

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

17

ORDERS OF THE BENCH

Date of Order: 08.02.2012

OA No.531/2009 with MA No. 335/2011

Applicant is present in person.
Mr. Anupam Agarwal, counsel for respondents.

MA No. 335/2011

Applicant has filed the MA bearing No. 335/2011 for taking his written arguments on record of OA.

The MA bearing No. 335/2011 stands allowed. The written arguments are taken on record of the OA.

OA No.531/2009

Heard. O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 8th day of February, 2012

Original Application No.531/2009

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

R.K.Mishra
s/o late Shri H.C.Mishra,
presently residing at 203,
Nanak Apartments, Arya Samaj Road,
Behind Bhimganjmandi Police Station,
Kota Jn.

.. Applicant

(Applicant in person)

Versus

1. The General Manager,
West Central Railway,
Indira Market,
Jabalpur
2. The General Manager,
Western Railway,
Churchgate, Mumbai
3. The Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
4. The Chief Claims Officer,
Western Railway,
Station Building,
Churchgate, Mumbai.

5. The Dy. Chief Personnel Officer,
Western Railway,
Headquarter Office,
Churchgate, Mumbai.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

O R D E R (ORAL)

The reliefs claimed by the applicant by way of filing the present OA are as under:-

- (a) That the impugned unilateral order dated 02.02.2009 (Reference: A/1) be quashed and set aside with consequential benefits.
- (b) That the respondent No.4 please be directed, suitable:-
 - (i) to exonerate the applicant from alleged responsibility of "NO WORK" during intervening period between 20.01.2003 and 26.02.2004 and further to treat this period as "ON DUTY" since he was never entrusted any work by the respondents during this period nor given any order/instruction on or after 04.02.2003 and before 26.02.2004 (Reference A/5 and A/6)
 - (ii) to allow the applicant, all admissible wages/salaries/allowances became due to him during 13 months intervening period i.e. February 2003 to February, 2004, but illegally withheld and not paid so far.
 - (iii) Not only to adhere on "last month salary (Rs. 22280/-) actually drawn by the applicant but



also to modify it correctly, as per calculation furnished vide calculation sheet (reference A/12) and to increase this amount from Rs. 22280/- to Rs.22330/- with consequent benefits.

- (iv) to re assess the period of his "Qualifying Service" which should be 40 years and 29 days (service period 02-11-1968 to 30.11.2008).
- (v) to amend and modify all settlement documents including the "Pension Payment Order" with consequential benefits.
- (vi) to make the payments, due to the applicant, pertaining to: 60% outstanding pay arrear (nearly Rs. 92,928/-) and also the proportionate amount for 8 months (April 08 to November 08) productivity linked Bonus, granted and paid to each employee for the year 2008-09, since the applicant is legally entitled for it having retired in the month of November, 2008. (Both these amounts, ought to have been credited to applicant's pension account but not done as yet).
- (vii) to make the payment of cost for filing this original application.
- (viii) any other relief, which the Hon'ble bench may deem fit and proper under the circumstances, keeping in view the hardships inconsistently being faced by the poor applicant during past 6-7 years and even after his superannuation."

2. Brief facts of the case are that the applicant superannuated from West Central Railways, Kota Division, Kota on 30.11.2008 from



the post of Chief Ticket Inspector (HQ), Kota. The controversy in the present OA is that the respondents repatriated the applicant on 20.1.2003 from the post of ad-hoc Law Assistant and vide order dated 2.3.2004 he was posted to his substantive post of TTE scale Rs. 4000-6000 under the control of Divisional Chief Ticket Inspector, Kota.

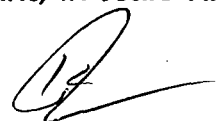
3. It is not disputed that for the intervening period from 21.1.2003 to 1.3.2004, the applicant had not reported to his substantive post of TTE, therefore, it was decided to treat the said period on the basis of no work no pay but taking a lenient view, the aforesaid period was regularized for the purpose of pensionary benefits.

4. The main challenge of the applicant is that the order dated 20.1.2003 has not been served upon him personally and he was not aware about passing of this order by the respondents as he was on sick leave. Both the learned counsel appearing for the parties referred the order dated 20.1.2003, which is reproduced as under:

"Sub:- Promotion/Reversion/Transfer of Group "N.G." staff-Legal Department.

Ref:-GM (E)CCG's No.E/Legal/839/ 4/30(LA) dated 16/1/2003.

In terms of office order quoted above, Shri R.K.Mishra, TTE of your Division presently working as Law Assistant, in scale Rs. 6500-



10500 (RPS) on adhoc basis in this office is under sick list from 20/1/03 stands relieved from 20/1/2003 (AN) and he is directed to yours for further posting order.

For Chief Claims Officer

C/- Shri R.K.Mishra, LA is relieved to report to DRM (E) Kota for further posting

C/-SPO (Bills) CCG For arrange and send his LPC to DRM (E) Kota.

C/- SPO (HQ) for information please.

Sd/- 20/1/03

For Chief Claims Officer"

5. In para 3 of the order dated 4.2.2003 (Ann.A/5) it is mentioned that the relieving memo was not accepted by the applicant and the copy of the relieving memo was enclosed alongwith Ann.A/5 dated 4.2.2003. It is also stated at Bar that this being the second round of litigation. Earlier the applicant on his repatriation preferred OA No.76/2003 before the CAT-Mumbai Bench wherein interim order of status quo was passed on 29.1.2003. By that time Shri Brijesh Mourya had already taken charge on 17.1.2003 and the reversion order of the applicant was issued. As such the CAT-Mumbai Bench vide order dated 10.4.2003 dismissed the OA. A Contempt Petition preferred by the applicant was also dismissed against which the applicant filed Review Petition No.37/2003 which was also dismissed vide order dated 19.6.2003. The applicant further preferred Writ Petition No.5092/2003 before




High Court of Mumbai which too was dismissed vide order dated 27.1.2004. Thus, it is clear that the applicant was well aware of his reversion and repatriation, yet he did not join his parent cadre at Kota. It was on his representation dated 9.2.2004, he was directed to report at Kota vide Ann.A/6. He joined in pursuance thereof on 1.3.2003. The issue regarding intervening period from 20.1.2003 to 27.1.2004 was put to the competent authority who decided the same and regularized the willful absence by not paying the salary for this period but for pensionary purposes the said period has been regularized.


6. It is evident by the averments in the reply and the submissions made on behalf of the respondents that the applicant was well aware about his repatriation order and he has challenged the same before CAT-Mumbai Bench. He is now taking the stand that the order impugned was not served personally. It is further evident that he refused to accept the same as is evident by bare perusal of Ann.A/5 dated 4.2.2003.

7. Having considered the rival submissions of the respective parties and upon perusal of the material available on record, we are of the view that there is no irregularity in the order passed by the respondents. Rather a lenient view has been taken by the respondents to regularize the intervening period for the purpose of pensionary benefits and the applicant has already retired on



30.11.2008. Thus, there is no substance in this OA. Consequently, the OA being bereft of merit deserves to be dismissed which is hereby dismissed with no order as to costs.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/