

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: :HYDERABAD BENCH: :AT HYD.

R.P.No.96/91 in
O.A.No.892/89.

Date of Decision: 20-3-92.

Between:

A. Wahab Applicant/Applicant

Vs.

1. The Divisional Rly. Manager (P),
SE Railway, Waltair.
2. The Chief Personnel Officer (A),
SE Railway, Garden Reach, Calcutta.
3. The Chairman, Railway Board,
(rep. Union of India) New Delhi .. Respondents/Respondents

For the Applicant : Shri C.Suryanarayana, Advocate.

For the respondents : Shri N.R.Devaraj, Standing Counsel
for Railway

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN.)

HON'BLE SHRI T. CHANDRASEKHAR REDDY, MEMBER (JUDL.)

XJUDGMENT OF THE BENCH AS PER HON'BLE SHRI R.BALASUBRAMANIAN, M(A) X

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This Review Petition is filed by Sri A.Wahab seeking review of the Judgment dt. 17.9.1991 in O.A.No.892/1989. He also seeks condonation of unavoidable delay of 25 days in filing this R.P. because of his serious ill-ness. We find ~~that there are~~ good and sufficient reasons to condone the delay and accordingly condone the delay of 25 days, in filing the R.P.

2. It is the case of the Applicant that the Tribunal had not taken into account four Judgments which he had cited. Citations he refers to in this R.P. are -

- (a) ATR 1988(1) CAT 1986 (Calcutta Bench) - Asim Benerjee Vs. Union of India & others.
- (b) 1988 (7) SLR 411 (Calcutta Bench) Sudhindra Chandra Saha Vs. Union of India & others;

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(c) 1989 (10) ATC 199 (Chandigarh Bench) Tulasiram Vs. EE, CPW, Shimla & another; and

(d) 1991 (1) ATC 590 (Chandigarh Bench) Balwanth Singh Vs. Union of India & others.

It is also his case that inspite of interim orders of the Calcutta High Court passed on 30-5-85, he had not been taken on duty and he had been unjustly denied the pay and allowances for the period from 1-6-85 to 30-11-87.

3. The Judgment in the O.A. was passed by a different Bench and therefore in terms of the recent orders of the H'n'ble Chairman, the R.P. was heard by this Bench.

4. As a matter of fact there is no reference to any of the citations in the O.A. Nevertheless, we have had gone through the citations shown above at (b) and (d). The case of the applicant is different and the decisions cited are not applicable. In the three cases, the concerned officials had actually worked for the department during the period extended by virtue of court orders. But, such is not the case of the Review Applicant. He was due to retire on 31-5-85. He obtained an interim order from the Calcutta High Court on 30-5-85 just one day prior to the due date of retirement. By the time the orders were received by the concerned authority at Waltair, on 10-6-85, the applicant had already retired from service. The Senior D.P.O., Waltair passed an order dt.23-8-85 referring to the interim order dt.30-5-85 of the Calcutta High Court restraining the Railwa Administration from retiring the applicant before 30-6-89.

He had clearly stated in that letter that the said interim order was brought to his notice only on 10-6-85 vide the applicant's application dt.10-6-85. In obedience and in compliance with the interim order dt.30-5-85, Sri Wahab was deemed to be continuing in service and he was to be paid full pay and allowances as admissible to him from month to month without allotting any duty to him till further orders from the High Court, Calcutta. Subsequently, the case was transferred to Calcutta Bench of this Tribunal, and was decided by the Tribunal against the applicant. The Transferred Application was dismissed by the Calcutta Bench and the interim order got merged into it. Later, the Respondents passed order dt.11-4-88 (Annexure A-5 in the O.A.) ordering recovery of amount of pay and allowances paid to him because he did not actually worked during the said period. It was against this, the applicant preferred the above O.A.892/89 which was dismissed by this Bench by orders dt.17-9-91.

5. The Review Application is to reconsider ^{whether} the order passed by this Tribunal upholding the recovery of amount paid is correct or not. The applicant tries to derive support from the four ^{icitations} he has made. As pointed out earlier, the case of the applicant before us is different from the officials in those cases. The applicant before us did not actually render any service to the Railways after 30-5-85 when he retired from service. We are therefore

unable to apply the principles laid down in these orders.

