

(Reserved on 29.01.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00374/2007

This the 01st day of February, 2018

HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

Bankey Lal Chaturvedi, S/o Late Madho Ram Chaturvedi, Aged about 58 years, lastly employed as Rajbhasha Adhikari, Northern Railway, Baroda House, New Delhi. R/o 1008, Gatashram Teela, Mathura (U.P) - 281001.

.....Applicant

By Advocate: Shri M.K. Upadhyay

Versus

1. The Union of India through Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, Northern Railway, Baroda House, New Delhi.
3. The General Manager, Rail Coach Factory, Hussainpur, Kapurthala (Punjab).

.....Respondents

By Advocate : Sri G.K. Tripathi

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicant has prayed for following main reliefs:-

"(a)to pass suitable orders so that the period w.e.f. 8.6.2005 to 18.7.2005 and 28.12.2005 to 11.1.06 may be regularized as duty with full financial benefits including interest @ 18% w.e.f. the date the amount of money is due to be actual payment to the applicant.

(b)benefit of encashment for leave and joining time TA/DA consequential to the above mentioned regularization may kindly be granted to the applicant with interest up to the date of actual payment by the respondents."

2. The facts of the case, in brief, are that the applicant was initially appointed as clerk under the respondents on 08.08.1974. In the year 1982, he was posted as Hindi Assistant and subsequently promoted as Hindi Superintendent. On 13.04.2005, the applicant was selected for promotional post of Rajbhasha Adhikari in Group 'B' and was posted in the Rail Coach Factory, Kapurthala as Rajbhasha Adhikari vide order dated 17.05.2005 (Annexure A-2 to the O.A). The applicant joined the said post on 09.06.2005 after being relieved from previous office and vide order dated 10.06.2005 (Annexure A-5 to the O.A), the respondent No. 3 posted the applicant as Assistant Secretary (G) in General Branch in addition to his work as Rajbhasha Adhikari. This order was protested by the applicant after which he was redirected by respondent No. 3 to the DRM Office, New Delhi vide order dated 14.06.2005 (Annexure A-7 to the O.A). The applicant reported back in DRM office and vide order dated 22.06.2005 (Annexure A-11 to the O.A) passed by the respondent No. 2, the applicant was directed to return to the office of respondent No. 3.

3. The applicant requested respondent No. 2 that he was willing to join only on the promotional post of Rajbhasha Adhikari and not as Assistant Secretary (G). On 15.07.2005 (Annexure A-13 to the O.A), the respondent No. 2 issued an order to respondent No. 3 to post the applicant only for the post of Rajbhasha Adhikari and accordingly, the applicant joined in the office of respondent No. 3 on 19.07.2005. Thus for the period from 08.06.2005 till 18.07.2005, the applicant was not willing to work as Assistant Secretary (G) and he was not paid salary during this period.

4. After 19.07.2005, the applicant was transferred to the office of respondent No. 2 where he joined on 28.12.2005 on transfer, but he was served with an order dated 27.12.2005 whereby the said transfer order was cancelled (Annexure A-19 to the O.A). Vide order dated 12.01.2006 (Annexure A-20 to the O.A), the respondent No. 2 issued an order to the applicant posting him in the office of respondent No. 2. Thus for the period between 28.12.2005 to 11.01.2006, the applicant had no posting and this period in his service was required to be regularized. Both these periods were regularized by the respondents vide order dated 22.06.2006 (Annexure A-1 to the O.A) treating the above periods as on leave.

5. The applicant filed a representation dated 28.07.2006 to the respondent No. 2 requesting to treat the aforesaid periods as duty so that his salary can be paid. Having received no response, the applicant filed the instant original application on the ground that there is no fault on behalf of the applicant and during the said periods i.e. 08.06.2005 to 18.07.2005 and 28.12.2005 to 11.01.2006, he was waiting for proper posting order on account of different orders passed by the respondents No. 2 and 3. It is also contended by the applicant that due to this problem, the applicant took voluntary retirement from service which was granted. It was submitted that the applicant is entitled for encashment of leave salary which was reduced since the aforesaid periods were treated as leave due.

