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CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR.

O.A.No.89/2003

October 14, 2004.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN &
HON'BLE MR.M.K.MISRA, MEMBER (ADM.)**

Vijay Singh son of Late Shri Sohan Pal, aged 43 years, r/o 50
Saraswati Nagar, Dhola Bhata Road, Ajmer.

.... Applicant

By : Mr.Sunil Samdariya, Advocate.

Versus

1. The Union of India through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Western Railways through its General Manager (E), Church Gate, Mumbai.
3. Chief works Manager, North Western Railway, Ajmer.

By : Mr. R. G. Gupta, Advocate.

.... Respondents

O R D E R (oral)
Per M.K.MISRA, AM

Shri Vijay Singh has filed this O.A. challenging the order dated 21.8.1989 (Annexure A-4) by which the disciplinary authority has dismissed the applicant from service by exercising power under rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968 and the applicant has sought the following relief:

"i) Quash and set aside the order dated 21.8.1989 (Annexure A-4) order dated 30.3.1999 (Annexure A-12) and first para of letter/order dated 24.4.2002 (Annexure A-19) and direct the



respondents to reinstate the applicant with all consequential reliefs with monetary relief @ 18% interest p.a.

ii) Alternatively order dated 30.9.2003 (Annexure-26) be quashed and set aside and direction be issued to respondents to re-appoint the applicant in conformity with the order passed by Hon'ble President of India.

iii) Any other relief to which applicant is found entitled, in facts and circumstances of the present case, may also be granted."

2. The relevant facts of the case are that applicant was appointed as Khalasi on 2.3.1981. He took sanctioned leave w.e.f. 4.8.1988. During leave he developed mental illness. His family members took him to 'Mehndipur Balaji' a place of worship, from where he was found missing. A report in this regard was sent to the Superintendent of Shops, Department of Carriage Ajmer; vide letter-dated 30.8.1988. After the applicant was located, he underwent treatment at mental Hospital, Jaipur. The Superintendent of Shops, Department of Carriage, Ajmer, was informed in this regard also vide letter dated 31.10.1988 with a request to extend the leave till the applicant becomes medically fit. Ultimately the applicant was declared fit to join his duties w.e.f. 7.4.1996. He was told that he has been removed from service on account of absence from duties vide order-dated 21.8.1989 (Annexure A-4). The wife of the applicant requested for setting aside the removal order by representation dated 9.10.1989, which was rejected on 25.11.1989. The applicant filed a mercy petition to the Workshop Manager, which was rejected on 25.9.1996 being time barred as reiterated by order-

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dated 27.3.1997. He filed representations to the Minister of Railways and Prime Minister of India (Annexures A-9 and A-10). By letter dated 8.8.1997 (Annexure A-11), the General Manager, Western Railway, Church Gate, Mumbai, informed that representations of the applicant have been treated as revision petition and decision on the same would be communicated later on. By order-dated 30.3.1999 (annexure A-12), the revision petition filed by the applicant has been rejected. The applicant thereafter approached the National Commission for Scheduled Castes and Scheduled Tribes by filing a representation. Shri S.S.Godbole, CPO, Western Railway, was summoned by the Commission on 9.9.1999 who advised that applicant should file a mercy appeal to Hon'ble President of India under rule 31 of D&A Rules, 1968. The applicant filed mercy appeal on 11.11.1998 (Annexure A-13). The National Commission of SC & ST also recommended for taking a sympathetic view by letter-dated 10.1.2000. The applicant again filed mercy petitions on 24.2.2000 and 10.3.2000 (annexures A-15 and A-16). Headquarters Office withheld these, by order-dated 20.6.2000 (Annexure A-17). On being approached by the applicant, the Director of National Commission for SCs and STs, wrote a letter-dated 15.11.2000 (annexure A-18) to Chairman, Railway Board, to re-consider the mercy appeal of the applicant. The Deputy Chief Mechanical Engineer vide letter date 24.4.2002 (Annexure A-19), has informed as under:-

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"Mercy Petitions dt. 11/11/99, 24/2/2000 & 10/3/2000 of Shri Vijay Singh have since been considered by the President. After carefully considering the case, the President has decided to reject these Mercy Petitions of Shri Vijay Singh. This decision of the President may please be communicated to Shri Vijay Singh immediately.

MSR (D) on behalf of the President has however ordered that in case Shri Vijay Singh is desirous for re-appointment under Rule 402 of Indian Railway Establishment code and applied for the same, his request should be considered."