We shall also examine the action of the Respondents in not allowing the applicant to work. The Respondents had an interim order before them and they considered it sufficient to pay him the pay and allowances. On this point the learned counsel for the applicant Sri C. Suryanarayana drew our attention to the judgment of the Hon'ble Supreme Court reported in AIR 1988 SC 78. Their Lordships had observed that every public sector officer should be given some posting commensurate with the status and no officer should be paid without any work assigned to him. As of an interim nature only in the case before us the Respondents treating the payments made to him as of an interim nature only pending a final decision in the case.

The final order in this case turned out against the applicant and therefore the Respondents have ordered ~~xxx~~ recovery of the payments made to the applicant. The ~~xxx~~ principal indicated in the Hon'ble Supreme Court is therefore not ~~xxx~~ violated ^{ble} ~~xxx~~ in ~~xxx~~ to this case. The applicant had not ~~xxx~~ been paid for the work he had not performed. Under these circumstances we do not find anything wrong in the action of the Respondents.

6. The learned counsel for the applicant Sri C.Suryanarayana, alleged that the Respondents had deliberately not acted on the interim order in time and allowed the applicant to retire. He produced a copy of the order dt. 30-5-85 passed by the High Court of Calcutta, which was

Copy to:-

1. The Divisional Railway Manager (P), S.E.Railway, Waltair.
2. The Chief Personnel Officer(A), S.E.Railway, Garden Beach, Calcutta.
3. The Chairman, Railway Board, (rep. by Union of India), New Delhi.
4. One copy to Sri. C.S. Suryanaryana, advocate, CAT, Hyd.
5. One copy to Sri. N.R. Devaraj, Addl. CGSC, CAT, Hyd.
6. One spare copy.
7. *one copy to D.R.(T)*

Rsm/-

made over on 30.5.1985 to the Chief Personnel Officer of the S.E.Railway, Calcutta. We find that it is just a letter by the applicant's Advocate addressed to the Headquarters Office containing the interim orders passed by the High Court. This is not an authentic copy of the court order. We do not find any malafide intentions on the part of the Respondents, if they have failed to act on this, as alleged by Sh. C.Suryanarayana.

7. Sri C.Suryanarayana, learned counsel for the applicant contends that in view of the interim order and in as much as the applicant was willing to work, he should have been taken on duty. If that was the intention of the applicant, what was he doing all the time when the Respondents passed a clear order on 23.8.1985 ^{itself} stating that no work would be allotted to him? If the applicant was really interested in performing any work for the pay and allowances he was receiving, he should have sought for the required redressal at the appropriate time. We are, therefore, not convinced about the applicant's intention.

8. In para-11 of our Judgment dt. 17.9.1991 a clear conclusion had been arrived at i.e. the applicant was not entitled to retain the amounts paid to him by way of pay and allowances during the period from 1.6.1985 to 30.11.1987. We do not find any error apparent on the face of it and what the review applicant now seeks is a re-consideration of the Judgment as such. This cannot be done through R.Ps. Appeal against the Judgment is the course open. Under these circumstances, we dismiss the Review Petition with no order as to costs.

R.Balasubramanian
(R.Balasubramanian) ..
Member (A)

T.C.Chandrasekhar
(T.C.Chandrasekhar Reddy)
Member (J)

Dated: 20th March, 1992.

grh/avl.

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Dr. Registrar (Jud.)

Romee

R.P. 96/91
O.A. 892/88

TYPED BY
CHECKED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.G.

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY: ✓
M(JUDL)

AND

THE HON'BLE MR.C.J.ROY : MEMBER(JUDL)

DATED: 20/3/92

ORDER/JUDGMENT:

R.A/C.A/M.A.N. 96/91

in

O.A.N. 892/88

T.A.N. (W.P.NO.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions.

R.P. Dismissed

Dismissed as withdrawn

Dismissed for Default.

M.A. Ordered/ Rejected

No order as to costs.

