

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00185/2016

This, the 17th day of August, 2018.

Order reserved on 08.08.2018

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CORAM:

HON'BLE SMT. HINA P. SHAH, MEMBER (J)

...

Navab Ali son of Shri Noor Mohd, aged about 40 years, resident C/o Near Sunaro Ka Kua, Behind Manohar Chand Club, Ward No.27, Churu, at present holding the post of Points Man A in the office of Station Superintendent, Suratpura Railway Station, District Churu, NWR, Churu.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra

VERSUS

1. Union of India through General Manager, North-Western Railway, Hqrs Jaipur Zone, Near Jawahar Circle, Jaipur Pin: 302017.
2. Senior Divisional Personnel Officer, NWR, Bikaner Division, Bikaner-334001.
3. Senior Divisional Operating Manager, NWR, Bikaner Division, Bikaner-334001.

RESPONDENTS

BY ADVOCATE : Mr. Salil Trivedi

ORDER

...

The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- “(i) That the impugned order dated 17.02.2016 (Annexure-A/1), passed by the 2nd respondent may be declared illegal and the same may be quashed. The respondents may be directed to treat the period from the month September 2013 to December 2014 as spent on duty for all purposes in respect of applicant and the applicant may be allowed with all consequential benefits including the pay and allowances for the same.*
- (ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (iii) That the costs of this application may be awarded.”*

2. The chequered history of the case is as under:-

The applicant while holding the post of Points Man at Churu Station was transferred to Shergarh (SGA) by the respondent department vide order dated 29.08.2013 and stood relieved on 04.09.2013 (Annexure-A/2). It has been averred that against the said transfer order/relieving order, the applicant had filed OA No.391/2013 before this Tribunal and this Tribunal vide order dated 13.09.2013 has passed the following interim order:-

“ Heard on IR, as no person has been posted in place of the applicant, the respondents are directed to continue the services of the applicant at present place of posting for next 14 days.”

3. It is the contention of the applicant that the said IR was extended from time to time and remained in force till the final order was passed in OA No.391/2013. It has been averred that the DRB Bikaner was

pleased to direct the concerned authorities to implement the interim order vide letter dated 20.09.2013. But the applicant was not taken on duty. Thereafter, the applicant filed Contempt Petition, but during the pendency of the CP, this Hon'ble Tribunal was pleased to dispose of the OA No.391/2013 vide order dated 30.05.2014, as under:-

"10. However, looking to the entire facts and circumstances of the case and the fact that the family of the applicant is residing at Churu and his children are studying there and the applicant has been transferred to Shergarh, which is 350 km away from Churu and his representation dated 05.09.2013 (Annexure-A/11) has not yet been decided, we are proposing to dispose of this OA with certain directions:-

- (i) The applicant may join at his place of posting at Shergarh and make a further detailed representation regarding his transfer within 15 days of his joining to the competent authority.*
- (ii) The competent authority is directed to consider and decide the representation within two months from the date of receipt of such representation.*

4. The applicant thereafter assailed the order of this Tribunal before the Hon'ble High Court of Rajasthan in DB Civil Writ Petition No.5892/2014 wherein the Hon'ble High Court of Rajasthan issued the interim directions on 20.08.2014, which is as under:-

"In the meanwhile, the effect and operation of the order dated 04.09.2013 passed by the Station Superintendent, North Western Railway, Churu, shall remain stayed. The petitioner, however, in the meanwhile may submit representation to the competent authority for cancelling the order of transfer. If such representation is submitted, that shall be considered by the competent authority as directed to the Central Administrative Tribunal, Jodhpur Bench vide order dated 30.05.2014 in Original Application No.391/2013."

5. The said DB Civil Writ Petition No.5892/2014 has been dismissed by the Hon'ble High Court of Rajasthan vide judgment dated 12.12.2014. The relevant portion of the judgment is as under:-

"In view of the facts stated as above, the writ petition is dismissed with observations that in case the petitioner joins at his new place of posting at Shergarh within a period of one week and gives a reminder to the competent authority to decide his representation with proof of joining, the representation will be decided within a period of next two weeks. If the petitioner does not join at Shergarh, the representation will be rejected without advertizing to the merits of his case."

