

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/497/2014

Order reserved on 04.01.2019

DATE OF ORDER: 17.01.2019

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER

Kiran Jyot Singh S/o Shri Prem Jeet Singh, aged around 31 years, presently working as ECRC, presently working as ECRC, Jhalawar, resident of Hotel Kiran, Bhawani Mandi Road, Jhalarapatan, District Jhalawar (Rajasthan).

....Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

1. The Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, Kota Division, Kota.

....Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER

Per: Suresh Kumar Monga, Judicial Member

The pleaded case of the applicant herein is that he was initially appointed as Assistant Commercial Clerk at Mumbai. He was promoted on the post of Enquiry cum Reservation Clerk and, thereafter, he was transferred from Western Railway to West Central Railway on his own request. On 06.01.2012, a Memorandum was served upon him under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 and he was placed under suspension. Later on, the order of suspension was revoked and he was transferred from Kota Division to Bhopal Division of West Central Railway on 13.01.2012. The said order

was challenged by him by way of O.A. No. 245/2012 before this Tribunal. During pendency of the said O.A., the respondents vide order dated 15.05.2012 had modified his transfer order and he was transferred to P.S. Bhawani Mandi, District Jhalawar. Consequent thereto, the applicant withdrew his O.A. in July, 2012. However, immediately after withdrawal of the O.A., the respondents again passed an order on 26.07.2012 in continuation of their earlier order transferring him again to Bhopal Division. The applicant again approached this Tribunal through O.A. No. 514/2012. This Tribunal vide order dated 13.09.2012 had quashed the transfer order and directed the respondents to allow the applicant to perform his duty pursuant to their earlier office order dated 15.05.2012. It has further been averred that despite the fact that the order dated 26.07.2012 was set aside by this Tribunal, the respondents did not allow the applicant to join his duties. The applicant approached the office of respondents on 21.09.2012 for joining his duty and on that day, he was directed to give his joining at Jhalawar on 22.09.2012. However, at Jhalawar Office also he was denied the joining and he was asked to contact at DRM Office, Kota. The applicant reported at DRM Office, Kota on the same day but still he was denied the joining. It has further been averred that he had been continuously submitting representations for joining. On 13.01.2013, an order was passed by the respondents directing him to join the duty at Bhopal on the ground that they had preferred a Writ Petition before the Hon'ble High Court. Whereas, the order passed by this Tribunal was never stayed by the Hon'ble High Court. The Writ Petition filed by the respondents before the Hon'ble High

Court was dismissed on 13.01.2014. Though the Writ Petition was dismissed by the Hon'ble High Court on 13.01.2014 but still the applicant was not allowed to join his duties upto 03.04.2014. The applicant immediately joined his duties on 04.04.2014 after the order dated 03.04.2014 passed by the respondents. The applicant has further stated that the respondents are biased towards him as he was again transferred within a period of two months after his joining on 04.04.2014.

2. The grievance of the applicant in the present Original Application is that whenever he approached the respondents for release of salary and allowances from 21.09.2012 to 03.04.2014, he was asked by the respondents to submit a leave certificate. Since the respondents have denied salary to applicant for the period commencing from 21.09.2012 to 03.04.2014, therefore, feeling aggrieved by the said action, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

3. The respondents by way of filing a joint reply have joined the defence and opposed the claim of the applicant. It has been averred that the applicant cannot ask for payment of salary and other benefits for the period commencing from 21.09.2012 to 03.04.2014 without performing his duty. The applicant submitted the representation after the order of this Tribunal on 21.09.2012 to Senior DCM, Kota, while as per the order of the Tribunal dated 13.09.2012, he was required to join at PRS, Jhalawar under Station Manager, Ramganj Mandi. He, however,

submitted subsequent representations only on 08.10.2012 and 15.10.2012, which were replied by an order dated 11.01.2013. He never challenged the said order nor reported for duty in pursuance thereof. It has further been averred that the applicant's transfer was pursuant to the recommendation of vigilance department because of his involvement in certain irregularities. It has further been stated that the applicant, despite directions of this Tribunal, reported to the office of Senior DCM at Kota. He never resumed the duty at his place of posting. The fact with regard to dismissal of the Writ Petition by the Hon'ble High Court, preferred by the respondents against the order passed by this Tribunal, has not been disputed. It has been stated that the applicant represented on 31.01.2014 for taking him on duty and, accordingly, vide office order dated 03.04.2014, he was allowed to resume his duty on 04.04.2014. It has, however, been denied by the respondents that they are biased towards the applicant. Since the applicant has not worked during the period in question nor he attended the office, therefore, he cannot claim the salary for the said period. With all these pleadings, the respondents have prayed for dismissal of the O.A.

