

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : INDORE

Original Application No.201/01030/2017

Jabalpur, this Friday, the 20th day of March, 2020

**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER**



Raghvendra Sharma, S/o Shri Bhawani Parshad Sharma, Aged 53 years,
97, Sai nath Colony, Sanwer Road, Ujjain(M.P.)-PIN-456001 **-Applicant**
(By Advocate – Shri A.N.Bhatt along with Shri C.P.Lashkari)

V e r s u s

Union of India & others

Represented by

1. The General Manager, Western Railway, Head Quarter Office,
Churchgate, Mumbai-400 020

2. The Divisional Rail Manager, Western Railway, Divisional Office,
Do-Batti, Ratlam-457001

3. Anshu Mali, Divisional Mechanical Engineer, Western Railway,
Rajkot(Guj), PIN-360001.

4. Pintudas, Senior Section Engineer, Carriage & Wagon Office,
Behind MPEB Office, Maxi Road,Ujjain-456001

-Respondents

(By Advocate – Shri Piyush Shrivastava)

(Date of reserving order: 17.03.2020)

O R D E R

By Navin Tandon, AM.

The applicant is aggrieved that leave has not been sanctioned for 124 days of sick period.

2. The applicant has made the following submissions:-

2.1 He is working as Senior Section Engineer (Loco) Ujjain and working in-charge of Loco.

2.2 He is chronic patient of diabetes and high blood pressure. While he was on duty on 05.02.2015, all of a sudden he became sick and hence approached his private family doctor, who advised him to take complete rest.

2.3 He intimated regarding sickness on 05.02.2015 itself (Annexure A-2).

2.4 He took treatment from private doctor from 05.02.2015 to 18.03.2015 and then gone under the treatment of railway doctor from 19.03.2015 onwards. During this sick period he met with a serious accident. He remained under treatment of railway doctor till 08.06.2015 and joined duty on 09.06.2015 with proper sick fit certificate issued by the railway doctor (Annexure A-3).

2.5 During sickness period he continuously sent the certificates. However, pay sheet preparing authority (respondent No.4) without any authority treated railway doctor's sick period from 19.03.2015 to 08.06.2015 as Half Leave Average Pay.

2.6 He submitted his representation dated 10.06.2015. The Senior Divisional Mechanical Engineer, Ratlam was misled and misguided by respondent No.4. Accordingly, he treated sick period from 05.02.2015 to 18.03.2015 as leave without pay vide order dated 16.12.2015 (Annexure A-1). No order has been passed for the remaining period in Annexure A-1. However,



respondent No.4 has treated 09.03.2015 to 08.06.2015 as Half Leave Average Pay.

2.7 He had a credit of maximum 300 days of leave at average pay at the concerned time.

3. He has prayed for the following reliefs:-

“(8.1) Through Ann.A/1 letter the sick period treat as leave without pay may kindly be quashed.

(8.2) The respondents may kindly be directed that the sick period from 05-02-2015 to 08-06-2015 should be treated as Leave Average Pay as due.

(8.3) Salary for this period with interest may kindly be directed to pay.

(8.5) The Court expenses incurred due to unauthorized action by Pintudas may be recovered for his wages and paid to the applicant.

(8.6) Suitable direction against Respondent No.3 (i.e. Sr.DME Ansu Mali) may kindly be passed in the interest of justice.

(8.7) Any other relief as deemed fit may kindly be passed with interest of justice”.

4. The respondents have filed their reply wherein they have stated that the impugned order is dated 16.12.2015 (Annexure A-1) but the present Original Application has been filed on 18.12.2017. Therefore, it is time barred in view of the provisions of Section 21 of the Administrative Tribunals Act.

4.1 They have further stated that the competent authority, namely, Senior Divisional Mechanical Engineer (for brevity ‘Sr.DME’) considered the matter regarding sanctioning of leave to the applicant in view of the rules framed in this





regard and passed an order whereby he observed that the applicant is not entitled for LAP as he had not followed the sick rule and submitted the application for sick leave just to avoid joining at the transferred place i.e. MHOW.

4.2 Since the applicant was under treatment of private doctor from 05.02.2015 to 18.03.2015 and he was under treatment of railway doctor from 19.03.2015 onwards, therefore, the period from 05.02.2015 to 18.03.2015 has been considered as leave without pay and the period from 19.03.2015 is considered for regular pay. A copy of the office memo dated 17.06.2015 (Annexure R-1) mentions the same i.e. his salary from 19.03.2015 onwards has been considered for regular pay.

