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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 1st December, 2010*

+ **W.P.(C) 6935/2010**

RAM SINGH Petitioner
Through: Mr.A.P.Dhamija, Advocate.

versus

GENERAL MANAGER, NORTHERN RAILWAYS & ORS.
... Respondents
Through: Mr.Chandan Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. On 18.10.2010 we had issued notice to show-cause by penning as under:-

“1. Learned counsel for the petitioner draws our attention to the rejoinder filed to the counter reply filed by the respondents and points out that he categorically stated that Annexures R-1 and R-2 referred to in the counter reply, being letters dated 22.4.1992 and 21.5.1992 were not filed nor copy given to him.

2. Learned counsel for the petitioner urges that the inference drawn by the Tribunal and reference to the two documents is a wrong finding inasmuch as the Tribunal could draw no inference upon documents which was not even placed before the Tribunal.

3. Issue notice to the respondents returnable for 25.11.2010.

4. Through a Special Messenger record of OA No.2377/2005 be requisitioned from the Tribunal.”

2. Suffice would it be to state that the record of the Tribunal has been received by us and has been perused.

3. Impugned order is dated 1.5.2007. The grievance of the petitioner is limited to the denial of back-wages and continuity in service as reflected by the Tribunal in para 11 and para 13 of the impugned order which read as under:-

“11. But notwithstanding all these infirmities, this is not a case where the employee has to be given the full reliefs as is normally expected of when it is found what has been passed is an illegal order. This is because of his own irresponsible conduct. He had referred in Annexure P-9 letter dated 13.3.2001 to an incident where he alleges that he had been compelled to give a statement dated 22.4.1992. It is on record that Annexure P-13 had been given to the appellant on 10.4.1992 revoking the order of suspension w.e.f. 18.4.1992. But on 22.4.1992, the applicant in categorical terms had informed the Department that he was not willing to join duty until the proceedings are completed. He has necessarily to bear the consequence of his stand, it is evident that this had jeopardized his interest. An employee definitely is not entitled to resort to a stand that he is not prepared to accept reinstatement until the disciplinary proceedings initiated against him are completed. He had been obviously ill advised. Since nobody was bothering about the formal completion of the inquiry proceedings, after his response, necessarily he had to suffer for that.

12. xxx xxx xxx

13. Since we found that disciplinary proceedings, suffer from irregularity, which are incurable, we set aside the orders in toto. The applicant would be entitled to reinstatement but without benefit of back wages or benefit of service. But, however his past service rendered before suspension should be tagged on to the service yet to be rendered by him. But for notional fixation of pay alone, the intervening period is to be deemed as reckonable. He will be entitled to get his pay refixed in the same post he was holding as on 17.2.1992, and if stagnation is there, he has to suffer, and no benefit of ACP Scheme can come to his aid because of his default, as far as this period is concerned. We direct that appropriate follow up orders are to be passed within 2 months. In any case, it has to be ensured that applicant is reinstated in service within one month from

today. There will be no order as to costs.”

4. Having perused the record of the Tribunal and with reference to the counter reply filed by the respondents to the Original Application filed by the petitioner, we note that it was pleaded that pending inquiry, order of suspension was revoked vide order dated 10.4.1992 and in respect whereof the petitioner responded vide letter dated 22.4.1992 stating that he would not report for duty till the inquiry was over. It was stated that in reply to petitioner's letter dated 22.4.1992 a letter was written to him on 21.5.1992 which was acknowledged by the petitioner on 20.6.1992. The two letters referred to in the pleadings as emanating from the petitioner were referred to as Annexure R-1 and Annexure R-2 respectively.

5. Indeed, we find that the two annexures referred to in the pleadings have not been filed with the counter reply. We further find that in the rejoinder filed, the petitioner has highlighted that Annexures R-1 and R-2 have neither been supplied nor filed and thus it was pleaded that the respondents may be directed to supply a copy of the same to the applicant.

6. The grievance of the petitioner is that in spite of the two documents not being filed, the Tribunal has gullibly accepted the contention of the respondent.

7. We find that the Tribunal has referred to petitioner's letter dated 22.4.1992 and has observed that in the said letter the petitioner had in categorical terms informed the Department that he was not willing to join duty until the disciplinary proceedings are concluded. From said stand of the petitioner a conclusion has been drawn that the petitioner has to bear the consequences of his stand.

8. Suffice would it be to state that the Tribunal ought to have called upon the Department to file the two annexures referred to in the pleadings and not gullibly accept the version in

the pleadings based upon a document.

9. Rules of pleadings in Writ proceedings are different than the Rules of pleadings in Suits. Before the Tribunal, Rules of pleadings applicable to Writs apply. The pleading in a Writ is a pleading of fact, of law and of evidence. The pleading in a Suit is a pleading of fact subject to requirements of Order 6 of the Civil Procedure, where if special facts or provisions of law relating to a condition precedent or a condition antecedent for fastening liability are required to be pleaded, it has to be so specifically pleaded.

10. The quote which has received overwhelming acceptance by society and members of the judicial fraternity is: *Justice should not only be done, but should manifestly be seen to be done.* It is a reflection of the society's values that the society is not simply satisfied when justice is done. Everybody may agree that justice is done and yet would like to know the manner in which justice is done and hence the requirement of justice being manifestly seen to be done.

11. We cannot countenance the manner in which the Tribunal has decided the Original Application filed by the petitioner. However, in spite of what has happened before the Tribunal, we find that at the end of the day, what has been done by the Tribunal is correct and with reference to justice should not only be done but manifestly seen to be done, we make amends and do the needful by reflecting upon the second stage of the requirement of doing justice.

