(2024) 12 CAT CK 0008

In the Central Administrative Tribunal

Case No : Original Application No. 330, 01509 Of 2015

Gulab Singh APPELLANT

Vs

Union Of India Through The General Manager, North Central Railway, Allahabad & Ors RESPONDENT

Date of Decision : 19-12-2024

Acts Referred:

Citation : (2024) 12 CAT CK 0008

Hon'ble Judges : Om Prakash VII, Member (J);Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : Binod Kumar Vishwakarma, M.P. Mishra

Final Decision : Dismissed

Judgement

Om Prakasah -Vii, Member (J)

1. By means of present O.A., the applicant has sought the following reliefs:-

"i. Issue an Order or Direction in the nature of mandamus commanding the Respondents to treat the Applicant in service up to the date of his retirement i.e.31-03-2014 in respect of all means (consequential benefits).

ii. Issue a Order Direction in the nature of mandamus commanding the Respondents to fix the pay of the Applicant in the Pay Scale of 110-180 during 2nd Pay Commission period with revised Pay Scales as recommended by the successive Pay Commissions during the subsequent period with all other consequential benefits including the benefits available under the ACP/MACP Scheme, in terms of letter of the Respondent No.2 dated 24-02-2012 (ANNEXURE No.A-8 to the O.A).

iii. Issue a further Order or Direction in the nature of mandamus commanding the Respondents to make payment of arrears of Pay and all other amounts towards the post retiral benefits to the Applicant including his monthly pension and all other Post Retiral benefits

iv. Issue a further Order or Direction in the nature of mandamus commanding the Respondents to make payment of interest on the due amount at the rate of 18% P/A.

v. Issue any other and further Writs, Orders or Directions, which this Hon'ble Court may deem fit and proper in the facts and circumstances existing in the present case the case.

vi. Award the cost of the Original Application to the applicant".

2. During the pendency of this OA, the original applicant Shri Gulab Singh passed away and thereafter his widow has been substituted in his place by way of a substitution application.

3. Present OA has been filed by the original applicant when 1st class coaches in running trains were reduced and applicant and some other similarly situated employees, who were coach attendants were declared surplus. Relief is sought in the matter for regularization of period between 2005 till superannuation and for salary and other allowances including the post retiral benefits. Applicant had earlier approached this Tribunal twice by filing original applications and same were disposed of. The applicant's pay scale has already been reduced in Rs. 110-180 and also time to time in revised pay scale.

4. Per contra, learned counsel for the respondents filed counter affidavit wherein it has been submitted that when first-class coaches were abolished, other Coach Attendants including the original applicant became surplus staff. The other surplus staff including the original applicant were given opportunities to clear the Ticket Collector exam twice for their absorption but failed to do so. On court direction, the original applicant was placed in the pay scale of Rs. 110-180 in accordance with the Pay Commission. The original applicant was offered the post of Helper, which he did not join and subsequently absconded from service. A chargesheet for unauthorized absence was issued but later-on withdrawn without prejudice. It is also mentioned in the counter affidavit that a person who willfully absconds from service cannot seek relief for re-engagement and regularization. The judgment in OA No. 744 of 2012 was challenged before the Hon'ble High Court, which is still pending in the High Court.

5. In reply to the counter affidavit, applicant has filed rejoinder affidavit negating the contentions as made in the counter affidavit while reiterating the averments as already advanced in the OA. Nothing new has been averred in the rejoinder affidavit.

6. We have heard Shri Binod Kumar Vishwakarma, learned counsel for the applicant and Shri M.P. Mishra, learned counsel for the respondents and perused the record.

7. Submission of the learned counsel for the applicant is that applicant's husband/ original applicant was serving in the respondents' department as Coach Attendant. On account of reduction of 1st class Coaches in running trains,

