide his letter dated 5.11.1981 (Annexure R-9) regretted his inability to do so.

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6. Adverting back to the charge-sheet dated 31.3.1981 the defendants have stated that it was neither illegal, nor unconstitutional. On the other hand, the Suit was not

maintainable for want of notice under Section 80 of C.P.C. The matter was not justiciable. The Suit was premature as the D.A.R. proceedings had not been finalised. On these pleadings the defendants prayed that the Suit be dismissed with costs.

7. The plaintiff, on 3.3.1987, after transfer of the Suit to the Tribunal submitted a rejoinder to the written statement stating that ACM Jagjivan Ram Hospital, Bombay had written a letter dated 16.4.1980 (Annexure A-1). In this letter it was suggested that the plaintiff should avoid lifting of heavy weights and if it required change of profession necessary action could be taken at the end of DMO Kota. No compliance was made thereof. On 5.6.1980 he wrote to D.R.M., Kota (Annexure A-2). The D.M.E. did not listen to DMO Kota as he was prejudiced with the plaintiff. Coming to the D.A.R. proceedings the plaintiff stated that the defendants wanted to remove him from service and therefore they had initiated the D.A.R. proceedings. The defendants offered the copy of D.A.R. proceedings to the plaintiff vide their letter dated 23.3.1982 but the plaintiff refused to take the said copy because the annexures were very faint and illegible. He submitted this fact in writing vide his letter dated 27.3.1982 (Annexure A-3).

8. The plaintiff has also stated that while he was consistently pursuing his request for allotment of light duties to him, he had applied for a privilege pass on 14.4.1984. The requisite pass was not issued to him on the ground that free pass cannot be issued to a person who has been removed from service vide order dated 23.3.1982. Thereon the plaintiff requested the Senior D.M.E., Kota vide his letter dated 5.6.1984 (Annexure A-4) to supply the copy of the order of termination of services but there has been no response.

36

9. The plaintiff/petitioner also submitted an application dated 2.5.1988 to the Tribunal for bringing subsequent events/documents on record. The plaintiff was ordered to be removed from service vide NIP No. E/L/308/1/1966 dated 23.3.1982. Copy of NIP alongwith findings of E.O. were served on the petitioner on 9.1.1988 vide D.R.M. Kota letter No. E/L/308/1/1966 dated 8.1.1988 (Annexure A-5). There were 19 enclosures to the NIP but copies of the record had not yet been supplied to the plaintiff, so he had written his letter of 27.3.1982 (Annexure A-3).

10. We have given our careful consideration to the pleadings of the parties and the documents as also the contentions advanced by the learned counsel for the parties.

11. From the foregoing, it is evident that the NIP dated 23.3.1982 alongwith a copy of findings of the EO was served on the plaintiff. He acknowledged receipt of it on 27.3.1982 (Annexure A-3). He wanted copies of 19 enclosures but these 19 enclosures were all with the EO's findings and this was no stage for the plaintiff to register the request for having copies of those enclosures. Except for Annexure A-3, it is very significant to note the plaintiff has not been able to raise an accusing finger at the way the D.A.R. proceedings were conducted. Simply asserting that the action was a product of malafide or was illegal, can be of no avail. So the D.A.R. proceedings could be taken as having been regularly conducted but the punishment awarded comprising removal of the plaintiff from service is, on the very face of it, not commensurate with the delinquency, particularly because of the plaintiff's request registered for granting him voluntary retirement. Under what rule can a request for voluntary retirement not

8/5/89
8/5/89

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7

be conditional has not been shown by the defendants/respondents. Why the plaintiff/petitioner insisted on the condition of giving him light job or acceding to his request for voluntary retirement also does not stand the test of reason and particularly so when he was clearly told to submit an unconditional request. In so far as providing him a light job is concerned, the plaintiff/petitioner has failed to cite any rule or order under which he could claim a light job on grounds of ill health. Taking all these factors into consideration, the punishment awarded to the plaintiff/petitioner in the D.A.R. proceedings comprising removal from service is adjudged as grossly disproportionate to the delinquency and the punishment is therefore, substituted by the punishment of compulsory retirement on proportionate pension. The petitioner will be given all consequential benefits arising out of this substitution within three months of today.

12. The Transferred Application is disposed of accordingly, leaving the parties to bear their own costs.

Singhvi
(G.C. SINGHVI)
ADMN. MEMBER.

8-5-89

S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

8-5-89