

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/00716/2017

Date of Reserve:06.11.2019

Date of Order:21.11.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Nabin Kumar Agarwal, aged about 48 years,S/o. Jagdish Prasad Agarwal, Ex.SSE/Estimates, Office of PCE/East Coast Railway, Bhubaneswar – resident of HIG-4, BDA Colony, Chandrasekharpur, Bhubaneswar-751 016, Dist-Khurda – permanent resident of Vill-Junagarh, PO-Junagarh, PS-Kesinga, Dist-Kalahandi, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
2. Chief Personnel Officer, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
3. Senior Personnel Officer (Engineering), East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.
4. Deputy Chief Engineer (General) & Disciplinary Authority, East Coast Railway, Rail Sadan, Chandrasekharpur, Bhubaneswar-17, Dist-Khurda
5. Principal Chief Engineer, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-751 017.

...Respondents

By the Advocate(s)-Mr.K.C.Kanungo

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has sought for the following reliefs:

- i) To quash the Memorandum dated 20.09.2017 under Annexure-A/6 and order dtd. 21.11.2017 under Annexure-A/9.
- ii) And to direct the Respondents to allow him to join in his post with full back wages.

2. Shorn of unnecessary details, it would suffice to note that the applicant, while working as SSE/Estimates under the Principal Chief Engineer, East

Coast Railway, Bhubaneswar, had tendered his resignation on 02.05.2008, which was accepted by the competent authorities, as communicated vide order dated 26.08.2009. However, the applicant challenged this order dated 26.08.2019 in this Tribunal in O.A.No.26 of 2010 with a prayer for direction to be issued to Respondents to allow him to resume his duties and also to allow him to work in the post held by him prior to acceptance of his resignation. This Tribunal vide order dated 05.01.2012 disposed of the said O.A. , the relevant part of which reads as follows:

“...Hence, the order accepting his resignation vide Annexure-A/5 is liable to be quashed. Ordered accordingly. Consequently, the Respondents are hereby directed to relegate the applicant to the post which he was holding in his cadre and allow him to discharge his duty with immediate effect, i.e., from the date of the receipt of copy of this order. He would be entitled to count his past service for all purpose, but would not be entitled to any back wages during the interregnum period on the principle of no work no pay”

3. Complying with the above direction, the Respondent issued a Memorandum dated 17.04.2012 (A/2), which reads as follows:

“In obedience to the Hon’ble CAT/CTC’s order dtd. 05.01.2012 passed in OA No.26 of 2010, Sri N.K.Agarwal Ex.SSE (Estimator is hereby taken back on duty into Railway Service in the post of SSE(estimator) on scale of Rs.9300-34800/- with Grade Pay Rs.4600/- and posted under PCE/BBS.

The intervening period from date of acceptance of resignation i.e., 26.08.08 to the date of issue of this order is treated as Dies non. During the said period, he is not entitled to get any pay on the principle of No work No Pay”.

4. Since the applicant did not join, the Respondents issued a letter dated 06.05.2016 (A/3), the relevant part of which reads as follows:

“However, in spite of lapse of 4 years, you have not turned up for duty which amounts breach of order of Hon’ble CAT

and establishes your indifference & lack of interest towards Railway service.

As such, you are once again advised to report back to duty at the office of PCE/ECOR/BBS by 20.05.2016 failing which you shall have no claim for Railway service & Railway administration will not be responsible for further complications in the matter. In case you do not report for duty by 20.05.2016, railway Administration will take steps to fill up the vacancy which is kept unfilled for your since last 4 years.

This should be treated as extremely Urgent".

5. In response to this, the applicant submitted a representation dated 21.5.2016 to the Sr.Personnel Officer (Engg), East Coast Railway, Bhubaneswar, stating as follows:

"I like to bring your kind notice that you are blaming me that in spite of 4 years, I had not turned up duty and your office had served office memorandum in railway quarter address at Rail Vihar, this blaming is purely baseless and arbitrary. This blame is whether my fault or your office faults. Without reviewing simply you are throwing blame to me is not good.

From initial days you have my permanent house address at your service book how you serve letter to Railway quarter since last 4 years, as you serve letter to me on dt. 6.5.2016.

Dt. 15.5.13, letter Grievance to General Manager (ECoR) (copy enclosed), I had clearly mentioned that I had vacant Railway quarter than how letter are serve to Railway quarter.

On letter dt. 20.12 & 4.9.12, I had mentioned that I had shifted to my own house, I am given my mobile number with enclosing vacation memo issued from SSE/Work issued dt. 31.5.13. A joint verification signed by various office people, including your office officer Mr.R.K.Padhi also sent to your office (copy enclosed) than how since 4 years your office has serve letter to railway quarter. Please review.

From this allegation it is understood that your office intention is not clear only throwing ball from one court to another court.

Hence, please mention that that will responsible for the above four your lapsed, whether my salaried of four year

will be payable by railway or not or once again I will knock the CAT for justice.