6. The applicant thereafter immediately joined at Shergarh on 26.12.2014 and submitted a reminder to his representation as per directions of Hon'ble High Court of Rajasthan. His representation was rejected. Against the rejection of his representation he has filed a separate OA No.110/2015, which was dismissed by this Tribunal vide its order dated 07.09.2015.

7. It has been further averred that the applicant submitted a detailed and exhaustive representation on 05.02.2015 for making payment of salary for the month from September, 2013 to December, 2014 (Annexure-A/5) on the ground that due to stay order passed by the competent Court he stayed at his earlier place of posting. But, when he did not get any reply on his said representation, he filed OA No.290/00442/2015 before this Hon'ble Tribunal for seeking a direction to the respondents to treat the period of his absence from September, 2013 to December 2014 as period spent on duty for all purposes. The said OA No.290/00442/2015 was disposed of by this Tribunal at

admission stage vide order dated 04.11.2015. The operative portion of the order is as under:-

"5. Therefore, the OA is disposed of directing the respondent No.2 i.e. Divisional Personnel Officer, NWR, Bikaner Division, Bikaner to consider representation of the applicant i.e. Annexure-A/4 dated 05.02.2015 and pass an appropriate reasoned speaking order on same, within a period of 3 months from the date of receipt of copy of this order."

8. It has been averred that in pursuance of the aforesaid directions, the respondents decided his representation by passing a detailed and speaking order dated 17.02.2016. The representation of the applicant was rejected by the respondents as per the Railway Rule 'no work, no payment', and since the applicant stood already relieved as per order dated 04.09.2013, hence, the period of absence from duty is treated as LWOP. The applicant prayed that the period from September, 2013 to December, 2014 may be treated as period spent on duty for all purposes and that he may be given the said pay and allowances alongwith consequential benefits for the said period.

9. The respondents vide their reply dated 02.12.2016 averred that as a matter of fact, the applicant was transferred from Churu to Shergarh by the competent authority of the respondents vide order dated 29.08.2013 and pursuant to the said transfer order, the applicant was relieved by the Station Superintendent, Churu on 04.09.2013 to join his duties at transferred place i.e. Shergarh. The respondents further averred that consequent upon the said relieving order being issued to the applicant on 04.09.2013 and the same was accepted by the applicant, the applicant was no more on roll at Churu since 04.09.2013. The said

fact could be verified as the applicant himself had submitted an application to the Station Superintendent, Shergarh, whereby he was transferred on 11.09.2013 (Annexure-R/1) mentioning that since he has suddenly fallen ill and he is undergoing treatment, therefore, he will join the duties after he will be declared fit. The respondents stated that in view of this admitted position, the applicant was not working at Churu after he was relieved on 04.09.2013. Apart from that, the applicant's LPC was also sent from Churu to Shergarh and his name was struck off from the roll at Churu. The respondents further averred that these facts were not brought to the notice of this Hon'ble Tribunal in the earlier OA No.391/2013 filed by the applicant, and in such a situation ex parte interim order was passed. The respondents in their reply brought the true facts before the Hon'ble Tribunal and ultimately vide order dated 30.05.2014 this Hon'ble Tribunal dismissed the said OA and only a liberty was given to the applicant to submit his representation. It has been further averred that the contempt petition filed by the applicant in this regard has also been dismissed by the Hon'ble Tribunal.

10. It has been further averred in the reply that the order of this Tribunal was challenged by the applicant before the Hon'ble High Court of Rajasthan wherein the Hon'ble High Court of Rajasthan had passed ex parte stay order. But after notices were received in the writ petition a detailed reply was filed bringing all the facts before the Hon'ble High Court. Thereafter, the Hon'ble High Court vide its order dated 12.12.2014 dismissed the writ petition while upholding the order

passed by this Tribunal. The respondents further averred that in view of the same, it goes without saying that the applicant despite having full knowledge of his being relieved from Churu on 04.09.2013, he moved an application before the Station Superintendent, Shergarh i.e his transferred place sought time to join his duties on 11.09.2013 on account of his illness. Thus, it is more than evident that the applicant since 04.09.2013 was never working at Churu and he ought to have joined his duties at Shergarh. The respondents further averred that no one prevented the applicant to join at transferred place of posting at Shergarh, but the applicant at his own avoided joining at his transferred place and remained absent willfully. It is only when the DB Civil Writ Petition No.5892/2014 came to be dismissed by the Hon'ble High Court of Rajasthan vide order dated 12.12.2014, the applicant joined his duties at Shergarh on 26.12.2014. Further, as per the directions of the Hon'ble High Court of Rajasthan, he submitted his representation. The said representation was decided by the competent authority on its own merit. The decision of the said representation was challenged by the applicant in OA No.110/2015 and the same also came to be dismissed vide its order dated 07.09.2015.