number of Coach Attendants became surplus. Original applicant has also been declared surplus and accommodated to the post of Helper vide letters dated 13.01.2005 and 19.01.2005. Since post of Helper was entirely different to the post of Coach Attendant due to this reason original applicant as well as other similarly situated employee did not join the post of Helper and made request to absorb them against the same grade pay. Since no action was taken on part of the respondents, original applicant along with similarly situated person filed OA No. 77 of 2005 before this Tribunal, which was decided finally on 18.08.2005 with the direction to decide the representation of the applicants in respect of their grievances. Interim protection has also been granted in the OA. It was next argued that applicant's representation was rejected thereafter again OA No. 136 of 2006 was filed before this Tribunal. Again interim protection was granted to maintain status quo. It was further argued that similar controversy was raised before Hon'ble Delhi High Court under Writ Petition No. 566 of 2000, which was decided on 07.02.2008 with direction to grant the claim of that petitioner in their placement in the pay scale of Rs. 110-180 from the year 1960 or from the date they were working as Coach Attendant. Direction given in the judgment and order passed by Hon'ble Delhi High Court was implemented. Original applicant and similarly situated person filed copy of the order of the Hon'ble Delhi High Court along with comprehensive representations as well as order passed by Chandigarh Bench of this Tribunal on dated 18.05.2001 but no fruitful action was taken at the end of the respondents. Thus, an execution application No. 05/2010 was filed before this Tribunal and on the basis of order passed in the execution application fixation of pay in pay scale of Rs. 110-180 and revised scale from time to time was allowed and arrear of Rs. 125526/- through cheque was issued in favour of the original applicant vide letter dated 21.10.2011. On dated 2.11.2011, respondents issued major penalty chargesheet leveling him for unauthorized absence w.e.f. 27.01.2005. Enquiry was conducted and report was also submitted in which unauthorized absence was not found proved beyond doubt. Applicant submitted his defence reply dated 09.07.2013 before the Disciplinary Authority but the Disciplinary Authority after considering the reply of the applicant withdrew the chargesheet in question vide letter dated 11.10.2013 without any prejudice. No any other chargesheet was issued thereafter against the applicant till his superannuation. It is also argued that since chargesheet has been withdrawn, no disciplinary proceeding was pending against the applicant, thus, applicant became entitled for all consequential benefits. It is also argued that original applicant retired on 31.3.2014 on attaining the age of superannuation, thus, he was entitled for arrear of salary for intervening period as well as post retiral benefits. No payment has been made till today despite moving several representations, therefore, present OA was filed. Thus, prayer was made to allow the OA and to direct the respondents to grant the arrear of salary as well as post retiral benefits of the original applicant as well as family pension in favour of the present applicant because no disciplinary proceeding is still pending, same has been withdrawn by the respondents.

8. Learned counsel for the respondents referring to the counter affidavit argued that when first class coaches of running train were reduced, coach attendant working in the said coaches became surplus, thus, they were declared surplus staff. Original applicant as well as other surplus staff were given opportunity to clear the exam of ticket collector for their absorption twice but they did not clear the test. Due to this reason they could not be absorbed on the post of Ticket Collector. It was also argued that on the direction of the Court, pay scale of Rs. 110-180 in accordance with the Pay Commission has been given to the original applicant. He was allowed to work as Helper but he did not join. He himself absconded his services and a chargesheet was issued against the original applicant for unauthorized absence but it was withdrawn without prejudice. It was next argued that person who was willfully absconding from service, cannot claim relief from the Court for re-engagement and regularization in service. It was next argued that similarly situated employee had filed OA No. 744 of 2012 Tej Singh and others Vs. Union of India and others before this Tribunal which was decided on 3.11.2014 and OA was dismissed. Facts and circumstances of the present matter is also identical to the facts of the OA No. 744 of 2012, thus, original applicant is also not entitled for any relief as he himself absconded his services at his sweet-will. It was next argued that judgment and order passed in the aforesaid order was challenged by the applicants of that OA before the Hon'ble High Court, which is still pending. It was next argued that prayer made in the OA are not liable to be allowed it and applicant is not entitled for any relief. Since applicant himself absconded his services, same cannot be regularized, nor he is entitled for any post retiral benefits. Thus, argued to dismiss the OA.

9. We have considered the rival submissions advanced by the learned counsel for the parties and have gone through the entire records.

10. Admittedly, original applicant was declared surplus staff and he was originally working as Coach Attendant in first class coaches of running trains. He was allowed twice for clearing the test to be accommodated as Ticket Collector but he did not clear the same. He did not join on the post on which he has been deployed since 2005 till his superannuation. No any relief was allowed to the original applicant except issuing direction for disposal of the representation in the light of settled principle of law in the OAs filed earlier on behalf of the original applicant. Pay scale of Rs. 110-180 has been allowed to him. Major penalty chargesheet in the year 2011 was issued against the applicant regarding his unauthorized absence, enquiry was conducted, on submission of enquiry report, original applicant was directed to submit his reply. He also submitted reply but respondents have withdrawn the said chargesheet on dated 11.10.2013 by passing the following order:-

"Divisional Railway Manager's Office N.C. Railway, Allahabad.

No.CT-1/Coach Attendent/2008/Gulab Singh

Dt-11.10.2013

Sri Gulab Singh

Coach Attendent

N.C. Rly, Allahabad

Sub-Major Pennalty Charge Sheet no.CT-1/Coach Attendent/2008 dt-02.11.2011.

