

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 5634/2006

1. Divisional Railway Manager Northern Western Railways, Power House Road, Jaipur.
2. The Station Manager, North West Railway, Railway Station, Jaipur.
3. Union of India through General Manager, North Western Railway, Khatipura Road, Jaipur.

-----Petitioner

Versus

1. The Presiding Officer, Central Government Industrial Tribunal, cum Labour Court, Jaipur.
2. Shri Ghanshyam S/o Shri Hari Narain, R/o 22-A, Near Sulabh Complex, Mohan Nagar, Nahargarh Road, Jaipur.

-----Respondents

For Petitioner(s)	:	Mr. Shailesh Prakash Sharma, Adv.
For Respondent(s)	:	Mr. Manoj Pareek, Adv.

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

04/07/2019

1. By this writ petition the petitioners assails the award passed by the Central Government Industrial Tribunal cum Labour Court, Jaipur (for short 'CJIT') wherein reference was answered in affirmative in favour of workman and against the railway administration and it was held that the workman is entitled to be treated in duty from 26.05.1998 to 29.10.2003 and also held entitled for arrears of salary with admissible benefits of period in question.

2. Counsel for the petitioners submits that the Award has been passed erroneously and respondent-workman was not entitled to the said benefit.

3. I have considered the submissions and find that the CJIT has noticed in its Award the deposition of the witness of the petitioner one KK Singodiya who was holding the post of Assistant Personnel Officer of the Railways who has filed an affidavit on behalf of railway administration. The learned CJIT in para 9 and 10 have discussed the affidavit filed by witness Mr. KK Sinogidya as under:-

"9. Contrary to it, MW-1 KK Singodiya has deposed in his affidavit that the workman absented himself from 27.5.1998 to 30.10.2003, who was marked absent in the attendance registers the copies thereof Ex.D-2 to D-95 have been placed on the record. He has also stated that between 22.4.95 to 30.10.2003, the workman never reported for duty before the concerned authority and he was absenting himself unauthorisedly from the duty. He has also stated that a notice Ex.D-96 dated 2.11.2001 was issued to him and thereafter the another notice dated 30.09.2003 was issued, but he did not join the duty.

10. In his cross-examination, this witness has admitted that on 17.2.1994, the workman was ill, he was not on duty and that the portion between A to B at para 3 of his affidavit is incorrect. He has also admitted that the copy of the transfer order and the acknowledgment receipt by the workman could not be placed on the record. He then has stated that the notice Ex.R-96 was issued on 1.11.2001 and the another notice Ex.R-97 was issued on 30.09.2003. He has admitted that on account of the absence of the workman no chargesheet was issued against him under the DAR Rules. Admitting the letter Ex.A-9, he has stated that by this letter the duty certificate of the workman was transmitted to the Sr.Division Traffic Manager and the workman has presented this letter before him. On scrutiny of the record the acknowledgment receipts/postcards of notices R-96 and R-97 respectively have not been placed on record."

4. Thus, it is apparent that the witness of the petitioners has given a false affidavit before the CJIT which alone is sufficient ground to oust the case of the petitioners. It is settled law that

those who are not honest in their pleadings, cannot be allowed to take up the remedies under the writ jurisdiction which is necessarily and essentially an equitable jurisdiction. Having said so on facts, this Court finds that the findings of fact has been arrived at by the CJIT which has reached to the conclusion on the basis of the facts that the concerned workman had remained sick w.e.f. 25.12.1994 to 22.5.1998 was undergoing treatment in the railway hospital and a sickness certificate was also issued in his favour for the said date. Whereafter he submitted his joining report to the Station Superintendent, Jaipur. The Station Superintendent, Jaipur sent a letter to the Senior Divisional Traffic Manager on 26.05.1998 to seek directions to take him on duty but he was not taken on duty. In view thereof, this Court in writ jurisdiction would not interfere on the findings of facts which have come on record on the basis of evidence. In **Sadhna Lodh Vs. National Insurance Company Ltd. & Ors.** reported in **2002(7) SCC 456** wherein three Judge Bench of the Supreme Court has held that power under Article 227 of the Constitution of India should be sparingly exercised and even if a different view could have been taken, the view taken by the Courts below does not require to be altered

5. The writ petition found to be devoid of merits and the same is accordingly dismissed.

(SANJEEV PRAKASH SHARMA),J