11. It has been further averred in the reply that in compliance of the order of this Tribunal dated 04.11.2015 passed in OA No.442/2015, the competent authority decided the representation of the applicant by passing impugned order dated 17.02.2016 (Annexure-A/1). While deciding the said representation, the competent authority has narrated all the relevant facts wherein it was observed that the applicant at his

own after being relieved from Churu on 04.09.2013 did not join his duties at Shergarh at his own and remained unauthorized absent till 24.12.2014. Therefore, the period during which he remained unauthorized absent was rightly held to be LWOP on the principles of 'no work no pay' and the applicant simply cannot take advantage of his own wrong as he disobeyed the transfer order passed by the competent authority. The respondents further averred that in such circumstances, the representation of the applicant was rightly decided by the competent authority of the respondents and the same does not warrant any interference from this Hon'ble Tribunal. The applicant is trying to take advantage on his own wrong by not joining the duties at the transferred place despite being relieved on 04.09.2013, therefore, the intervening period from 04.09.2013 to 26.12.2014 cannot be treated as period spent on duty for any purposes.

12. Heard Mr. J.K. Mishra, learned counsel for the applicant and Shri Salil Trivedi, learned counsel for the respondents.

13. Learned counsel for the applicant averred that the applicant was having stay order in his favour for working at his previous place of posting but the order of this Tribunal as well as order of the Hon'ble High Court of Rajasthan was not obeyed and rather the orders were flouted by the respondents. He further submitted that the applicant was not taken on duty due to adamant nature of the respondents whereas the applicant was willing to do his duty. It has been further averred that the representation of the applicant has been abruptly rejected without

passing a reasoned and speaking order as per the directions of this Tribunal. Therefore, the impugned order deserves to be quashed being violative of Articles 14 and 21 of the Constitution of India.

14. Per contra, learned counsel for the respondents averred that it is completely wrong on the part of the applicant to allege that the respondents did not obey the order passed by this Tribunal and the Hon'ble High Court of Rajasthan, on the contrary when the respondents brought true and correct facts to the Court after receiving the notices, thereafter, the OA as well as CP was dismissed by this Tribunal and also the DB Civil Writ Petition and the Contempt Petition filed by the applicant before the Hon'ble High Court of Rajasthan came to be dismissed. He further averred that the applicant concealed the fact that he had already been relieved on 04.09.2013 and has approached the transferred place by submitting an application seeking time to join duties on account of his illness, thus for the period from 04.09.2013 till he joined his services at Shergarh on the 26.12.2014, the applicant remained willfully absent from duties and avoided the joining at Shergarh. In such a situation, the claim of the applicant to treat him on duty for all purposes cannot be sustained by any stretch of imagination. It has been further averred that the respondents never refused the applicant to join his services at transferred place, whereas the applicant himself did not join his services at transferred place. It has been further averred that now the applicant is trying to take advantage on his own wrong by not joining the duties at the transferred place despite being relieved on 04.09.2013. Therefore, the intervening period from

04.09.2103 to 26.12.2014 cannot be treated to be period spent on duty for any purpose because for the said period he has willfully remained absent from duty.

15. After perusing the material available on record and going through the sequence of events, it is clear that pursuant to transfer order dated 29.11.2013, the applicant was relieved on 04.09.2013 to join his services at his transferred place i.e. Shergarh. The applicant instead of joining at Shergarh, submitted an application to the Station Superintendent, Shergarh on 11.09.2013 stating that he had suddenly fall ill and he is undergoing treatment and, therefore, he is unable to join the duties and he will join the same after he is declared fit. The applicant in a meantime approached this Tribunal by way of filing OA No.391/2013 and obtained ex parte interim order, which is as under:-

“ Heard on IR, as no person has been posted in place of the applicant, the respondents are directed to continue the services of the applicant at present place of posting for next 14 days.”