Ref-Your representation dated dt-09.07.13.

I have gone through the D&AR case of Sri Gulab Singh, Coach Attendant/ Allahabad and perused that he has been served with SF-5 dated 02.11.11 for unauthorized absence from duty with effect from 27.01.2005.

Further, I find that correct procedure, while issuing SF-5 dated 02.11.2011 has not been followed in accordance with the instruction issued vide NRPS No. 10568.

In view of above the proceeding is being withdrawn without any prejudice. Please acknowledge the receipt.

(S.K Srivastava)

Asstt.Comml. Manager

N.C.Rly, Allahabad.

Copy to:-

APO/Allahabad for information. He is requested to please arrange to make entry in this regard in the S/R of employee".

11. Perusal of the record also reveals that similarly situated employees had also been declared surplus and had been allowed twice for clearing the test for accommodating them on the post of Ticket Collector but they did not clear the same. They also did not join redeployed post after declaring the surplus but had approached before this Tribunal through OA No. 744 of 2012 – Tej Singh and others Vs. Union of India and others, which was decided on 3.11.2014 whereby the OA was dismissed being devoid of merit. The judgment and order passed in the aforesaid OA reads as under:-

Reserved

"CENTRAL ADMINISTRATIVE TRIBUNAL, ALAHABAD BENCH,

ALAHABAD

Allahabad, this the 3rd day of November 2014

Hon'ble Mr. Shashi Prakash, Member-A

Original Application No.744 of 2012

1. Tej Singh S/o Ram Chandra, R/o Village Phoolpur, Pest Chandikara, District Mainpuri.

2. Ram Bujharath S/o Jagdeo, R/o H.No. 225A, City Side Railway Colony, Kanpur.

3. Munna Lal Sio Lajja Ram, R/o Near Railway Station Bhogaon, District Mainpuri.

4. Mohan Lal S/o Late Balak Ram, R/o Village & Post Baba ka Purwa, District Auraiya.

5. Murlidhar S/o Bansidhar, R/o Mohalla Sanjay Nagar, District Auraiya (Diviyapur).

By Advocate Shri S.P. Shukla

.......Applicants.

VERSUS

1. General Manager, North Central Railways Head Quarter, Allahabad.

2. Divisional Railway Manager, North Central Railway, Head Office, Allahabad.

3. Senior Divisional Personal Officer, North Central Railway, DRM's Officer, Allahabad.

4. Senior Divisional Commercial Manager, North Central Railway, DRM's Office, Allahabad.

.Respondents.

By Advocate: Shri B. Tiwari

ORDER

(Reserved on 15.11.2014)

By Hon'ble Mr. Shashi Prakash, A.M.:

The present O.A. has been instituted seeking to quash the impugned orders dated 27.09.2005, 30.09.2005 and 22.01.2008 (Annexures 1, 2 and 3 of the O.A.). The applicants have also sought payment of salary in terms of the judgment of the apex court in Civil Appeal No.1248/2009 dated 23.06.2010.

2. Briefly, the facts as per O.A are that the applicants were promoted as coach attendants in the year 1982-83 in pursuance of a recruitment test. While working as coach attendants, the department published a provisional seniority list of the coach attendant comprising a total number of 46 employees. The app.icants completed 22 years of service on the post of coach attendant. Subsequently, the respondent No. 2 by order dated 27.09.2005 and 30.09.2005 deployed applicant No. 3 and 1 as helper & khalasi respectively. It is contended in the O.A that while the post of coach attendant is a class lil post in the old pay scale of Rs. 3050-4590, respondent No. 2 illegally deployed them to the post of helper/ khalasi which is in the pay scale of Rs. 2650-4000 thereby causing finar.cial hardship to the applicants. Though representations were made by the applicants against the action of the respondents, it was not responded to.

3. By orders dated 13.01.2005, 27.09.2005 and 30.09.2005, the respondent No. 2 redeployed the applicants to the post of helper/khalasi with a view to shutout their promotional channel. Feeling aggrieved on this account, the applicants filed an O.A No. 858/2005 and 359/2006 before this Tribunal challenging the validity of their dep.oyment. The Tribunal decided the O.A by order dated 29/10/2007 and directed the respondents to seriously consider the possibility of accommodating the applicants in other categories of attendants as described in the Para 3 of the O.A against the vacancies. If on consideration of this possibility, it is found to be possible to accommodate the applicants as attendants, the respondents shall issue suitable revised order. It is also stated in the order that the position of the respondents in this regard will be final and no further Eberty will be given to the applicants to file any O.A in the same matter. It is averred in the O.A that despite the order of this Tribunal, the applicants were directed by order dated 28/01/2008 to join the posts where they had been deployed implying thereby that the respondents had declined the claim of the applicants.

