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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1461 of 1999

New Delhi, this the 8th day of June, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

V.L.S. Tyagi
S/o Shri B.S. Tyagi
Chief Pharmacist/AMBR,
R/o 10/12 Railway Colony
Sewa Nagar, New Delhi.

And General Secretary, Northern Railway Labour Union,
Registered and Protective) -APPLICANT

(Applicant in person)

Versus

1. Union of India
through the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Dr. Deepali Gupta
Ex-DMO/ANVR
Presently posting at Delhi Division
Hospital, S.P. Mukherjee Marg, Delhi
(Northern Railway Hospital).
3. Senior DMO, Northern Railway
Health Unit, Anand Vihar, Delhi-92.
4. Shri Mahinder Partap, APO,
(Welfare and Pass, PTO),
Northern Railway, Baroda House,
New Delhi.
5. Shri S.C. Gupta
Station Superintendent, Lajpat Nagar,
Railway Station, New Delhi-110 024.
6. Shri R.P. Gupta,
Station Superintendent,
Safdarjung Railway Station,
New Delhi. -RESPONDENTS

(By Advocates: Shri H.K. Gangwani and Sh.R.L. Dhawan)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant in this case is aggrieved of the
fact that he has not been issued privilege passes and PTOs
for travelling on the railways as these are being issued

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to every railway employee.

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2. The facts in brief are that the applicant at the relevant time was working as Chief Pharmacist and he alleges that he was posted at Anand Vihar Health Unit of Northern Railway, Delhi-92. He further alleges that all the railway employees are entitled for issue of free railway passes and PTOs and uniform etc. which is a service condition of contract between the employee and the employer and which falls in the ambit of wages to be paid to the employees.

3. The applicant further alleges that at the Anand Vihar one Dr. Deepali Gupta was DMO but her behaviour and attitude with patient and staff was very bad so applicant made certain complaints against her and had also registered a case under Industrial Dispute alleging allegations against Dr. Deepali as such she became very much annoyed with the applicant with the result that she never issued any pass/PTO and on the contrary she got him transferred from Anand Vihar Health Unit to Delhi Division Hospital. The applicant challenged his transfer vide order in OA 2035/95 which was allowed and the transfer order was quashed and the applicant had requested the Sr. DMO, Anand Vihar, Delhi i.e. Dr. Deepali Gupta to issue his passes and PTOs for his requirement from time to time but she has not issued the same because of her revengeful attitude which has caused much of the harassment and humiliation to the applicant and despite his repeated requests for issue of

passes and PTOs the applicant has not been issued the passes and PTOs, so he has prayed for the following reliefs:-

(i) A direction be issued against the respondents to issue the pass and PTOs to the applicants w.e.f. 1996 to onwards.

(ii) A direction be issued against the respondent to issue the passes and PTOs for the years 1998, as requirement of the applicant, immediately.

(iii) A direction be issued against the respondents to pay the cost of the passes and PTOs in the form of fare as per statement submitted as attached herewith annexure-A-9 (collectively). A direction be issued against the respondents to pay the 12% interest on the cost of the total fare w.e.f. 1996 to 1999 onwards on the aforesaid amount as shown in the annexure A-9.

(iv) Pass such other order or further order as this Hon'ble Tribunal deems fit and appropriate in the facts and circumstances of the case.

4. In the grounds to claim this relief in para 5 of the OA the applicant has alleged that withholding of the benefit of the passes and PTOs amounts to imposing a penalty as per the Rule 6(III)(a) of the Railway Servants (Discipline & Appeal) Rules, 1968 and this penalty has been imposed without any show cause notice thus the refusal on the part of the respondents to issue passes and PTOs is illegal and arbitrary and since passes and

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PTOs are part of wages, so the applicant is entitled to recover the cost of the fare due to three journeys to the applicant on the basis of the aforesaid passes and PTOs of the applicant and he being a permanent employee of the Railway administration, could not have been denied privilege passes/PTOs.

5. The OA is being contested by the respondents. The respondents pleaded that the applicant was working at Health Unit Anand Vihar from where he was transferred to Delhi Main Hospital vide order dated 10.6.97. He was relieved from Anand Vihar on 11.6.97 (F/N) by Dr. Deepali Gupta and since then he has failed to report for duty under CMS/Delhi and has absented himself unauthorisedly. He has also been issued SFS (major penalty charge-sheet) dated 8.5.1998 for unauthorised absence w.e.f. 12.6.97 till date. Chargesheet was sent to his residence three times by registered post but he did not present himself before the Enquiry Officer. Thereafter the chargesheet was pasted at his residence.

6. The respondents further state that in normal procedure passes and PTOs are issued from the office where the employee is working and since the applicant is neither working at Health Unit Anand Vihar nor at Delhi Main Hospital so his present status is that he is nowhere as such he is not entitled to get any passes or PTOs and to get his passes and PTOs he must report for duty at once to prove his bona fide. /An

7. The respondents also deny that the applicant has ever made any application for issue of passes and PTOs. (B)

8. It is further stated that the order of transfer issued on 10.6.97 stands as on date and it is only the order dated 25.9.1995 which was quashed in OA 2035/95 and since the applicant has not complied with the order dated 10.6.97 as he has neither reported for duty at Health Unit Anand Vihar nor he had reported for duty at Delhi Main Hospital and has been absenting himself deliberately so the applicant cannot be allowed to avail of the perquisites attached to the post by sitting at home defiantly without any rhyme and reason.

