

11 (42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. No. 1550 of 1994

Between

Abdul Kareem

...

Applicant

and

The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad
and two others,

...

Respondents

Rejoinder
REPLY AFFIDAVIT FILED BY THE APPLICANT

I, Abdul Kareem, son of Sri Abdul Sattar, aged 45 years, working as Carpenter Khalasi in the Wagen Workshop, South Central Railway, Guntupalli, Vijayawada do hereby solemnly affirm and state as follows.

1. I am the applicant herein and as such well acquainted with the facts of the case.

2. I have gone through the counter affidavit filed by the 3rd respondent herein. The averments made therein are misleading and contrary to the facts. It is a fact that my son died in 1981 ~~at the age of 20 years~~ which ~~caused me great grief and I was mentally depressed.~~ I underwent treatment under Dr. T.R.V.Rao at Hyderabad for the period from 19-5-1981 to 8-10-1990. There is no

any enquired made regarding the genuineness of my sickness.

I reported for duty with private medical certificate and I was not permitted to resume duty. In the affidavit filed

by the respondents, it is stated that the records connected with my case are not available and as such they ~~are~~ ^{have} not

was intimated from time to time as per my letters dated

R. S. Rao

- 2 -

20-5-1981, 16-8-82, 19-4-1983, 20-5-1984 onwards requesting for drawal of salary. The nature of the complaint suffered by me was such ^{that} it prevented me from performing my duties and the respondents are not the competent authorities to express opinion regarding my sickness as he has absolutely no knowledge about my sickness. Moreover the averments made are without any basis and devoid of any report from a competent medical authority who as per rules had to be deputed to certify the genuineness or otherwise of my sickness. There is practically no facility available for treating mental illness in the Railway Hospital either at Vijayawada or Secunderabad. The respondents admitted that they would have referred the case to a mental hospital if I approached them. There is no prohibition, according to rules, that Railway employees should not undergo private medical treatment. What was considered best in my interest was adopted by my family members ~~max~~ in the circumstances of the case and the respondent is not the judge of the situation. The observations made by the respondents are misconceived and have no relevance to my sickness.

3. It is submitted that I made several representations to the authorities to take me to duty. As there was no response to any of my representations by the respondents, it was represented to the Government of India, Public Grievance Cabinet Secretariate, New Delhi. It was only after such representation, the General Manager, South Central Railway Secunderabad chose to reply quoting reference to my representation dated 17-4-1993 to the said Department that under Rule 732 of Railway Establishment Code, I was treated as deemed to have been resigned from service with effect from ~~17/19-2-1982~~ 17/19-2-1982 issued by Guntupalli Wagon Workshop authorities. There is no proof of having ~~served~~ served such notice on me and the respondents are put to strict proof re

17 p sur

the service of the said deemed resignation notice. In the absence of any request by me offering me to resign from service, there is nothing like deemed resignation.

4. It is respectfully submitted that I joined service on 26-4-1973 and was absorbed as a Carpenter Khalasi in Wagon Workshop Guntupalli, I am a permanent employee of the Railway and under Article 211(2) such order of deemed resignation is violative of the Fundamental rights. It has been held by the Supreme Court in AIR 1964 SC 600 Motiram Deka Vs. General Manager NEF Railway that rules cannot trespass upon or curtail the rights guaranteed under Article 311 of the Constitution. The Supreme Court also held in AIR 1958 SC 36 Parshotham Lal Dingra Vs. Union of India that a servant can be removed or dismissed from service without complying the provisions contained in Article 311, which applies both to temporary as well as permanent employees.

5. The action of the respondents is in removing me from service under the euphemistic term of deemed resignation which is penal in nature involving in depriving me of my livelihood, ^{is illegal and violative of fundamental rights} It is therefore, submitted that the respondents have for the first time advised me on 16-4-1994 that I was deemed to have resigned on 17/19-2-1982. The cause of action actually arose on the notification issued with retrospective effect. Any punishment inflicting with retrospective date is illegal. The Hon'ble Tribunal directed me to file a condonation delay petition treating my date of reporting for duty i.e., 19-2-1982. In compliance I filed a condonation delay petition which in fact is not necessary. The action is reckoned from the date of receipt of the penalty advice of dated 17/19-2-1982 16-5-1994 and it has to be treated as final reply from the respondents and the D.A. is well within the limitation under the provisions of the Central Adminis-

[Handwritten signature]

trative Tribunals Act, 1985.

6. ^{Prayed that} It is, therefore, this Hon'ble Tribunal may be pleased to admit the D.A. and quash the order dated 16-5-1994 by declaring the same as illegal, arbitrary and unconstitutional violative of Articles 311, 14 and 16 of the Constitution of India and direct the respondents to reinstate me into service with all consequential benefits.

Solemnly affirmed and
signed before me on
this the 22nd day of
March, 1995.

Abdul Kareem
DEPONENT

Before me,
[Signature]
Advocate, Hyderabad.

G. V. Subb
Counsel for Applicant.