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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 17.5.2000

OA No.72/96

Bhanwar Singh S/o Shri Ramji Lal aged about 35 year at present employed on the post of Pointman under Station Master, Mirhakur, Western Railway, Kota Division.

.. Applicant

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Station Master, Mirhakur, Western Railway, Kota Division, Mirhakur.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. O.P.Sharma proxy counsel to Mr. T.P.Sharma, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant prays that the impugned order dated 7.9.1995 (Ann.A1) be quashed and applicant may be taken on duty with all consequential benefits.

2. The facts of the case, as stated by the applicant, are that he was initially appointed in Kota Division on 20.7.1979, given temporary status on 30.7.1982 and promoted to the post of Pointsman w.e.f. 7.10.1993. All of a sudden, the respondent No.3 issued the letter dated 7.9.1995 stating that the applicant refused to close (lock) the gate No.62 and that the applicant has been "put off duty" (emphasis supplied). The applicant was on that day working with respondent No.3 at gate as well as points and never refused to work. He made a representation on 4.10.1995 (Ann.A2) and also sent a number of reminders to respondent No.2 but of no avail and the applicant has not been taken on duty even though more than 4 months had passed (as on 12.1.1996, the date of presentation of OA). The case of the applicant is that he has neither been removed nor suspended. If he had refused to close (lock) the gate, disciplinary action could be taken against him but he cannot

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be put off duty illegally and not paid his salary. Such action of respondents is violative of Articles 14 and 16 of the Constitution of India. He apprehends that he may be declared absent from duty since respondent No.3 is pressing him to bring a medical certificate of fitness, although he is daily reporting for duty.

3. The respondents have taken a preliminary objection about jurisdiction of this Bench in view of the fact that the applicant was working under the control of Station Master (for short SM), Mirhakur (U.P.) and the impugned order was also passed by the said Station Master. We, however, find that the OA was admitted as far back as 19.3.1996 and the applicant was working on the post of Pointsman under Kota Division. The preliminary objection is, therefore, rejected.


4. In reply to the OA, the respondents have admitted that the applicant was promoted as PP in the scale of Rs. 750-940 on 7.10.1993 but was working in the capacity of PP at Station Fatehpura, Agra. On that date, the Up-side Pointsman was short and when the SM asked the applicant to close gate No. 62, he refused with the result that Up-side Tower Wagon remained 5" outside and the same gate was closed by Bachchu Singh the Dn-side Pointsman. Due to this misconduct (emphasis supplied), the applicant was put off duty by T.I., Bayana. It is also stated that when the applicant attended the station on 10.9.1995 for taking his payment, the ASM on duty told the applicant regarding the order of T.I., Bayana but the applicant refused to come on duty as per charge book available. According to the respondents, same thing was repeated on 11.9.1995. The applicant was also not available at his quarter on 15.9.1995 and 16.9.1995 and at Headquarters on 19.9.1995, 22.9.1995 and 23.9.1995. On 21.1.1996, as per orders of DSO, Kota, he was taken on duty without any explanation. The respondents also state that they never asked the applicant to produce medical fitness certificate and he is trying to misguide the Tribunal. All that the respondents have said about order of "put off duty" except that the order was passed by the competent authority and not in any illegal or arbitrary manner.

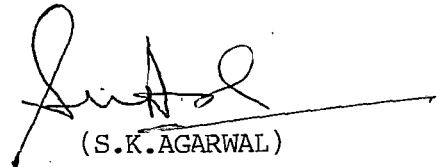
5. We would have appreciated if the respondents had referred to the rules which provide for "putting off duty". The disobedience of orders by the applicant on the said day has been taken as misconduct. To our knowledge, the penalty for misconduct on the part of a railway employee is incorporated in the Railway Servants (Discipline and Appeal) Rules 1968 (for short Rules of 1968) and there is no penalty like "put off duty" in Rule 6 of the said Rules. Para 2 of the said Rules provide for suspension and the fact remains that the applicant was not placed under

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suspension by invoking the provision of para 2 of the Rules of 1968. Disobedience of orders in any organisation like Indian Railways, with serious security implications involving life and property of millions of people, should not be condoned but the provisions incorporated in the above mentioned Rules has to be followed. In the circumstances, we hold that the respondent No.3 had no legal authority to order to "put off duty" and the impugned order dated 7.5.1995 (Ann.A1) is not sustainable in law.

6. The Original Application is accordingly allowed and the impugned order dated 7.9.1995 (Ann.A1) is quashed. The respondents are directed to treat the applicant as on duty during the period he was put off duty with all consequential benefits. This direction may be carried out within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.


(N.P. NAWANI)
Adm. Member


(S.K. AGARWAL)
Judl. Member