

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
CIRCUIT CAMP AT BILASPUR
Original Application No. 527 of 2002

Jabalpur, this the 5th day of October, 2004

Hon'ble Mr.M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

D.S.R. Shastri, son of Late D.B.N.
Moorthy, aged about 62 years,
Ex-Loco Shunter, South Eastern
Railway, Resident of Door No.6-73/9,
Padma Nilayam, Behind Old S.D.E,
(Telecom) Chandrampalem, Post P.M.
Palem, Vishakhapattanam(A.P.)

APPLICANT

(By Advocate - None)

VERSUS

1. Union of India, Through General
Manager, South Eastern Railway,
Garden Reech Road, Kolkata-43
(West Bengal).
2. Additional Divisional Railway
Manager, South Eastern Railway,
Bilaspur(Chhattisgarh)
3. Senior Divisional Personnel Officer,
South Eastern Railway, Bilaspur
Chhattisgarh
4. Senior Divisional Mechanical
Engineer, South Eastern Railway,
Bilaspur(Chhattisgarh).

RESPONDENTS

(By Advocate - Shri S.K.Jain)

O R D E R

By Madan Mohan, Judicial Member -

None is present on behalf of the applicant. Since it is an old case of the year 2002. We are disposing of this OA by invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987.

2. By filing this OA, the applicant has sought the following main reliefs :-

"(i) to command the non-applicants and directed to grant the back-wages and all other consequential service benefits for the period, which has been marked by the non-applicants as illegal absent i.e. from 21.1.1995 to 5.10.1995 during the enquiry proceedings.

(ii) ... to set-aside the order/direction issued by the non-applicant relating to the period treated as 'DIES NON' i.e. 22.11.95 to 17.2.1998(during the period from removal of service to the date of reinstatement and further till the date of joining) and quash the letter dt. 26.2.1998.



(iii) to command the non-applicant no.2 and may kindly be directed to modify the reversion order according to redesignated as Senior Shunter instead of Shunter in the Pay Scale of 4500-7000 and the non-applicants may kindly be directed to pay the salary to the applicant on the basis of Rs.1860/- Basic Pay plus other allowances and quash the impugned letter dt.17.8.1998, in the interest of justice.

(iv) be directed the non-applicants to fix the Pay the arrears and also revised the payments of the retiral benefits according to law."

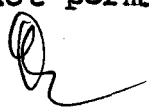
2. The brief facts of the case are that the applicant was appointed as Khalasi in February, 1961 under the respondents and promoted as Fireman Grade-II, in the year 1962 and further promoted as Fireman Grade-I as well as Diesel Assistant in the year 1970 and thereafter the applicant was promoted in the year 1978 as Loco Shunter and in the year 1981 as Driver. According to the applicant, Loco Foreman, of the applicant Loco Shed Shahdol marked illegal absence from 21st January, 1995 onwards and not permitting to join the service, though the applicant had submitted several requests before the authority concerned. Thereafter he has filed OA No.471/95 in which the Tribunal's vide order dated 4.10.95 directed the respondents to permit the applicant in service. In compliance with the order of the Tribunal, the applicant has submitted his joining report on 6.10.95 but the respondents had issued call memo on 25.11.95 to the applicant. The aforesaid OA No.471/95 was decided on 14.11.95 whereby the respondents were directed to pass a reasoned order after giving an opportunity of hearing to the applicant (Annexure-A-4). According to the applicant, due to malafide intention, the respondents have issued order dated 20.11.95 whereby the applicant ^{was} removed from service. The applicant has preferred an appeal and also filed an OA and the Tribunal in the Tribunal/has directed the ADRM on 18.12.95 to decide the representation/appeal within a period of three months from today and the concerned authority had not followed the direction of the Tribunal and appeal was