4.3 The applicant submitted his application dated 16.06.2015 in regard to sanction of leave. A detailed explanation was sought from him as well as from the unit-in-charge SSE(respondent No.4 being occupant of that post at the relevant time). Both the applicant and respondent No.4 have filed their replies (Annexures R-3 and R-4 respectively).

4.4 The competent authority has considered the relevant rules as per RBE No.145/2002 (Annexure R-5) and order dated 14.09.1999 (Annexure R-6).

5. The applicant has filed his rejoinder where he has raised insinuation against respondent No.4. It has also been reiterated that the Original Application is within limitation.



6. Heard the arguments of the learned counsel of both the parties and perused the pleadings available on record.

7. The arguments were mainly on the lines of the pleadings.

8. Learned counsel for the applicant placed reliance on the decision of Principal Bench of this Tribunal in the matters of **Vijay Singh Vs. D.D.A & ors.** 2018(2)SLJ(CAT)234 and also of Cuttack Bench of this Tribunal in the matters of **Rajlakshmi Mitra Vs. Union of India and others**, 2016(3)SLJ (CAT)244.

9. It is seen that the impugned order is dated 16.12.2015 and this Original Application has been filed on 10.12.2017. Section 21 of the Administrative Tribunals Act, 1985 provides that an Application before this Tribunal should be filed before expiry of one year of the passing of the final order. It further provides that in a case where an appeal or representation is made against an order, and a period of six months had expired thereafter without such final order having been made, the Application can be filed within one year from the date of expiry of the said period of six months. In the instant case we find that the applicant has not stated that he had ever represented against the order dated 16.12.2015. Therefore, it is clear that the present Original Application is barred by limitation.

10. The entire period for which sanction of leave is being prayed for is in two parts, namely, 05.02.2015 to 18.03.2015 and 19.03.2015 to 08.06.2015.



11. As far as the period 05.02.2015 to 18.03.2015 is concerned, it has not been disputed by the applicant that no sick and fit certificate has been issued by a railway doctor. He has only placed reliance on the fact that on 05.02.2015 he had informed his office that he is having abdominal pain and therefore is reporting sick (Annexure A-2). On the other hand the respondents have clearly stated that as per the relevant rules of commuted leave/leave on medical certificate (RBE No.145/2002 dated 29.08.2002) “the Railway employees who are covered by the line jurisdiction of the Railway doctor and who have fallen ill, may obtain a Medical Certificate from a Registered Medical Practitioner (RMP) subject to the condition that if the leave applied for on medical grounds is for more than 3 days, the employee should report to the Railway doctor if he is fit to travel or send intimation about his condition if he is bed-ridden, at such intervals as directed by the Railway doctor”. The learned counsel for the respondents submits that there is a railway dispensary within Ujjain where the applicant could have availed the treatment.

11.1 The reliance placed by the learned counsel for the applicant on the decision of **Rajlakshmi Mitra**(supra) will not come to his assistance as in that case it was a question of five days' casual leave in five different occasions. In the present case it is a case of remaining absent for 42 days.



11.2 The learned counsel for the applicant also placed reliance on the decision of **Vijay Singh** (supra) wherein the charge sheet had been quashed. Perusal of the said order clearly indicates that that was a case of charge sheet being issued on 20.06.2016 just 10 days before his retirement for remaining absent in various spells for the period from 1985 to 2011, the bulk being from 1985 to 1998. In the instant case there is no charge sheet which has been issued and the case is of regularization of absence, which has been considered in a reasonable time.

12. It is an admitted fact that the applicant did not approach the Railway doctor during the period of his leave from 05.02.2015 to 18.03.2015 even though the railway medical facilities were available at Ujjain. In view of the rule position brought out by the respondents, we do not find any illegality or irregularity in the orders of the respondent-department in treating the period from 05.02.2015 to 18.03.2015 as leave without pay.

13. As far as the period 19.03.2015 to 08.06.2015 is concerned, it is covered by a sick and fit certificate of the railway doctor. The respondents in their reply have stated that this period is considered for regular pay. However, during argument stage it has been submitted by the learned counsel for the applicant that he has not been paid full salary for this period and only half pay has been given. The respondents are directed to examine this matter by examining the pay records of

relevant period and if any amount is due to be paid for this period, the same may be paid to the applicant within a period of 60 days from the date of receipt of a copy of this order.

14. Therefore, the Original Application is dismissed as barred by limitation as well as on merit. However, the respondents are directed to take steps regarding what has been stated in Para 13 above. No costs.



(Ramesh Singh Thakur)
Judicial Member

rkv

(Navin Tandon)
Administrative Member