The applicant was asked by communication dated 11.12.2002 written by Deputy Chief Mechanical Engineer Carriage (Ajmer), asking him to submit his application for re-appointment to General manager (Establishment) North West Railway, Jaipur (Annexure A-20). The applicant made such request by letter-dated 16.12.2002 (Annexure A-21) but reserving his right to challenge the removal order and order rejecting his mercy petitions. It was followed by a demand of notice through an Advocate on 1.1.2003. Since he was not informed of any decision on his request for re-appointment, he filed the present O.A. The applicant was asked by letter dated 21.7.2003 to submit a declaration which he did vide letter dated 30.7.2003. Ultimately, the case of the applicant for re-appointment under Rule 402 of the I.R.E.C., as alleged, has illegally and unlawfully been rejected by order dated 30.9.2003 (Annexure A-26). The applicant has challenged this order by amending the Original Application.



3. The respondents have filed a reply to the Original Application. Their stand is that the applicant remained absent in an unauthorised manner w.e.f. 31.8.1988 and such information was alleged to have been sent on 30.8.1988 at the instance of father of the applicant never reached the department. They also denied the information sent by wife of the applicant on 31.10.1988. They admitted the issue of letter-dated 11.12.2002. Under the office letter dated 27.6.2003 (Annexure R-1), a declaration was called from the applicant asking him as to where he remained since 1989, what was he doing, where did he receive treatment whether he was involved in any criminal case. The applicant informed that he received treatment since 26.10.1988 to 1992 from a Mental Hospital, Jaipur. It was also stated that due to financial paucity and for problem of family maintenance he moved from door to door of his relatives. The applicant stated that he received treatment at Jawahar Lal Nehru Hospital also and he was not involved in any criminal case and he also did not obtain any passport for going out of India. For the cause of self-maintenance he used to cooperate with his children in bidi making. Head Office, Jaipur, also wrote to the Secretary, railway board, New Delhi, by letter dated 30.9.2003 to the effect that since the record of the applicant is bad, therefore, no recommendation can be made in favour of re-appointment (Annexure R-4). Since the applicant remained absent from duty in an unauthorised manner and reason was not

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communicated to the authorities concerned, hence removal from service was an inevitable result to follow.

4. We have heard learned counsel for the parties and have perused the material on the file.

5. The applicant has filed an M.A.No.174 of 2003 seeking condonation of delay in filing the Original Application. However, during the course of arguments learned counsel for the applicant made a statement at the bar that he does not press for his first relief with regard to impugned orders passed under the Discipline & Appeal Rules and requests that this O.A. be entertained only with regard to the challenge of the applicant to the impugned order dated 30.9.2003 (Annexure A-26) by which his request for re-appointment has been rejected. The prayer, as made by the applicant is allowed. Thus, the M.A. as well as the O.A. to the extent of challenge to the impugned orders passed under the D&A Rules, are dismissed. Now we proceed to consider the case of the applicant with regard to his claim for re-appointment.

6. It is undisputed that the applicant had been proceeded against departmentally for remaining absent from duties in 1988 and he was removed from service by invoking rule 14 (ii) of the Railway Servants (Discipline & Appeal) Rules, 1968, by order

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dated 21.8.1989 (Annexure A-4). The wife of the applicant moved an application against this order, which was also rejected by order-dated 25.11.1989 (Annexure A-6) and even subsequent challenge posed by the applicant also failed. Ultimately, it is the President of India who, while rejecting the mercy petitions dated 11.11.1999, 24.2.2000 and 10.3.2000 of the applicant, passed the following order:

"MSR (D) on behalf of the President has however, ordered that in case Shri Vijay Singh is desirous for re-appointment under Rule 402 of Indian Railway Establishment Code and applies for the same, his request should be considered".

Thus, it is clear that President of India had sympathetically considered the case of the applicant after considering all the facts and circumstances of the case of the applicant and recommended / suggested the applicant to file an application for appointment under rule 402 of the IREC. The same being relevant is reproduced as under:

"402-No person who has been dismissed from Govt. service or convicted for criminal offence shall be re-employed without the sanction of President or if employment or re-employment is to a group C or D post without the sanction of General Manager".

Keeping in view the above facts, the applicant filed an application for re-appointment. However, the General Manager of North West Railway has rejected application on the grounds that the applicant has bad record of service and thus his case could not be recommended for re-appointment. It is undisputed that in so far as bad record or absence of the applicant is concerned, the department has already taken action against him

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under the Discipline & Appeal Rules. The applicant has been punished for his procedural lapse.

7. In view of the above discussion, this O.A. is partly allowed as much as the impugned order, (Annexure A-26) dated 30.9.2003 is quashed and set aside. Respondents are directed to re-consider the request of the applicant for re-appointment ignoring his past misconduct for which he already stands punished, and if found suitable to re-appoint him in service as per rules at the earliest possible keeping in view the advice given to the applicant as mentioned above (Annexure A-19). These directions may be complied with within a period of three months from the date a certified copy of this order is produced before the competent authority. In the peculiar facts of this case there shall be no order as to costs.



(M.K.MISRA)
Member (A)



(KULDIP SINGH)
Vice Chairman

HC*

October 14, 2004.