The said interim order was extended from time to time till the final order was passed by the Hon’ble Tribunal on 13.05.2014. When, the respondents filed their reply and brought the facts to the notice of the Hon’ble Tribunal that the applicant has already been relieved on 13.09.2013 and he himself submitted an application to the Station Superintendent, Shergarh, mentioning that since he has suddenly fallen ill and he is undergoing treatment, therefore, he will join the duties after he will be declared fit and the applicant’s LPC was also sent from Churu to Shergarh and his name was struck off from the roll at Churu,

the Hon'ble Tribunal dismissed the OA vide order dated 30.05.2014 directing the applicant to join at his place of posting at Shergarh and make a further detailed representation regarding his transfer within 15 days of his joining to the competent authority and the competent authority was directed to consider and decide the representation within two months from the date of receipt of such representation.

16. It is seen that the applicant thereafter assailed the order of this Tribunal dated 30.05.2014 before the Hon'ble High Court of Rajasthan in DB Civil Writ Petition No.5892/2014 wherein the Hon'ble High Court of Rajasthan issued the interim directions on 20.08.2014 as under:-

“In the meanwhile, the effect and operation of the order dated 04.09.2013 passed by the Station Superintendent, North Western Railway, Churu, shall remain stayed. The petitioner, however, in the meanwhile may submit representation to the competent authority for cancelling the order of transfer. If such representation is submitted, that shall be considered by the competent authority as directed to the Central Administrative Tribunal, Jodhpur Bench vide order dated 30.05.2014 in Original Application No.391/2013.”

However, the Hon'ble High Court of Rajasthan dismissed the said Writ Petition vide its order dated 12.12.2014 with a clear-cut finding that in case the petitioner joins at his new place of posting at Shergarh within a period of one week and gives a reminder to the competent authority to decide his representation with proof of joining, the representation will be decided within a period of next two weeks. If the petitioner does not join at Shergarh, the representation will be rejected without advertizing to the merits of his case.

17. In pursuance of the aforesaid directions, the applicant submitted his representation. But, when the same has not been decided he approached this Tribunal by filing OA No.290/00442/2015 for seeking a direction to the respondents to treat the period of his absence from September, 2013 to December, 2014 as period spent on duty for all purposes. The said OA was disposed by this Tribunal vide order dated 04.11.2015 with a direction to the respondents to consider his representation dated 05.02.2015 (Annexure-A/5). In pursuance of the said directions, the respondents passed the reasoned and speaking order dated 17.02.2016 (Annexure-A/1), by which the claim of the applicant was rejected. By way of this Original Application, the applicant has challenged the impugned order dated 17.02.2016.

18. I have perused the impugned order dated 17.02.2016. It appears that the applicant has not worked from 04.09.2013 to 24.12.2014 and he has joined the transferred place of posting at Shergarh only on 24.12.2014. The applicant in the guise of the interim order passed by the Hon'ble High Court as well as by this Tribunal remained absent from duty and did not join at Shergarh. It was only when the Hon'ble High Court of Rajasthan passed directions on 12.12.2014, he joined his services at Shergarh. Therefore, it is clear that the applicant has not worked at all since his relieving order dated 04.09.2013 was issued by the respondents. Further, it appears that the applicant though remained willfully absent from his duty now wants to claim pay and allowances for the said period for which he has not worked. It is highly unjust and improper on the part of the applicant to ask for pay and allowances

when the transfer order dated 29.08.2013 was passed in exigency of service and the applicant stood relieved on 04.09.2013. The applicant remained adamant to join at Churu instead of joining at transferred place and did not work at any place. The applicant is unable to place any communications/proof which shows that the respondents have denied him to join at his transferred place. Therefore, I find no infirmity in the impugned order dated 17.02.2016 (Annexure-A/1) as the applicant himself remained willfully absent from duty and therefore the intervening period from 04.09.2013 to 24.12.2014 has rightly been held as LWOP.. Hence, the Railway Rule 'no work no pay' is just and proper.

19. Looking to the aforesaid facts and circumstances of the case, I am not inclined to interfere in the impugned order dated 17.02.2016 (Annexure-A/1) passed by the respondents as the same is just and proper. Accordingly, the OA is dismissed. No order as to costs.

(HINA P. SHAH)
MEMBER (J)