Further you are given short period for joining that means, you had issued letter on dt. 6.5.16 which is received on dt. 18.5.16 and within two days it is not possible to join as I am in medical.

Copy of all letter enclosed for your reference".

6. Responding to this letter and certain letter dated 27.06.2016 (copy not annexed to the O.A.), the Respondents communicated a letter dated 08.07.2016 (A/5), the relevant part of which reads as follows:

- "3. As per the quarter vacation certificate dated 31.05.2013 enclosed to your present appeal dated 21.05.2016 shows that you had vacated the Railway quarter only on 31.05.2013.
4. Railway Administration has taken all out efforts to serve the memorandum dated 17.04.2012 by all means, and all the earlier letters sent to your Railway quarter address are much before the date of vacation certified by the SSE(Works). Therefore, there is nothing wrong in this matter, since letters have also been sent to your home address simultaneously.
5. Despite sufficient time has elapsed after the issue of memorandum dated 17.04.2012 for joining duties, you are not bothered to carry out the administration order and still showing some or other plea without joining duty, thereby you are not entitled the benefit of past service and also not entitled for any back wages on the principle of 'No work no Pay" as per Hon'ble CAT/CTC order dated 05.01.2012.
6. As you have not carried out the orders dated 17.04.2012 of the Railway administration, which was issued in obedience to Hon'ble CAT/CTC order dated 05.01.2012, it is presumed that you are not interested to join duties. Therefore, the post cannot be kept vacant for any more and action will be taken accordingly without any further instruction".

7. Since the applicant did not turn up, Respondents issued a Memorandum dated 20.09.2017 (A/6) in contemplation of disciplinary

proceedings against the applicant under Rule-9 of the Railway Servants (Discipline & Appeal) Rules, 1968, the imputation of charge being his failure to join duty and thus, remained unauthorized absence till 20.09.2017 i.e., the date of issue of charge sheet. In response to this, the applicant also submitted his defence representation dated 08.10.2017 (copy not annexed to the OA). The Disciplinary Authority being not satisfied with the defence representation, ordered for inquiry by appointing Inquiry Officer vide A/9 dated 21.11.2017. Aggrieved with this, the applicant has approached this Tribunal seeking for the reliefs as referred to above.

8. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder filed by the applicant.

9. From the pleadings of the parties to the short point to be decided is whether before joining of the applicant in pursuance of Memorandum/Communication issued by the Respondents in complying with the direction of this Tribunal in O.A.No.26 of 2010 quashing the acceptance of resignation and directing the respondents to take the applicant back in service, the applicant could be called a Railway Servant and if so, whether the disciplinary proceedings initiated against him under Rule-9 of RS(D&A) Rules, is sustainable.

10. Admittedly, vide order dated 05.01.2012 passed by this Tribunal in O.A.No.26 of 2010, order, accepting resignation of the applicant was quashed and consequently, the respondents were directed to relegate the applicant to the post which he was holding in his cadre and allow him to discharge his duty with immediate effect. In obedience to this order, the Respondents issued a Memorandum dated 17.04.2012 (A/2) taking the applicant back to service. Since, the applicant did not turn up, a reminder letter 06.05.2016 (A/3) was

sent to him with an advice to report back to duty. However, there was no affirmative response made from the applicant in this regard.

11. At the outset, it is to be noted that this is a case where even though the applicant is not willing to abide by the orders of this Tribunal dated 05.01.2012 in O.A.No. 26 of 2010, as quoted above, the Respondents have shown extra interest coherently by running after the applicant one way or the other and in the end, by initiating disciplinary proceedings against the applicant in order to comply with the orders of this Tribunal. Admittedly, there has been no allegation on the part of the applicant that ever the Respondent-Railways had ever flouted the orders of this Tribunal in O.A.No.26 of 2010 deliberately. Therefore, by no stretch of imagination respondents can be blamed for non-compliance of the orders of this Tribunal. Since the applicant did not join in pursuance of the Memorandum that had been issued to him as a measure of compliance of the orders of this Tribunal, it is at his own risk. Since the respondents are unable to keep the post to be occupied by the applicant vacant in the interest of public, nothing prevents them from taking action as deemed fit and proper for the purpose of filling up the said post. However, be it noted that since the acceptance of resignation tendered by the applicant has been quashed by this Tribunal and the applicant has not shown any interest to join the post in question complying with the orders of this Tribunal, his status remains as such and in such a situation, the disciplinary proceedings initiated against him under the RS(D&A) Rules, is not maintainable since, he is no longer a Railway Servant. Accordingly, we answer the point in issue.

12. In view of the discussions held above, we quash the impugned Memorandum dated 20.09.2017 (A/6) and order dated 21.11.2017 (A/9).

However, respondents are at liberty to go ahead with the filling up the post in question in the interest of public.

In the result, the O.A. is allowed in part, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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