
(2014) 03 JH CK 0055

Jharkhand High Court

Case No: W.P. (S) No. 7001 of 2013

Naresh Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: March 27, 2014

Acts Referred:

- Penal Code, 1860 (IPC) - Section 323, 341, 385, 506

Citation: (2014) 3 JLR 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.