12. After the impugned order was passed, the petitioner filed a Miscellaneous Application in which he himself referred to his letter dated 22.4.1992 which we find has been annexed as Annexure P-6 along with the writ petition. The letter in question reads as under:-

“To

The Assistant Engineer,
Northern Railways, Rohtak.

Dated : 22nd of April, 1992.

Sir,

Reply of the applicant in the context of the letter No.(Illegible) dated 10th of January, 1992 issued by you.

On the above mentioned subject matter, it is to inform you that the applicant has been suspended on 17th of February, 1992, whose enquiry has not so far been initiated, whereas the applicant proves himself to be innocent. Until the enquiry of the case is not conducted and any judgment is not pronounced, till then the applicant wants to remain under suspension and does not want to appear for duty up till the judgment in this case.

Yours faithfully-Applicant,
Sd/- (Ramsingh) Mali – Khalasi,
Under Construction Inspector,
Northern Railways, Rohtak."

13. The second letter of 21.5.2010 has been annexed by the petitioner as Annexure P-7. It reads as under:-

"Office of the Construction Inspector, Northern Railways, Rohtak.

Letter No.E-2/Loose/R.S./Rohtak. Dated : 21st May, 1992.

To: Shri Ram Singh, Mali – Khalasi,
Gardner.

Subject: Application of the applicant Shri Ramsingh s/o Kallu Singh, Mali – Khalasi (Gardener) Sanpla for awarding/release of pay stopped by the office.

In the context of abovementioned subject, it is to inform you that on 11th of April, 1992 you have been ordered to the present on duty again. But in this subject matter you have given in writing that I want to remain under suspension until my enquiry is not completed.

Therefore, you are hereby informed that as you are absent since 11th of April, 1992 due to this reason any pay of you could not be drawn. In respect of the pay, if you remain absent, then there is not any responsibility of this office. During the course of suspension period, you have been receiving half pay.

Copy is being sent to you for information.

Sd/- Indrachand Malhotra,
Construction Inspector,
Northern Railways, Rohtak."

14. It is thus apparent that the petitioner was not only aware but was in possession of both the letters.

15. Suffice would it be to state that the letter dated 22.4.1992 which petitioner does not dispute bears his signatures is in conformity with what has been noted as a matter of fact by the Tribunal.

16. Learned counsel for the petitioner states that in response to the letter dated 21.5.1002 the petitioner had written a letter dated 25.6.1992 which reads as under:-

"To,

Shri E.Chandra Malhotra,

Shri Nand Lal Wadhwa,
Through Rail Track Inspector II (IO)
Works Inspector, N.R.Rohtak N.R.Rohtak.

Sub: Pay/Subsistence Allowance – Application for
payment thereof.

Ref: Letter No.E-2/Loose/RS/Rohtak dated 4.5.1992.

Sir,

Order dated 11.4.92 for resumption of duty (Revocation Order) No.4 has never been given to me. You intentionally planned to harass me and making me absent. Whatever you got written from me on 22.4.92 by calling me in your room and surrounding by four five persons is not remembered now but the slap given by you on my face is definitely remembered. On account of your fear what I wrote is not remembered. But if your suggestion is admitted that "I want to remain suspend till my enquiry is completed" was written then whether the Railway administration had accepted my submission. If it was accepted then why have you not intimated me the same, and what condition was put for that and what directions were given.

1. Whether there is any rule in Railway that if an

employee given in writing that he wants to remain suspended for ever, he can be kept so. Kindly give details of this rule.

2. As per your letter I have written that I want to remain suspended, whether I should be kept suspended or absent. If you are so pleased with my writing that you should have immediately given the reply "that your letter was considered and you would remain suspended in future" or in future you would be treated as absent."

3. By taking the pretext of my letter, stopping my Pay/subsistence allowance and non-issue of pass for inquiry proceeding etc. is your planned conspiracy to harass me and are willing to expel me from the service in a planned manner. Your writing this that "with regard to pay this office has not responsibility" is completely incorrect and irresponsibility.

Hence, if you do not make payment of my salary within 15 days then being compelled I shall have the right to sue you (personally Shri E.Chandra Malhotra) and against the Department under Pay Wages Act and for ten times under Industrial Disputes Act. Hope, you will make payment early. Otherwise you will personally liable for all the expenses.

Thanking You,

Applicant

(RAM SINGH) Mali Khalasi
Sampala."

17. From the letter dated 25.6.1992 the petitioner's counsel seeks to urge that it was the duty of the Department to write back to the petitioner informing him that if he does not join duty they would treat it to be a case of unauthorized absence and should have further informed the petitioner that the same would invite penal consequences.

18. Now, that is not the issue. The issue simply is that the petitioner was aware of the letters dated 22.4.1992 as also the letter dated 21.5.1992, the former being written by him and the latter being received by him. These letters were referred to

in the counter reply filed by the respondent but not annexed as annexures. The petitioner knew what they were. He could have responded thereto. He did not do so.

19. We are informed by learned counsel for the respondents that what had actually happened was that during arguments the two documents were shown to the Tribunal and thus the contents thereof were reflected by the Tribunal in its order dated 1.5.2007.

20. Indeed, the stand taken by the learned counsel for the respondents is correct inasmuch as the same finds reflection in MA No.527/2008 filed by the petitioner in which the petitioner has, in para 4, categorically pleaded that though the two annexures were not supplied to him but during arguments were shown to the Court, but not to his counsel.

21. Thus, we find no merit in the writ petition which is dismissed.

22. We refrain from imposing any costs.

23. Record of the Tribunal be returned forthwith.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

December 01, 2010
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