

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Wednesday 21st day of December Two Thousand And Sixteen

PRESENT:

THE HON'BLE MR. JUSTICE A. ARUMUGHASWAMY, MEMBER(J)

THE HON'BLE MR R. RAMANUJAM, MEMBER (A)

M.A./310/0983/2016

in

O.A. No. 47/2013

&

O.A. No.47/2013

Sreenu Paidi,
Emp. No. 841 707,
Unit No. 60/A,
CMM/SHELL/ICF.

... Applicant/Applicant

(By Advocate : M/s. Ganesha)

-versus-

1. General Manager,
Integral Coach Factory (ICF),
Chennai-38;
2. Chief Personnel Officer,
Integral Coach Factory (ICF),
Chennai- 38;
3. Assistant Personnel Officer,
Integral Coach Factory (ICF),
Chennai-38;
4. Mr. Shanmugaraj- CMM/P/SHELL,
Integral Coach Factory (ICF),
Chennai- 38;
5. Deputy Chief Materials Manager/ Purchase/ Shell,
(Dy. CMM/P/S) Disciplinary Authority,
Integral Coach Factory (ICF),
Chennai-38.

....Respondents/Respondents

(By Advocate: Eathirraj P.S.)

ORAL ORDER

(Pronounced by Hon'ble Mr. Justice A. Arumughaswamy, Member (J))

This M.A. has been filed by the applicant seeking restoration of the O.A. to its original file and position, which was dismissed for default on 21.11.2016.

2. At para -4 of the M.A., it has been stated by the applicant as follows:-

"4. I submit that on 28.09.2016, the Hon'ble Court was not taken on file of final hearing matter, the office clerk has entered the next hearing dated on 23.11.2016 in the office diary instead of 21.11.2016. Thereafter on verification of office diary it was seen that the hearing date has been noted as 23.11.2016. I submit that on 23.11.2016, I verified the cause list of this Hon'ble Court and found that the case was not listed. After enquiry and scrutiny of previous cause list from court, I was surprised to note that the case came up on 21.11.2016 and the same day Hon'ble Court was pleased to dismiss the Original Application."

3. The reason as stated by the counsel for the applicant is that as he wrongly noted down the date in his diary and fixing the responsibility upon him, therefore, the restoration petition is allowed by setting aside the order dated 21.11.2016 by restoring it to its original file and position.

4. Since the matter is of 2013, we take up the O.A.

5. This is the fourth round of litigation. The instant O.A. is filed by the applicant seeking the following reliefs:-

"i) to call for the records pertaining to the order Dt.2/11/12 under Reference No. PB/S/DAR/841707/UA passed by the 5th respondent and quash the same;

ii) consequently direct the 2nd respondent to absorb the applicant back in the post, with back wages and emoluments, with seniority as on the date of appointment of the applicant;

iii) Direct the 2nd respondent to pay the salary for the month of 1/8/2009 to 17/9/2010."

6. The case of the applicant is that he was appointed as Substitute Bungalow Luskar on 19.7.2007 in South Eastern Railway, Adra and was deputed to the 4th Respondent who is station at Adra. On transfer of the 4th

respondent to ICF-Chennai, he was also transferred to ICF, Chennai during August, 2008 and was residing in the front lobby room of the 4th respondents. On 19.1.2009, the 4th respondent informed that service of the applicant was no longer needed and without assigning any reason he was marking the applicant as absent from 12/1/2009 and informing the office that applicant was un-authorizedly absent. Since there was no response to his representation, applicant filed O.A. 788/2009 which was disposed of by directing the respondents to dispose of the representation of the Applicant. In pursuance of the same, though the applicant was directed to join duty, no work was given to him and, therefore, he again approached the Tribunal by filing O.A. No. 1231/2009 and, thereafter, again OA. No. 549/2010 which was disposed of on 06.08.2010, the operative portion of which is extracted as under:-