4. The All India Shramik Coach Attendants Association and others filela writ petition (Civil No. 556/2000) before the Hon'ble Delhi High Court claiming parity of the pay scale of the coach attendants with that of passenger attendants and saloon attendants. This writ petition was allowed by the Hon'ble Delhi High Court with direction that the coach attendants should also be placed in the pay scale of 110-180 since the year 1960. The SLP filed against this order before the Hon'ble Supreme Court was rejected. Having regard to this position, the applicants have stated that the decision of the respondents to deploy the applicants on a lower post cannot be sustained and they should be granted the claim as granted by the Hon'ble Delhi High Court.

5. In the counter reply, the respondents have submitted that the applicants who were appointed as porters/ peon in the grade of Rs. 196-232 were promoted as coach attendants in the grade of Rs. 200-250, subsequently upgraded to Rs. 210-270 (revised pay Rs. 2650-4000). On account of phasing out of first class coaches, there was reduction in the requirement of coach attendants and the large number of coach attendants had to be surrendered and declared as surplus staff. All these surplus coach attendants were given two chances for redeployment as ticket collector but they could not be found suitable and hence could not be posted as ticket collector. Thereafter, they were redeployed as helper Grade-I in the grade of Rs. 2650-4000 in mechanical and electrical departments in the equivalent grade of Rs. 2650-4000 on account of existence of vacancies in those departments at the relevant point of time.

6. The applicants had filed O.A. 858/2006 in this Tribunal which was disposed of by order dated 29.10.2007 alongwith O.A of 359 of 2006. The directions given in this order were fully complied with by the respondents to the effect that a fresh exercise was carried out to determine the revised seniority of all the 46 coach attendants based upon the relevant records. Furthermore, an assessment of the requirement of the services of coach attendants was undertaken and it was found

as a result of the assessment that only four coach attendants were required and the remaining had to be declared as surplus in the commercial department for the reason that only the four senior most coach attendants from the seniority list could be absorbed in the coach attendant cadre. The remaining persons had to be redeployed. The seniority position of all the applicants was below serial No. 4 and therefore none of them could be absorbed. They of Rs. 200-250, subsequently upgraded to Rs. 210-270 (revised pay Rs. 2650-4000). On account of phasing out of first class coaches, there was reduction in the requirement of coach attendants and the large number of coach attendants had to be surrendered and declared as surplus staff. All these surplus coach attendants were given two chances for redeployment as ticket collector but they could not be found suitable and hence could not be posted as ticket collector. Thereafter, they were redeployed as helper Grade-I in the grade of Rs. 2650-4000 in mechanical and electrical departments in the equivalent grade of Rs. 2650-4000 on account of existence of vacancies in those departments at the relevant point of time.

7. It has further been brought out in the counter affidavit that the applicants have absented themselves from the duty since 2005-06, that is from the time they were redeployed as Helper Grade-1. As they have absconded from duty without any permission and justification, this amounts to abandonment of the.r services as per their own choice. Hence, they cannot seek any relief against their deployment order due to the fact of their voluntary abandonment of service. For the reasons stated herein above, it has been urged that the applicants do not have any claim to the relief as sought by them and the O.A deserves to be dismissed.

8. Heard counsel for both the parties and perused the pleadings. The grievance of the applicant in the present O.A has arisen on account of certain developments taking place in the respondent's department. As a consequence of policy decision, the respondents decided to phase out the first class compartment that were being attached with the passenger trains and replaced by AC-II Tier coaches. This was done with a view to increase the number of berths in a coach so as to facilitate accommodation of larger number of passengers and provide them with air condition facilities. On account of this policy decision resulting in phasing out of first class coaches, the requirement of coach attendants was considerably reduced. The more numerous part of the coach attendants cadre had been allotted duties in the first class coaches where they were assigned Die task of providing bed rolls to the passengers and to core of their miscellaneous needs. Since, due to phasing out of these coaches, a large number of coach attendants were found to be in surfeit and had to be surrendered and redeployed. These coach attendants were provided with an opportunity to qualify for the post of ticket collector subject to their clearing the eligibility test. It is, on account of this development that the applicants who were rendered surplus redeployed as Helper/ Khalasi in the mechanical and electrical division in the pay scale equivalent to that which they were drawing as coach attendants. It is

clearly brought out in the counter affidavit that they were provided with the opportunity for redeployment as ticket collector, but were not found suitable. As there were no vacancies existing at that point of time in the commercial department, the respondents were constrained to redeploy them as Helper/ Khalasi in the same pay scale in the departments where vacancies were found.

