

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00711/2018**

Date of Order: 13.01.2020

C O R A M

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Jagdish Sah, Son of Late Ram Prit Sah, Pointsman 'A' under Station Superintendent, N.F. Railway, Dalan (Bihar).

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Applicant.



By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the General Manager, North Frontier Railway, Maligaon- 781012 (Guahati).
2. The General Manager (Personnel), North Frontier Railway, Maligaon- 781012 (Guahati).
3. The Divisional Railway Manager, North Frontier Railway, Katihar- 854103 (Bihar).
4. The Senior Divisional Operating Manager, North Frontier Railway, Katihar- 854102 (Bihar).
5. The Divisional Railway Manager (Personnel), North Frontier Railway, Katihar- 854103 (Bihar).
6. The Senior Divisional Financial Manager, North Frontier Railway, Katihar- 854103 (Bihar).

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Respondents.

By Advocate: - Shri Sheojee Prasad

O R D E R
[ORAL]

Dinesh Sharma, A.M:- In the instant OA, the applicant has prayed for setting aside the order passed by Sr. DOM/KIR dated 02.08.2018 regarding regularization of his period of absence and also requested for directing the respondents to count the LAP period from 17.08.2012 to 19.08.2012 and RMC period from 17.05.2013 to 26.08.2013 (total 104

days) towards qualifying service (for eligibility of pension and consequential benefits). The applicant had earlier approached this Tribunal in OA/050/00484/2018 which was disposed of by this Tribunal with a direction to the respondents/concerned authority to consider and dispose of a representation to be filed by the applicant. Following this, the impugned order dated 02.08.2018 has been passed in which the respondents have wrongly regularised the aforementioned period as Leave Without Pay. This order is bad in law and is also contrary to the earlier orders passed by the respondents regularizing the aforementioned period of absence as LAP (Annexure A/1 and Annexure A/5). He has already been paid salary for the said period and therefore conversion of this period into leave without pay by the impugned order is wrong and hence, the OA.

2. A written statement has been filed by the respondents in which they have denied the claim of the applicant. It is stated that the applicant tried to misguide the authority for treating the period from 22.06.2013 to 26.08.2013 as RMC. His name was struck off from the sick list w.e.f. 22.06.2013 due to non-attendance. Non-attendance in hospital is treated as unauthorized absence. In terms of Rule-36 of MOPR- 1993 all leave and extraordinary leave granted on medical ground only shall be counted as qualifying service. When the applicant submitted option for retirement under LARGESS scheme, on scrutiny of his application it was found that he has not completed 33 years of qualifying service as on



01.01.2017 and his candidature was rejected on that ground. Since the period of absence from 27.08.2012 to 29.08.2012 and also the period from 22.06.2013 to 26.08.2013 have been treated as leave without pay and a speaking order has been passed by the competent authority, the OA deserves to be dismissed.

3. I have gone through the pleadings and heard the arguments of the learned counsels of both the parties. The learned counsel for the applicant argued that the impugned order treating the period of absence as leave without pay could not have been passed without the applicant applying for such leave. A change in the type of leave granted is not permissible under the rules. The learned counsel for the respondents argued that the LARSGESS scheme has now been terminated. The matter regarding the wrong sanction of leave against medical certificate was noticed at the time of considering the application of the applicant for grant of employment under the scheme. The applicant had himself made a request for regularization of leave by a letter (Annexure R/2) in which he had sought for regularization of his period of absence against leave due in his credit into commuted leave or any leave due in his credit.

4. After going through the pleadings and hearing the arguments of the learned counsels for the parties, it is clear that the respondents, after sanctioning LAP (for the period 17.08.2012 to 19.08.2012) and another leave against medical certificate and also paying him salary against these periods have later changed the leaves



sanctioned into leave without pay. The reason apparent from the speaking order issued by the applicant is that “the concerned staff has obtained the fit certificate by misguiding the issuing authority and hence the period will not be treated as RMC”. The speaking order also mentions that regularization of his absentee/sick period after such a long period “naturally creates doubt that it is just to get the job under LARSGESS scheme”. The respondents have not produced anything to show under what rules they have converted the period of sanctioned leave from a leave against medical certificate to a leave without pay. There is also no evidence to show that any opportunity was given to the applicant to explain his side before such change in the nature of leave sanctioned was made. Thus, I find that the order passed by the respondent authorities dated 02.08.2018 is in violation of principle of natural justice and also suffers from the infirmity of not showing under what rules a leave already granted was converted into leave without pay, that too without any application by the applicant to grant him that kind of leave. If there is any doubt about the applicant having misguided the respondents the respondents will be at liberty to take appropriate action under the rules against the applicant after giving him a reasonable opportunity to represent against that action. The OA is disposed of accordingly. No order as to costs.

[Dinesh Sharma]
Administrative Member

Srk.

