

Naresh Sharma Vs Union of India

Court: Jharkhand High Court

Date of Decision: March 27, 2014

Acts Referred: Penal Code, 1860 (IPC) â€” Section 323, 341, 385, 506

Citation: (2014) 3 JLJR 614

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: M.M. Pal, Sr. Advocate, S.C. Roy, A.C. Maheta and Ruby Pandey, Advocate for the Appellant; Ram Nivas Roy, S.C. and Jalisur Rahman, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.

Aggrieved by order dated 22.07.2013 passed by the learned Central Administrative Tribunal, Circuit Bench,

Ranchi in O.A. No. 90 of 2011 (R), the petitioner has approached this Court by filing the present writ petition.

2. The petitioner was appointed on 24.01.1974 on the post of Khalasi in Signal and Telecom Department and he was posted at Tatanagar, CKP

Division. On 11.04.1996, a charge-memo was issued to the petitioner for unauthorised occupation of quarter No. 530/E at Golpahari and for

constructing a Pucca structure on the railway land adjacent to the said quarter. By the penalty order dated 14.05.1998, pay of the petitioner was

reduced in the time scale of pay to Rs. 2,550-3,200/- by two stages below for two years with non-cumulative effect. Thereafter, vide order dated

18.01.2000 the petitioner was relieved from Tatanagar. The petitioner made representations to the authorities for permitting him to continue at

Tatanagar on the ground of his personal difficulty. By letter dated 16.11.2001, the petitioner was informed that his request for transfer from Bano

to Tatanagar may be considered as and when a vacancy at Tatanagar would occur. Since the petitioner did not join at Bano, a charge

memorandum dated 13.10.2001 was given to the petitioner to which he filed his show-cause reply. The petitioner thereafter also made several

representations and lastly in May, 2009 before the Senior Divisional Signal and Telecom Engineer, S.E. Railway for accepting his joining however,

he was not permitted to join his post. In the meantime, the petitioner moved the Central Administrative Tribunal in O.A. No. 202 of 2009 which

was disposed of by order dated 05.10.2009 and pursuant to the said order of the learned Tribunal, the Senior Divisional Signal and Telecom

Engineer, Chakradharpur vide order dated 30.12.2009 posted the applicant at Padapahar under S.S.E. Signal, Padapahar. The petitioner

accordingly, joined his new place of posting on 15.01.2010 from where he retired on 03.01.2011. The learned Tribunal after considering the

response of the respondents dismissed the O.A. holding that the contention of the applicant was fallacious and barred by limitation.

3. Mrs. M.M. Pal, the learned Senior counsel appearing for the petitioner has submitted that, it is a matter of record that the petitioner submitted

several representations for permitting him to continue at Tatanagar and for accepting his joining however, the petitioner was not permitted to join.

Relying on order dated 30.01.2010 in Complaint Case being C/1 Case No. 458 of 2001 whereby, accused namely, Ashim Sarkar, Uday Kumar

Sinha and Ram Kumar Jha have been found guilty for offence under Section 323, 341, 506 and 385 IPC, the learned Senior counsel submitted

that since the petitioner was prevented from joining his duty, he was entitled for regularisation of the period of the alleged absence with all

consequential benefits. It is further submitted that though, a charge-memo dated 13.10.2001 for not joining his post was served to the petitioner,

the departmental proceeding was not concluded and no order has been passed imposing penalty on the petitioner for unauthorised absence and

therefore, the period between January, 2001 to December, 2009 needs to be regularised and all consequential benefits should have been granted

to the petitioner. The learned counsel appearing for the petitioner has relied on the decision in Union of India Vs. K.V. Jankiraman, etc. etc., .

4. As against the above, the learned counsel appearing for the respondents submitted that, though vide office order dated 12.01.2001, the

petitioner was promoted and posted at Bano and he was released from Tatanagar on 18.01.2001 with V specific direction to join at Bano on

19.01.2001 however, the petitioner did not join at Bano and remained absent unauthorisedly and therefore, the petitioner was not entitled for any

relief.

5. We have heard the learned counsel for the parties and considered the submissions made by the them. It is not in dispute that vide order dated

12.01.2001, the petitioner was posted at Bano and on 18.01.2001, he was released from Tatanagar. It is the case of the petitioner that he was

prevented from joining his duty and inspite of several representations, he was not permitted to join his duty. It is also submitted that the petitioner

filed a Complaint Case being C/1 Case No. 458 of 2001 against three persons who had threatened them with dire consequences if he tried to

enter the office. Except the alleged representations and the order dated 30.01.2010 in Complaint Case being C/1 Case No. 458 of 2001, the

petitioner could not produce any other material in support of his claim that he was prevented from joining his duty. The Complaint Case was filed

on 26.04.2001 for the occurrence dated 25.04.2001. The petitioner himself made representations to the authorities for permitting him to retain the

post at Tatanagar and in response to the representation of the petitioner by letter dated 16.11.2001 he was informed that his request for transfer to

Tatanagar may be considered as and when vacancy arises. The petitioner moved the learned Central Administrative Tribunal in O.A. No. 127 of

2004 for grant of promotion and promotional benefits. He again moved the Tribunal in O.A. No. 202 of 2009 for a direction to the respondents to

pass an appropriate order so that the petitioner can join his duty. The petitioner has failed to explain the delay from 12.01.2001 till he approached

the learned Tribunal in O.A. No. 202 of 2009. The learned Tribunal has found that the plea of the petitioner that he was not allowed to join his

duty is highly fallacious. It has also been found that the petitioner had failed to produce any evidence that he performed his duty between the period

January 2001 to December, 2009 and accordingly, the learned Tribunal has held that the question of making payment or regularising the said

period does not arise. We do not find any merit in the contention raised by the learned Senior Counsel appearing for the petitioner that, since

pursuant to charge-memo dated 13.10.2001 the departmental proceeding was not continued and no order of punishment has been passed against

the petitioner, the aforesaid period between January, 2001 and December, 2009 cannot be treated as unauthorised absence. We also do not find

any substance in the contention that the petitioner was prevented from joining his duty. It is admitted by the petitioner himself that he wanted to

remain at Tatanagar. Except stating that, he submitted several representations, the petitioner has failed to produce any evidence that he had actually

gone to his place of posting at Bano and offered his joining. Mere filing of representation would not regularise the unauthorised period of absence

from duty When the petitioner moved the learned Tribunal in O.A. No. 202 of 2009, pursuant to order dated 05.10.2009 passed therein, the

respondents issued order dated 30.12.2009 posting the applicant at Padapahar where the petitioner ultimately joined on 15.01.2010. Had the

petitioner approached the learned Tribunal in the year, 2001 such a direction could have been issued at that time itself. However, the petitioner

failed to take prompt steps in the matter and the learned Tribunal has rightly held that for such laches the petitioner is to be blamed himself.

6. We find no infirmity in the order dated 22.07.2013 passed by the learned Central Administrative Tribunal and accordingly, this writ petition is

dismissed.