9. I have heard the applicant, who argued the case in person and S/Shri H.K. Gangwani and R.L. Dhawan, counsel for the respondents.

10. The applicant submitted that he is being unnecessarily harassed as he has not been issued passes and PTOs for which he has a right as the same are the service benefits and are perquisites attached with the post and the facility of passes and PTOs is a part of wages as per the provision of Payment of Wages Act as such the respondents cannot refuse the issue of passes and PTOs to the applicant.

11. As far as the transfer order is concerned, the applicant submitted that he was working as a Chief Pharmacist at Health Unit Anand Vihar whereas he has been transferred to Delhi Division Hospital where there was no

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post of Chief Pharmacist and he could not have been asked to work in a lower position so that is why he did not join the duties and challenged the transfer order before the Tribunal and the same was set aside. Since the transfer order had been set aside so there was incumbent duties upon the respondents to give the applicant duty at Health Unit Anand Vihar and as the respondents have failed to give him duty, so he cannot be compelled to attend duties at Delhi Main Division so the transfer order had been quashed.

12. The applicant further emphasised that since the passes and PTOs are part and parcel of the wages, so the applicant is entitled to the same so long as he was in service and denial of the same amounts to punishment in Rule 6(III)(a) of the Railway Servants (Discipline & Appeal) Rules and it amounts to imposing a penalty and since the passes and PTOs have been denied to him without undergoing the proper procedure for imposing penalty under the Railway Servants (Discipline & Appeal) Rules, so on that account also the applicant could not have been denied the issued of passes/PTOs.

13. In reply to this, the learned counsel for the respondents heavily emphasised on para 63 in Chapter-III to Section III with regard to grant of Northern Railway Pass Manual wherein it is provided as under:-

"63. Grant of passes
discretionary:- Privilege passes cannot be claimed as a right. The issue of such passes is subject to the discretion of the authority competent to issue the same".

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14. After referring to the above, the counsel for the respondents Shri H.K. Gangwani submitted that since the applicant had not been performing his duties as he had not reported for duty either at Health Unit Anand Vihar or at Delhi Main Division so he could not have been issued the passes or PTOs.

15. The counsel for the respondents further referred to Railway Servants (Pass) Rules, 1986 and submitted that in Rule 6(1) it is stated "that a Railway servant may be issued on his/her request a privilege pass or privilege ticket order on the prescribed format from one station to another as requested by him/her....." and submitted that in this case the applicant has never submitted any request for issue of passes or PTOs in the prescribed format since no such request had ever been received by the respondents so the question of issue of passes/PTOs does not arise though the applicant has pleaded in his OA that he had made a request to the DMO in-charge/Health Unit Anand Vihar but the respondents have categorically denied and stated that no such request was ever received by the respondents and the respondents submitted that in the absence of any request for issue of passes and PTOs in the prescribed form as prescribed in Rule 6, the request could not be allowed and no passes or PTOs could be issued.

16. I have given my thoughtful consideration to the issue involved and have gone through the record.

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17. At the outset I may mention that during the course of arguments both the parties informed that the applicant is no more in the service of the Railways as some order in pursuance of the charge-sheet for major penalty has been passed by the department. (16)

18. Now coming to the question involved in this case with regard to issue of passes and PTOs is concerned, the applicant could not deny his absence from duty which is otherwise confirmed because the department had proceeded against the applicant for unauthorised absence and major penalty has been awarded. That confirms the fact that the applicant had not been performing his duty either at Health Unit at Anand Vihar or at Delhi Main Division so in accordance with Paragraph 63 of the Northern Railway Pass Manual the applicant who was not performing duty could not claim privilege passes as a matter of right and issue of such passes were subject to discretion of the authorities itself.

19. Besides that the respondents have taken a categorical stand that the applicant had never applied for issue of passes or PTOs as required under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1986 as Rule 6 requires that a request has to be made for issue of passes and PTOs on the prescribed form. Though the applicant in his OA has pleaded that he had applied to the DMO for issue of passes/PTOs but the department has totally denied having received such like an application. Copy of the applications are annexed by the applicant along with the OA in which he has submitted that he had submitted a format asking for passes and PTOs but the

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same do not contain any acknowledgement from the department whether the same had been delivered to the concerned authorities or not. Thus there is no authentic proof that the same had been delivered in the appropriate office for issue of passes/PTOs. Assuming for the sake of argument that the applicant did apply but the Annexure A-7 which is an application for pass is stated to have been made on 10.12.1998. Then an application for PTO is dated 19.12.1998. Thereafter an application for PTO is dated 7.12.1998. On going through all these applications and their contents, it appears that these applications itself are not free from suspicion and probably the same had not been sent to the department. Even otherwise during those days despite issue of transfer order the applicant had not reported for duty at any place so it is also to be presumed that he was not performing duty so in these circumstances the applicant is not entitled for issue of passes/PTOs.

20. In view of the above, nothing survives in the OA which is accordingly dismissed. No costs.

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(KULDIP SINGH)
MEMBER(JUDL)

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