decided by the ADRM on 26.6.1996 which was communicated by the Senior Divisional Mechanical Engineer on 9.7.1996. (Annexure-A-6) whereby the applicant was reverted on the post of Loco Shunter and the punishment order dated 20.11.95 as removal from service was modified by the authority concerned. In compliance of the order dt.9.7.1996, the applicant tried to join the service, but the authority concerned did not permit him. Thereafter the applicant had filed an OA No.568/96. The Tribunal vide order dated 5.12.1997 directed the respondents that the period between 3/9-7-1996 till he reports for duty shall be regularised by passing an appropriate order. But the respondents did not pass any order regarding pay and allowance to be paid for the period from the date of removal till the date of reinstatement, due to malafide intention of the authority concerned. After receiving a contempt petition no.33/98 the respondents have issued an impugned order dated 17.8.1998. The Contempt Petition No. 33/99 was decided on 9.5.2002. Thereafter, the applicant has filed a representation dated 23.5.2002 (Annexure-A-11) before the respondent no.2. However, the respondent no.2 has not passed any order on the aforesaid representation of the applicant. Hence this OA.

3. Heard the learned counsel for the parties. and carefully perused the records.

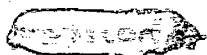
4. The learned counsel applicant has stated that the applicant was removed from service vide order dated 20.11.95 (Annexure-A-5) and by filing an appeal this order of removal from service was revoked and the applicant was reverted to the rank of ^{Loco} Shunter for two years and the period from removal to reinstatement was treated as dies non vide order dated 4/9.7.96 (Annexure-A-6). The applicant has submitted his representation to the respondents to permit and join duty in compliance of the aforesaid order dated 9.7.96. The respondents did not permit him. Hence, he has filed OA No.



568/96. In which the Tribunal has passed the order that "It is however seen that the competent authority has not passed any order regarding the pay and allowances to be paid for the period from the date of removal to the date of reinstatement as required vide F.R.54(4). Let such an order be passed within three months from the date of receipt of a copy of this order." But the respondents did not permit the ^{applicant} to join the duty.

5. In reply the learned counsel for the respondent has argued that the appellate authority has decided that the date of removal to the date of reinstatement i.e. from 29.11.95 to 9.7.96 ^{will be} treated as dies-non is correct and the order of this Tribunal in OA.No.471/95 was followed as per the rules and regulations. The learned counsel for the respondents further argued that the appeal of the applicant was considered and punishment order was reduced from removal from service to reversion to Loco Shunter in scale of Rs.1200-2040. He has further argued that the pay of the applicant was fixed at Rs.1860/- but due to typographical error the same was typed as Rs.1680/-. As such, the corrigendum dated 17.8.98 had been issued and the same had been acknowledged by the applicant on 20.8.98. The directions given by the tribunal are fully complied with. Hence, the orders passed by the respondents are legal and justified.

6. After hearing the learned counsel for the parties and careful perusing the records, we find that vide order dated 20.11.95 the applicant was removed from service with immediate effect. Thereafter, the applicant has filed an appeal against the aforesaid order which was decided on 9.7.96 (Annexure-A-6) whereby the punishment of removal from service was





revoked and in this order it is also mentioned that the period from removal to reinstatement shall be treated as dies non. Vide order dated 19.2.98 it has been mentioned that the period from 22.11.95 to 9.7.96 is treated as dies non and the applicant himself mentioned in para 4.15 of the OA that " the respondents have also stated in the Contempt Petition, that the period from the date of reversion till the date of joining, is also treated as 'DIES NON' ". Hence, the respondents have complied with the directions given by the Tribunal in OAs No.471/95 and 568/96. We also find that the applicant was not exonerated from the charges levelled against him by the appellate authority. The appellate authority revoked the punishment order of removal from the service of the applicant and further ordered that he was reverted to the rank of Loco Shunter for two years. Hence he cannot claim for the pay, allowance and backwages for this period i.e. removal from service to the date of joining of his service. This is the discretion of the respondents to pass the order regarding regularisation of the aforesaid period.

7. After considering all the facts and circumstances of the case , we do not find any merit in this OA. Accordingly the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

skm

प्रकाशन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि अर्जो दित:-

- (1) सचिव, उच्च न्यायालय वर एडवोकेटजन, जबलपुर
- (2) आदेशक सी/डीसी/यु.....के काउंसल
- (3) प्रत्यक्षी सी/डीसी/यु.....के काउंसल
- (4) वकील, कोषा, जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Shailendra Yadav.
SK Jain

Issued
on 7-10-04
BS