9. Consequent to the order issued in OA No. 858/2006, the respondents under took re-assessment of the requirement of the coach attendants in the commercial department. They came to the conclusion that there were requirement of only four coach, attendants and as the seniority list of these coach attendants comprised 46 persons the others had to be redeployed with the departments where vacancies were available. It has been clearly brought out in the counter affidavit by the respondents that since the date of the redeployment, the applicants have absented themselves and not reported for duty till the date of retirement. The respondents have treated this voluntary absence on the part of the applicants as an abandonment of their services and hence they are not entitled to relief as claimed by them.

10. From the above facts, it is evident that in absence of vacancies in the commercial department, the respondents did not have any option but to redeploy the applicants in the departments where vacancies were to be found at the time when "the applicants were declared as surplus staff. There does not appear to be any infirmity in their action which is in accordance with the well settle/practice followed in this regard.

11. The applicants have raised their objection against their redeployment in mechanical and electrical department on the ground that while the post of coach attendants was in Grade 'C' (Rs. 3050-4590) they were deployed as Helper/ Khalasi which, were Grade 'D' (Rs. 2650-4000) posts which was not sustainable. In this connection, it ray be relevant to note that the pay of the coach attendants in the scale of Rs. 3050-4590 was fixed only pursuant to the judgment of the Hon'ble Delhi High Court in the writ petition (Civil No. 566/2003, delivered 07.02.2008). Accordingly, the coach attendants could have claimed this pay only subsequent to the judgment of the Hon'ble Delhi High Court. The applicants were declared surplus in the year 2005 and redeployed by order dated 27.09.2005 as Helper/ Khalasi ie prior to the date of the judgment of the Hon'ble Delhi High Court. In view of this fact, the arguments of the applicants that they were in the Group 'C' post and were wrongly redeployed in Group 'D' posts is found to be untenable.

12. During hearing, the learned counsel for the applicants stated that the decision of the respondents to treat the period of absence of the applicants as abanconment of services cannot be upheld particularly in terms of the ratio laid down by the Apex Court in the case of New India Assurance Co. Ltd. versus Vipin Behari Lal Srivastava (2008) 1 SCC (L&S) 778 and Krushnakant & Parmar Versus Union of India, AIR (SCW)- 2012-0-1633. Perusal of these two judgments suggests that they are not applicable to the facts of this case as they mainly deal

with the question of unauthorized absence and not with the question of abandonment of the services. Here it may be relevant to understand as to what constitutes the abandonment of services. This can best be done by reproducing the extracts of the judgment of the Apex Court delivered on the subject in the case of G.T. Lad Vs Chemical & Fibres of India Limited (AIR 1979 SC 582).

"In the Act, we do not find any definition of the expression 'abar.donment of service'. In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. Accordingly to the Dictionary of English Law by Earl Jowitt (1959 edition) 'abandonment' means 'relinquishment of an interest or claim'. According to Black's Law Dictionary 'abandonment' when used in relation to an office means voluntary relinquishment". It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual or imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient 'abandonment of office'. to constitute an From the quotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham & Carnatic Co. v. Venkatiah, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abar.don service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to a employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surroundings circumstances of each case.

13. From the above, it is seen that the inference related to abandonment of service has to be withdrawn from the facts and surrounding circumstances of the case as to whether there has been a voluntary relinquishment on the part of the employee. From the facts of the case, it is evident that the applicants abandoned their duties since 2005 and did not report back (CR- 3). It clearly manifests an intention on the part of the applicants to abandon their service. Their cases can not be treated as that of unauthorized absence. Having regard to this fact, the treatment of the period of absence of the applicants without intimation has rightly been treated by the respondents as the case of abandonment of the service.

14. Keeping in view the above mention facts and circumstances we find that the

O.A is devoid of merit and accordingly dismissed. No order as to costs”.

12. Although major penalty chargesheet had been issued against the applicant but it was later-on withdrawn, applicant did not join the duty since 2005 till his superannuation on redeployed post, thus, ratio laid down in Tej Singh (supra) case is equally applicable in the facts and circumstances of the present case also. Applicant ought to have joined the duty on redeployed post. Since he did not join that post meaning thereby he has relinquished his services on his sweet-will, thus, applicant is not entitled for any relief claimed in the matter. Accordingly, present OA is decided in terms of OA No. 744 of 2012 and present OA is devoid of merits and is accordingly dismissed. No order as to costs. All associated MAs are disposed of.

