

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 23-12-2003

OA No.233/2000

Mahesh s/o Shri Madho r/o village and post Nimoda, Distt. Sawai Madhopur at present employed on the post of Gangman, Hindon, Western Railway, Kota Division.

.. Applicant

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Permanent Way Inspector, Hindon, Western Railway, Kota Division.

.. Respondents

Mr. Shiv Kumar - Counsel for the applicant

Mr. T.P.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

Hon'ble Mr. A.K.Bhandari, Member (Administrative)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

This application has been filed by the applicant for taking him on duty and payment of salary w.e.f. 3.4.2000 onwards.

2. Facts of the case are that the applicant was initially appointed as casual labour and was conferred temporary status w.e.f. 24.7.87 on the post of Gangman. It is alleged that since then he is discharging his duties to the entire satisfaction of the authorities. It is also alleged that father of the applicant expired on 1.4.2000. He has taken leave from the Jamadar. The applicant has submitted joining report to the concerned authority on

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3.4.2000. It is further alleged that the applicant is attending the duty daily but the respondent No.2 has not taken the applicant on duty without showing any reason. The applicant has been neither suspended nor has been removed from service. Work is still available and the post has not been abolished. Under these circumstances, the applicant has prayed that the respondents may be directed to take the applicant on duty and pay monthly salary w.e.f. 3.4.2000 till he is taken on duty forthwith.

2.1 The applicant has further submitted that the second respondent is biased against the applicant as earlier he has filed OA No. 182/97 against his illegal transfer. The Hon'ble Tribunal granted the interim stay in that case on 26.5.97. The respondent No.2 in the present case was also respondent No.4 in OA No.182/97. In that case the Hon'ble Tribunal initiated suo-moto contempt proceedings against respondent Nos. 2,3 and 4 and they were directed to present in person. It is on account of this fact that the second respondent is annoyed with the applicant and he is intentionally causing hardship to the applicant.

3. The respondents have filed reply. In the reply it has been categorically stated that the applicant had taken leave for one day i.e. 1.4.2000 and there being Sunday on 2.4.2000, the applicant should have given his joining report on 3.4.2000 for joining his duty, but till date the applicant has not joined his duties and he has been unauthorisedly absent from the duty. Merely saying by the applicant that he has given his joining report is not correct and it is a false statement made by the applicant. Hence, the OA is liable to be dismissed on this ground

alone.

3.1 It is further stated that applicant is wilfully and unauthorisedly absent from duty and he has neither given his joining report nor resumed in the office and merely saying that he has not been allowed to join, is false and baseless. Regarding filing of earlier OA, it has been stated that the applicant was transferred to Paran vide order dated 8.8.96 but the applicant did not join his duties and after a lapse of nine months the applicant filed OA before the Jaipur Bench of this Hon'ble Tribunal and joined his duties on 29.5.1997. Other allegations regarding intentionally causing hardship to the applicant and bias attitude of respondent No.2 have been denied. It is on this basis, the respondents have stated that the applicant is not entitled for any payment of salary as he has been unauthorisedly absent from duty.

4. The applicant has not filed any rejoinder.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 At the outset, it may be submitted that the case of the applicant that his father expired on 1.4.2000 and he has taken leave from the Jamadar and also that the applicant gave his joining report to the concerned authority on 3.4.2000 but he has not been allowed, this contention of the applicant cannot be accepted at all. If the father of the applicant expired on 1.4.2000, the contention of the applicant that he submitted joining report on 3.4.2000 is unacceptable. It was expected from the applicant to perform ritual ceremony and it is only after performing the ritual ceremony, one will be able to

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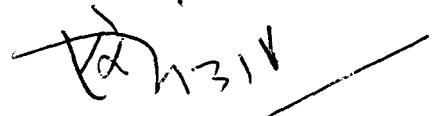
submit joining report but not on the next working day. In these circumstances, the explanation given by the respondents that the applicant only submitted leave for one day i.e. 1.4.2000 and due to Sunday on 2.4.2000, the applicant should have joined on 3.4.2000 on his duty but he failed to join the same, has to be accepted. Further, from perusal of the representation dated 17.4.2000 addressed to the respondent No.3, it is clear that the grievance regarding non joining of his duty w.e.f. 3.4.2000 was made on 17.4.2000. Thus from this document inference which can be drawn in this case is that ^q the father of the applicant expired on 1.4.2000, ^q in that eventuality, it may be just possible that the applicant attended the office on 17.4.2000 on which date he may not have been allowed to join duty. However, it is not the case of the applicant as pleaded in this OA. Had this been the case of the applicant, we would have interfered in the matter, as the same being a probable version. That apart, the categorical case of the respondents is that the applicant has never submitted his joining report on 3.4.2000 whereas as per the applicant he has submitted his joining report on 3.4.2000. The applicant has neither annexed copy of the joining report nor filed rejoinder to the specific plea taken by the respondents in this regard. As such in the absence of any contemporaneous record and that the version of the respondents has not been refuted by the applicant, the contention of the applicant that he submitted joining report on 3.4.2000 cannot be accepted.

5.2 From the material placed on record, it is clear that the applicant had not joined his duty till 31.7.2001 when the reply was filed by the respondents in which it has been stated that the applicant had been unauthorisedly

absent from duty from 3.4.2000 and till date he has not resumed his duty nor he has made any application to allow to join. So he is not entitled to payment of salary. The applicant has not even cared to obtain interim order or filed any affidavit thereby controverting the version of the respondents in their reply affidavit in case he was interested in joining his duty. From the material placed ~~on record, even on earlier occasions~~ the applicant after remaining absent from duty for a considerable period was able to obtain favourable order from the Tribunal in OA No.182/97 whereby this Tribunal has issued show-cause notice as to why contempt proceedings should not be initiated against the respondents as they have not filed reply and then directing the respondents to allow the applicant to join his duty in the office of respondent No.4 by way of interim order which was in the nature of mandatory relief. We are of the view that such a course is ~~wrong~~ not legally permissible and by way of this OA the applicant wants to achieve the same result which relief was granted to him by the Tribunal in OA No.182/97 by way of interim order dated 26.5.97. Admittedly, the applicant is absent w.e.f. 3.4.2000. He has neither submitted joining report nor thereafter taken any serious steps for taking him on duty. Keeping in view the conduct of the applicant and unrefuted version put forth by the respondents thereby categorically stating that the applicant is absent from 3.4.2000 and he has never submitted his joining report, no mandamus/direction can be issued to the respondents that the applicant be treated on duty w.e.f. 3.4.2000 and to pay monthly salary w.e.f. that date till he is taken on duty. (b)

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6. For the reasons stated above, we are not inclined to grant any relief to the applicant. Accordingly, the OA is dismissed with no order as to costs.


(A.K.BHANDARI)

Member (A)


(M.L.CHAUHAN)

Member (J)