4. Heard learned counsels for the parties.

5. Learned counsel for the applicant submitted that the order dated 13.01.2012 passed by the respondents transferring the applicant from Kota Division to Bhopal Division was challenged by the applicant by way of O.A. No. 245/2012. During pendency

of the said O.A., the respondents passed another order dated 15.05.2012 and the applicant was directed to join at PRS, Jhalawar under Station Manager, Ramganj Mandi in Kota Division. In view of the order dated 15.05.2012, the applicant withdrew his O.A. on 03.07.2012. However, the respondents had passed another order dated 26.07.2012 again transferring him to Bhopal Division and he was immediately relieved on 27.07.2012. Learned counsel further submitted that the action of the respondents was not bona fide and, therefore, the applicant was again compelled to file O.A. No. 514/2012 before this Tribunal challenging the order dated 26.07.2012. The said order was set aside by this Tribunal vide order dated 13.09.2012 and the respondents were directed to restore the modified order dated 15.05.2012 allowing the applicant to join at PRS, Jhalawar under Station Manager, Ramganjmandi. But the respondents did not allow him to join the duty though there was no stay operating against the order passed by this Tribunal, in D.B. Civil Writ Petition No. 18092/2012 filed by the respondents before the Hon'ble High Court of Rajasthan at Jaipur Bench, Jaipur. Learned counsel further submitted that on a representation given by the applicant, the respondents passed a contemptuous order dated 11.01.2013 directing the applicant to join his duties in Bhopal Division. Learned counsel further submitted that though the Writ Petition was dismissed by the Hon'ble High Court of Rajasthan on 13.01.2014 but still the applicant was not permitted to join duty till 03.04.2014. He, thus, argued that the applicant was kept out of service without any lapse on his part and, therefore, he cannot be denied the salary and other benefits for the aforesaid period.

6. Per contra, learned counsel for the respondents argued that though no stay order was granted by the Hon'ble High Court of Rajasthan against the order passed by this Tribunal but since the applicant did not file any execution application in order to execute the order passed by this Tribunal on 13.09.2012, therefore, the respondents are within their right to deny the salary to applicant for the said period. Learned counsel further submitted that when the respondents had denied joining to applicant vide order dated 11.01.2013 and he was directed to report in Bhopal Division; he ought to have challenged the said order at that time. Since the said order was not challenged by him, therefore, now he is not entitled to claim any salary from the respondents during which he remained out of service. It was further argued by learned counsel for the respondents that there is no document available on record depicting therein the willingness of the applicant to join duty after the orders passed by this Tribunal. Learned counsel further submitted that even on the basis of principle of no work no pay, the respondents are within their right to deny salary to applicant for the period commencing from 21.09.2012 to 03.04.2014.

7. Considered the rival contentions of learned counsels for the parties and perused the record.

8. The initial order dated 13.01.2012 vide which the applicant was transferred from Kota Division to Bhopal Division was challenged by him by way of O.A. No. 245/2012 before this

Tribunal. During pendency of the said O.A., the respondents had modified the order of transfer by way of passing another order dated 15.05.2012 and the applicant was transferred back to Kota Division. The said order dated 15.05.2012 was issued by the respondents while keeping in view the fact that transfer outside the Division would have affected the applicant's seniority, which is, admittedly, maintained at divisional level and, indisputably, would have affected the applicant's service conditions. Since the order dated 13.01.2012 was modified by way of a subsequent order dated 15.05.2012, therefore, the applicant withdrew his O.A. No. 245/2012 on 03.07.2012. Immediately, thereafter, the applicant was again ordered to be transferred to Bhopal Division by the respondents vide order dated 26.07.2012 and he was relieved on 27.07.2012. Aggrieved by the said order, the applicant again preferred O.A. No. 514/2012 before this Tribunal, which was disposed of on 13.09.2012 by setting aside the orders dated 13.01.2012 and 26.07.2012. The respondents were further directed to restore the modified order dated 15.05.2012 allowing the applicant to join at PRS, Jhalawar under Station Manager, Ramganj Mandi. After the said order, there was no reason with the respondents to not to allow the applicant to join his duty in Kota Division. Since he was not allowed to join the duty, therefore, he submitted a representation dated 21.09.2012, which was not even considered by the respondents upto January, 2013. On 11.01.2013, the respondents came out with an order stating therein that since they have filed a Writ Petition before the Hon'ble High Court challenging the orders passed by this Tribunal, therefore, the applicant should report for duty in