6. In the Counter Reply (in short CR), the main contention of the respondents is that vide order dated 13.09.1995 (Annexure CR-1) one of the post of Assistant Secretary (G) of Railway Coach Factory, Kapurthala was designated as Rajbhasha Adhikari and duty of Rajbhasha Adhikari included the routine duties of post of Assistant Secretary (G). Refusal of the applicant not to continue as Assistant Secretary

in addition to Rajbhasha Adhikari was his fault for which his transfer order was required to be modified. Hence, the decision of regularizing the service period in question as leave is just and proper.

7. At the time of hearing, Learned counsels for the parties broadly reiterated the stand taken in the O.A as well as in the Counter Reply.

8. We have considered the pleadings and the submissions of both the parties in this case and are not able to accept the contention of the respondents that modifications of transfer order of the applicant were due to the fault of the applicant since he did not want to work as Assistant Secretary (G) in the office of respondent No. 3 inspite of the order dated 13.09.1995 (Annexure CR-1 to the Counter Reply). It is a fact that the applicant after joining in the office of respondent No. 3 on 10.06.2005 had requested the respondents vide his application dated 11.06.2005 that either he may be posted only as Rajbhasha Adhikari and if no independent post is available for Rajbhasha Adhikari, then he may be redirected to Northern Railway, Baroda House, New Delhi as indicated in para 15 of the Counter Reply. It is not the case of the respondents that the applicant was informed about the existing order dated 13.09.1995 by which Rajbhasha Adhikari is also to function as Assistant Secretary (G). On the other hand, the representation of the applicant was considered favourably by the respondents and he was reverted back to the DRM Office, Northern Railway, New Delhi vide order dated 14.06.2005 (Annexure A-7). Thereafter, the applicant was directed to return to the office of respondent No. 3 vide order dated 22.06.2005 (Annexure A-11) and the reason for giving posting to the applicant in the office of respondent No. 3 immediately after reposting of the applicant in DRM Office, New Delhi has not been explained by the respondents. in the CR. Thereafter, the request of the applicant was reconsidered and he was ordered by the respondent No. 2 and 3 to work exclusively as Rajbhasha Adhikari which could have been done earlier, since it did not create any difficulty in discharge of official function in the office of respondent No. 3. Therefore, gap in the period from 08.06.2005 to 18.07.2005 was also due to the flip-flop in the decision of the respondents regarding applicant's posting. Although the applicant cannot be observed fully, but the relevant fact here is that the request of the applicant was accepted by the respondents in deviation of the order dated 13.09.1995. Therefore, the contention of the respondents that the applicant was not willing to function as Assistant Secretary (G) as per the order dated 13.09.1995 cannot be accepted.

9. Similarly, when the applicant was transferred subsequently to the office of respondent No. 2 where he joined on 28.12.2005 on transfer, he was immediately handed over the cancellation order dated 27.12.2005 (Annexure A-19). If his transfer order was cancelled or modified on 27.12.2005, the applicant could have been informed not to get himself relieved from the office of respondent No. 3. In that case, this gap in the service from 28.12.2005 to 11.01.2006 would not have arisen. Instead of doing so the applicant was allowed to proceed to the office of respondent No. 2 in pursuance of the transfer order dated 28.12.2005 which was already cancelled. Subsequently, vide order dated 12.01.2006 of the respondent No. 2, the applicant was posted in the office of respondent No. 2 and the applicant joined on 12.01.2006. Therefore, during the period between 28.12.2005 to 12.01.2006, the applicant was waiting for an appropriate posting order in the office of respondent No. 2, which was given to the applicant only

on 12.01.2006. Therefore, the applicant cannot be faulted for not joining any post during the period from 28.12.2005 to 12.01.2006.

10. In view of the above, treating the periods i.e. 08.06.2005 to 18.07.2005 and 28.12.2005 to 11.01.2006 as leave as due to the applicant vide order dated 22.06.2006 is unjust and unfair, particularly when the applicant has opted for voluntary retirement and hence, the said decision of the respondents is not sustainable under law.. Accordingly, the matter is remitted to the respondent No. 2 to review the decision to treat the above two periods i.e. 08.06.2005 to 18.07.2005 and 28.12.2005 to 11.01.2006 as leave as due and to treat the aforesaid periods as duty by extending joining time if necessary, with consequential benefits to which the applicant is entitled as per the Rules. The respondents are directed to comply with this order within three months of receipt of the copy of this order.

11. The O.A is allowed as above. No costs. .

(GOKUL CHANDRA PATI)
MEMBER-A

(DR. MURTAZA ALI)
MEMBER-J

Anand...