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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH:JAIPUR

O.A. No.150/1994 : Date of order: 29.3.1995

Radhey Shyam Gautam : Applicant

Versus

1. Union of India through General  
Manager, Western Railway,  
Churchgate, Bombay.

2. Divisional Railway Manager,  
Western Railway, Kota Division,  
Kota.

3. Sr. Divisional Mechanical Engineer(E)  
Western Railway, Kota Division, Kota.

: Respondents

Mr. J.K.Kaushik : Counsel for the applicant  
Mr. M. Rafiq : Counsel for the respondents

CORAM:

HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE)  
HON'BLE MR. RATTAN PRakash, MEMBER (JUDICIAL)

O R D E R

( PER HON'BLE MR. O.P.SHARMA, MEMBER (ADMINISTRATIVE) )

In this application under Section 19 of the Administrative Tribunal's Act, 1985 Shri Radhey Shyam Gautam has prayed that the order dated 29.3.1993 (Annexure A-1) treating the period of absence of the applicant as 'dies-non' and denying promotion to him may be declared illegal and be quashed with all consequential benefits.

2. The applicant's case is that he was initially appointed on the post of Cleaner at Gangapur City on 11.5.1986 and later he was posted as Phallasi. Still later he was granted promotion as Helper Phallasi. While he was working on the post of Helper Phallasi, there were allegations against him that he was doing money lending

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business. The applicant was ordered to be transferred from Gangapur City to Guna in M.P. on the post of Senior Mhallasi. This transfer involved his reversion as well. He challenged his transfer and reversion by filing a suit before the Court of learned Munsif at Kota which was transferred to this Tribunal. This Tribunal quashed the order of reversion but upheld the order of transfer. The applicant was thereafter allowed to resume duty in October 1989. He asked for the promotion which was due to him. The applicant was informed vide order dated 29.3.1992 that the period of unauthorised absence, from 26.8.1977 to 18.7.1989 had been treated as dies-non (Annexure A-1), and due to this he had been denied the promotion. The applicant's grievance is that before treating the period of absence as dies-non he was not given any opportunity of hearing, nor was any enquiry held. The applicant's case is that this order of treating his absence as dies-non entails civil consequences as it not only denies pay and further promotions but also pensionary benefits. According to the applicant this order is punitive in nature and a punishment cannot be imposed except after following the procedure of disciplinary proceedings in accordance with the rules.

3. The respondents in the reply have taken a preliminary objection as to the limitation because according to them even as per the representation dated 22.10.1992 filed by the applicant (Annexure A-2), the period of limitation expired in the month of April 1993, whereas the OA was filed on 29.3.1994.

4. The respondents have further stated that the applicant was not transferred from Gangapur City as a result of any disciplinary action initiated against him. The respondents have a right to transfer an employee from one place to another. The applicant was ordered to be transferred to

Guna but instead of carrying out the order of transfer and reporting at Guna, he remained absent on his own accord. On the basis of serious complaints received against him, disciplinary proceedings were also initiated against him and a major penalty of reduction to the minimum of the pay scale for a period of two years with future effect was imposed upon him vide order dated 10.4.1977. On his resumption of duty in 1989 his pay was fixed keeping in view that the period of absence from 26.8.1977 to 18.7.1989 had been treated as dies non due to his unauthorised absence. He was treated as not eligible for benefit of any payment for the aforesaid period. For the same reasons, he was also not found fit for promotion on account of his absence from duty from 26.8.1977 to 18.7.1989. There is no rule which provides that an opportunity of being heard has to be given before the absence from duty of an employee is treated as dies-non. The applicant has been granted his due pensionary benefits on his retirement on 30.4.1993 as per his service record.

5. We have heard the learned counsel for the parties and have gone through the records. The learned counsel for the applicant has drawn our attention to an order passed by Ernakulam bench of the Tribunal in F.T.Varghese Vs. Union of India and others, 1991(1)SLJ(CAT)493 to support the view that principle of natural justice must be followed before treating the period of absence of an employee as dies-non. In this case there was difference in opinion between the two members of the Tribunal on this issue and the matter was referred to the third Member, Vice Chairman of the Tribunal who held that the principles of natural justice must be followed before treating the absence from duty as dies-non.

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6. We have gone through the aforesaid order of the Tribunal and we find that the issue decided in this case as mentioned in para 16 thereof is different and it is whether the memoranda issued to the applicant were in conformity with the provisions of C.C.S.(CCA) Rules 1965 or not. The third member, Hon'ble Vice Chairman had directed that the aforesaid memoranda be set-aside and the case be remanded to one of the respondents to initiate disciplinary proceedings against the applicant in accordance with law, etc. Since the issue raised before the third member, the Hon'ble Vice Chairman was different, any observations regarding the treatment of the period of absence have to be treated as obiter dicta. The learned counsel for the applicant has not been able to show us any specific rule to suggest that the principles of natural justice have to be followed while treating the period of absence as dies-non. In the instant case the applicant was transferred to Guna in August 1977 and he failed to resume duty there till July 1989. The period of absence is not disputed. When a person does not perform his duties, when he is not prevented from doing so by the respondents, he has to bear the consequences of such absence. All that the respondents have done is to treat this period as dies-non i.e. as if those days of the applicant service did not exist. We do not find that any violation of principle of natural justice is involved in taking this action when there is no dispute that the applicant was absent of his own volition. We therefore see no merit in the application. It is dismissed with no order as to the costs.

  
( RATTAN PRAKASH )  
MEMBER (J)

  
( G.P. SHARMA )  
MEMBER (A)