"6. This is the third round of litigation for the applicant for the same cause of action. It is seen from the records that the applicant has made various representations to the first respondent stating that he has not been assigned any work in the residence of the second respondent and he has been simply made to stand outside the residence of the second respondent. On this issue, the first respondent does not seem to have taken any action. On the contrary the applicant has been issued with charge sheet on two occasions for unauthorized absence and both the charge sheet have been withdrawn. Now the third charge sheet has been issued on the same issue. Be that as it may, when the applicant was not assigned any duty by the second respondent and marking the applicant absent in the muster roll of the applicant, he being a bungalow peon, cannot do anything. When the matter was brought to the notice of the first respondent, he should have immediately looked into the matter. The applicant stated in his application that he had also sent the joining report to the first respondent, but no action was taken. The applicant is physically available and willing to work as bungalow peon. Therefore, he cannot be said to be unwilling to work in the post

to which he is appointed. It is the second respondent who has failed to assign him the duties. In view of the peculiar circumstances of the case we direct the respondents to pay the applicant the salary for the period from January 2009 to till the date of this order within a period of four weeks from the date of receipt of copy of this order. We also direct the respondent to take steps to post the applicant in some other bungalow as bungalow peon in the peculiar facts and circumstances of the case. However, the respondents are at liberty to proceed with the disciplinary action, if any, if so advised.

7. With the above direction, the O.A. is partly allowed. No costs."

In the mean time, the applicant made two representations dated 28.1.2010 and 25.08.2010.

7. Aggrieved by the aforesaid order of the Tribunal in O.A. No. 549/2010, the respondents in the O.A. filed W.P. No. 20697/2010 before the High Court which dismissed the W.P. on 06.11.2012, paras 9, 10 and 11 reads as under:-

"9. It is submitted by the learned Senior Counsel appearing for the petitioner that as observed by the Tribunal at the time of disposal of the original application granting liberty to the respondents therein to proceed with the disciplinary action, If any, against the applicant/second respondent herein, the Department has proceeded against the second respondent by conducting disciplinary proceedings and ultimately, an order was passed on 02.11.2012 imposing punishment of removal from service with effect from 03.11.2012. It is also stated in the said order that an appeal lies to the COS within forty five days of receipt of the said order.

10. In view of the fact that an order was passed on 02.11.2012 pursuant to the order passed by the Central Administrative Tribunal, we are of the considered opinion that no orders are necessary in this writ petition.

11. Accordingly, recording the statement made by the learned senior counsel for the petitioner, the writ petition is dismissed. However, it is needless to mention that it is for the

[Signature]

second respondent to assail the correctness of the order dated 02.11.2012 in accordance with law. No costs."

8. The contention of the applicant is that the third charge sheet which was issued after cancelling the earlier charge sheets that too after getting the reply of the applicant and evidence recorded in the earlier proceedings is unsustainable, the proceedings were held in a biased and arbitrary manner without any defence helper or opportunity for the applicant to lead his evidence. New documents were produced and evidences were let into fill in the lacuna of the earlier cancelled proceedings. The Disciplinary Authority was not the competent authority to issue the order of removal which was even otherwise illegal as the same had been done in disregard of the findings of the Tribunal and, therefore, the order dated 02.11.2012 is liable to be set aside and the O.A. allowed.

9. Counsel for the respondents submits that the applicant had not preferred any appeal against the order of 02.11.2012 and without exhausting the statutory remedy available to him, he ought not to have approached the Tribunal and therefore the O.A. is liable to be dismissed.

10. Under such circumstances, we are not inclined to express any view on the merits of the matter at present as the applicant approached the Tribunal without exhausting statutory remedy available to him. Therefore the O.A. is disposed of by directing the respondents to entertain the appeal, if any, preferred by the applicant against the impugned order by excluding the period from the date of filing of this OA till the date of receipt of a copy of the order from the period of limitation allowed otherwise and pass a reasoned order within a period of eight weeks from the date of receipt of copy of this order. There shall be no order as to costs.