

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER: 04.05.2001

OA 211/2000

Nirmal Kumar Mishra son of Shri Dori Lal Mishra resident of Plot No. 28, Rajasthan Oil Mill Colony, Ramganj Mandi, District Kota.

.... Applicant.

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Chief Personnel Manager, Western Railway, Churchgate, Bombay.
3. The Divisional Railway Manager, Western Railway, Kota.

.... Respondents

Mr. P.K. Asthana, Counsel for the applicant.

Mr. S.S. Hassan, Counsel for the respondents.

CORAM

Hon'ble Mr. A.K. Mishra, Member (Judicial)

Hon'ble Mr. S.K. Agarwal, Member (Administrative)

ORDER

PER HON'BLE MR. A.K. MISHRA, MEMBER (JUDICIAL)

By representing this OA, the applicant has prayed that the communications dated 15.11.99 and 21.1.88 be declared null and void and the respondents be directed to reinstate the applicant in service w.e.f. 21.10.1987 with all consequential benefits.

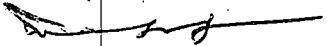
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2. Notices of the OA was given to the respondents who have filed their reply.
3. We have heard the learned counsel for the parties and have gone through the case file.
4. From the pleadings of the parties, it appears that the applicant was appointed vide letter dated 25.7.86 as Trainee Electrical Fitter and was sent for training under the Electrical Engineer TRD Bharatpur. However, the applicant remained absent from training initially from 23.4.87 to 30.6.87, 17.8.87 to 6.10.87 and thereafter absented from training from 16.10.87 and therefore, the applicant was removed from service vide order dated 21.1.88. As against the removal order, the applicant filed a departmental appeal on 28.3.87. The appeal of the applicant was dismissed on 15.11.99. Thus the applicant all through was sleeping over his rights and has approached the Tribunal delayedly.
5. The contention of the applicant is that the applicant had developed some mental ailment and was admitted in mental hospital Indore on 26.10.87 as communicated in Annexure A5 and remained under treatment upto 10.3.97 as communicated in Certificate (Annexure A6), issued by the Medical Officer, Mental Hospital. Therefore, the applicant could not report for the duty. His termination was illegal. The termination order was never communicated to him. Consequently the same is ineffective.
6. We have considered the rival arguments and facts of the case.
7. From Annexure A 4 dated 25.7.86, it appears that applicant was appointed as Trainee on probation. He was informed that his services could be terminated by giving him 14 days' notice. As per appointment order, the applicant has to undergo training for one and a half year and on successful completion of training and on being found fit could be appointed on a suitable post but no guarantee or promise could be given to provide appointment. The applicant was to execute a bond in favour of the respondents that he would remained in service of the respondents for five years after having been appointed after completion of training. There are certain other conditions in the appointment order which are not necessary to be reproduced. From the appointment order, it is amply clear that the applicant was to

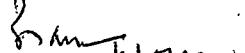
attend the training but the applicant failed to attend the training as per the condition. He intermittently absented from the training initially and thereafter from 16.10.87 absented from training continuously. The contention of the applicant that he could not complete the training course because of the mental ailment has no importance after almost a lapse of 14 years of beginning of the training period. The applicant was sent for training in the year 1986. From the certificate (Annexure A 5) at page 20, it could not be concluded that the applicant was so ill and remained continuously so ill and was not in a position to attend the training. There is nothing on record to show that the applicant remained admitted in mental hospital throughout the intervening period. The applicant was undergoing the treatment for mental hospital. Some of the wellwishers could have informed the authorities for either extending his training period or condoning the training. Since the applicant or any of his relative did not take any such steps during the intervening period, therefore, it would not be just on our part to direct the respondents to allow the applicant to complete the training after 14 long years when the applicant has become 14 years older than his age at the time of initial appointment. The Tribunal cannot grant relief in such matters on humanitarian grounds or on equitable considerations. When the applicant was appointed on probation, his service could be terminated during probation period without any formality or observance of rule or assigning any reason. In such situation, the applicant's termination order of 1987 cannot be interfered with after a lapse of 13 to 14 years, simply to provide relief to the applicant. In our opinion, the applicant has not been able to make out a case for interference in the matter. The ruling cited by the learned counsel for the applicant and reported in 1988(7)SLR 283 is not applicable in the instant case because of difference of facts. From the facts of the reported case, it appears that the applicant was permanent Workman of the Company and in view of this, his absence due to mental ailment was considered not intentional relinquishment of the service but in the instant case, the applicant was only a probationer ~~and~~ and his absence could be adversely viewed by the employer for terminating his service during probation period. Therefore, the rule propounded in this ruling is not applicable in the instant case. The OA in our opinion of devoid of any force and the same deserves to be dismissed.

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8. The OA is, therefore, dismissed with no order as to costs.


(S.K. AGARWAL)

MEMBER (A)


(A.K. MISHRA)

MEMBER (J)