Bhopal Division. Admittedly, upto that day, no stay order was granted by the Hon'ble High Court of Rajasthan against the order dated 13.09.2012 passed by this Tribunal. The said order was not even stayed later on throughout during pendency of D.B. Civil Writ Petition No. 18092/2012. Finally, the Writ Petition was dismissed by the Hon'ble High Court of Rajasthan on 13.01.2014 but still the respondents did not permit the applicant to join his duties. No reason has been offered by the respondents in their entire reply that why upto 03.04.2014, the applicant was not permitted to join duty after dismissal of D.B. Civil Writ Petition No. 18092/2012 by the Hon'ble High Court of Rajasthan at Jaipur on 13.01.2014. Whole of the action in not permitting the applicant to join the duties in Kota Division, in our considered view, cannot be termed to be a bona fide action on the part of respondents. Initially when the applicant was ordered to be transferred by the respondents to Bhopal Division vide order dated 13.01.2012, they knew about the fact that the inter-division transfer will definitely affect his seniority and will also jeopardise his future claim for promotion and, therefore, they issued the modified transfer order on 15.05.2012 and directed him to join at PRS, Jhalawar under Station Manager, Ramganj Mandi in Kota Division. In view of the said order dated 15.05.2012, the applicant withdrew his earlier O.A. No. 245/2012. It appears that the respondents were all out to harass the applicant as immediately after withdrawal of O.A. No. 245/2012, he was again ordered to be transferred to Bhopal Division vide order dated 26.07.2012. The said orders dated 13.01.2012 and 26.07.2012 were held to be illegal by this Tribunal while adjudicating upon the matter in O.A. No.

514/2012 and after setting aside those said orders on 13.09.2012, this Tribunal restored the earlier modified order dated 15.05.2012 and directed the respondents to permit the applicant to join his duties at PRS, Jhalawar under Station Manager, Ramganj Mandi in Kota Division. After the said order of the Tribunal, again there was no reason with the respondents to not to permit the applicant to join his duties in Kota Division. Though no stay order was granted by the Hon'ble High Court of Rajasthan against the order dated 13.09.2012 passed by this Tribunal but still the applicant was not permitted to join his duties. The D.B. Civil Writ Petition No. 18092/2012 was ultimately dismissed by the Hon'ble High Court of Rajasthan on 13.01.2014 but still the respondents did not permit the applicant to join his duties in Kota Division upto 03.04.2014.

9. The whole sequence of events narrated herein above leads us to draw an irresistible conclusion that the action of respondents in not permitting the applicant to join his duty in Kota Division from 21.09.2012 to 03.04.2014 was not bona fide. The argument projected by learned counsel on behalf of the respondents that the applicant never tried to execute the Tribunal's order and he did not challenge the order dated 11.01.2013 do not find favour with us. There was a positive direction by this Tribunal while disposing of O.A. No. 514/2012 that the applicant shall be permitted to join at PRS, Jhalawar under Station Manager, Ramganj Mandi. We do not see any reason with the respondents to defy the aforesaid direction of the Tribunal in the absence of any stay order granted by the Hon'ble High Court of Rajasthan.

10. Equally untenable is the argument of learned counsel for the respondents that the applicant cannot claim the salary for the period commencing from 21.09.2012 to 03.04.2014 on the basis of principle of 'no work no pay'. As admittedly, the applicant had submitted a representation on 21.09.2012, which was declined by the respondents vide order dated 11.01.2013 without getting any stay order from the Hon'ble High Court of Rajasthan in D.B. Civil Writ Petition No. 18092/2012 filed by them challenging the order dated 13.09.2012 passed by this Tribunal in O.A. No. 514/2012.

11. In the conspectus of discussions made hereinabove, the present Original Application is allowed with costs quantified at Rs. 10,000/- (Rupees ten thousand). The respondents are directed to release the applicant's salary and allowances from 21.09.2012 to 03.04.2014 within a period of one month from the date of receipt of a certified copy of this order. The arrears of applicant's salary and allowances shall also carry interest @ 6% per annum.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER