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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. 2081/88.

Decided on 16.4.1991.

T.C. Saxena

.....Applicant.

Vs.

Union of India
through General Manager, Northern Railway,
Baroda House, New Delhi.

.....Respondents.

CORAM: HON'BLE MR B.S. SEKHON, VICE CHAIRMAN.

HON'BLE MR P.C. JAIN, ADMINISTRATIVE MEMBER.

For the Applicant - Mr. J.K. Bali, Advocate.

For the Respondents - None.

B.S. SEKHON:

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The instant Application is directed against the order dated 19th October, 1987 (Annexure A/1) and the order dated 8th October, 1987 passed by the Divisional Railway Manager, Moradabad (Annexure A/5). By virtue of Annexure A/1, Applicant's pay in the grade Rs. 2000-3200 was fixed at Rs. 2240/- from 1.1.1986 but his increment which fell due on 1.1.1987 was deferred for the reason that the period from 13.10.1986 to 31.1.1987 was treated as leave without pay. Vide Annexure A/5, Applicant was, inter alia, advised with reference to his representation dated 11.9.1987 that his pension and other settlement dues had been revised and necessary papers submitted to Accounts for audit and payment. The period of suspension could not be converted as duty. Applicant remain^{ed} absent from duty from 14.8.1980 to 2.9.1980.

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and that as the periods of his sickness covered by PMC's have already been regularised as leave without pay (LWP) by the competent authority, the question of commutation of these periods does not arise. It is common ground that Applicant had retired on 31.1.1987 (afternoon) while he was holding the post of Divisional Checking Inspector Ticket Grade Rs. 700-900 and ^{was} continued as Conductor in the same grade. As per the case set up by the Applicant, he fell sick and submitted medical certificates covering the following periods of sickness to the office in time:-

i) From 25.9.86 to 10.10.86.

ii) From 13.10.86 to 30.1.87.

But the Respondents are stated to have illegally treated the aforesaid period as LWP. It has been further stated by the Applicant that he was on duty on 11.10.86, 12.10.86 and 31.1.87 and that the action of the Respondent has affected his pensionary benefits e.g. leave encashment, pension and gratuity. Applicant's efforts to get his grievance redressed from the Pension Adalat held on 15.10.87 at Moradabad ended in smoke. The other grievances agitated by the Applicant are that he could not attend duty during 14.8.80 to 24.8.80 and 26.8.80 to 2.9.80 as curfew had been clamped in Moradabad due to communal riots and that the aforesaid periods should have been treated as special casual leave as decided by the Northern Railway Headquarters but the Applicant was denied the aforesaid benefit and was also wrongly treated as on leave without pay for the period 12.10.1976 to 25.10.1976. Applicant was also placed under

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suspension during the following periods:-

- i) 26.10.76 to 4.12.76.
- ii) 14.8.84 to 21.8.84; and
- iii) 27.2.85 to 5.3.85.

The period at Sr. No. (ii) above was directed to be treated as duty vide DRM's communication dated 19.7.80 (Annexure A/8) but the aforesaid decision has not been implemented despite reminders. Applicant has prayed that Respondents be directed to regularise the periods mentioned in paragraph 6 of the Application and to arrange for early payment alongwith interest.

2. Respondents have resisted the Application, inter alia, on the ground that the same is barred by limitation. The Applicant submitted medical certificates from private Physician for the period 25.9.86 to 10.10.86 and remained on unauthorised absence from duty during the period 13.10.86 to 31.1.87 and the aforesaid periods were correctly treated as LWP by the competent authority. After stating that the Applicant had been paid wages for the period 11.10.86 to 12.10.86 in time, Respondents have added that on final scrutiny of the service record, the grant of increment was deferred for the reason that the period from 13.10.86 to 31.1.87 was treated as LWP and the Applicant has been paid pensionary dues as admissible on the pay of Rs. 2240/- p.m. Regarding the period during which curfew was imposed in Moradabad in August, 1980, Respondents have pleaded that necessary arrangements were made by issuing curfew passes and plying buses for transporting staff to and from place of duty and

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that it was for the Applicant to avail the facilities himself but he preferred to remain away from duty.

Respondents have also controverted the other claims made by the Applicant for the periods during which he remained under suspension ^{adding} / that the claim for wages for the ^{could be} period 26.10.76 to 4.12.76 / not/verified after such a long lapse of time.

3. We have heard the arguments addressed by the learned counsel for the Applicant. Since no appearance was ⁱⁿ put/on behalf of the Respondents, we have no option but to proceed with the judgment on the basis of arguments ^{and} advanced by the learned counsel for the Applicant/on the basis of pleadings and documents on record.

4. We may first of all deal with the plea about the Application being barred by limitation. The Application in so far as it seeks to regularise the different periods during 1976, 1980, 1984 and 27.2.85 to 5.3.85 is hopelessly barred by limitation. As a matter of fact, the Tribunal is not competent to entertain the Application pertaining to grievance arising during the period anterior to 1.11.1982. In such a case the Tribunal is not even competent to condone the delay. This view has been taken consistently in an unbroken catena of decisions rendered by different Benches of the Tribunal including the decision¹ in Sukumar Dey V. Union of India and V.S. Raghavan V. Secretary to the Ministry of Defence.² So far as the challenge to Annexure A/1 is concerned, the Application is within limitation. This is for the reason that the Application was filed within one year

1. (1987) 3 ATC 427 (CAT) (Cal).
2. (1987) 3 ATC 602 (CAT) (Mad).

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(on 11.10.1988) of the passing of the date of order Annexure A/1 which is dated 19.10.87. As regards the order Annexure A/5, there is minor delay of 4 days. Applicant has filed MP 2151/88 for condonation of delay. The aforesaid minor delay of 4 days is hereby condoned. This condonation may not, however, be taken to mean that the Applicant can rake up the grievance in respect of such matters as are clearly barred by limitation as pointed out here-in-above. The Application is, therefore, held to be within limitation in so far as it seeks to challenge Annexure A/1 and also Annexure A/5. The Application in so far as it seeks to rake up the grievance pertaining to 1976, 1980, 1984 and 1985 is hopelessly barred by limitation.

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5. Adverting to the Applicant's claim for payment for 11th and 12th October, 86, Respondents' specific defence is that Applicant has already been paid. In the corresponding para of rejoinder, Applicant has further stated that he has not been paid salary for the aforesaid dates. In regard to this, the appropriate direction to be made and which we hereby make is that the Respondents shall consider the claim of the Applicant for payment of salary for 11.10.86 and 12.10.86 in case the payment has not already been made to the Applicant. If on scrutiny of records, Applicant's claim in this behalf is found to be well founded, respondents shall make the payment therefor within a period of 3 months. Turning to Applicant's claim for payment of salary in respect of 31.1.1987, it may be stated that the Applicant has not adduced any material much less adequate to show that he was on duty on the said date. As a matter of fact, Annexure R/4 tells against the Applicant's case in that

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the aforesaid Annexure, interalia, states that Applicant had submitted medical certificates for the period 13.10.86 to 31.1.87.

6. In view of the foregoing, the only claim which is left to be considered pertains to the periods 25.9.86 to 10.10.86 and 13.10.86 to 30.1.87. Relying on paragraph 535 of the Indian Railway Medical Manual (for short the 'Manual'), the learned counsel for the Applicant submitted that as the Applicant had not been allotted a railway quarter and was staying outside the jurisdiction of the railway hospital/health unit Applicant could submit and did submit medical certificates. The learned counsel relied upon Annexure R/1 pertaining to the period 25.9.86 to 10.10.86 and added that medical certificates for the periods 13.10.86 to 13.12.86 and 14.12.86 to 30.1.87 (Annexures R/2 and R/3 respectively) are from the private Registered Medical Practitioner namely Dr. R.K. Saxena. The learned counsel also invited our attention to the address of the Applicant given in Annexures R/2 and R/3. The learned counsel added that Applicant obtained certificate of fitness (Annexure R/4) from the Railway Doctor when he was fit to resume duty. So saying, the learned counsel contended that Respondents have wrongly and arbitrarily treated the aforesaid period as LWP resulting in deferment of the increment which fell due on 1.1.1987. The deferment of the increment has naturally resulted in loss to the Applicant not only by depriving him of the salary during the aforesaid period but it has also resulted in reducing the quantum of pensionary benefits. Applicant has elaborated this point in sub para (iii) of the paragraph of the rejoinder dealing with paragraph 6.3 to 6.8 of the reply. The appropriate course for the Applicant

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was to state all this in the Application. Nonetheless we will
not oust the Applicant for the aforesaid omission in the
Application for the reason that the Applicant did assail
the legality of the order Annexure A/1 in the Application
and he can justifiably press into service paragraph 535
of the Manual. Our attention was specifically invited by
the learned counsel to sub para (4) of the aforesaid para.
This sub para reads thus:-

"When a Railway employee residing outside the jurisdiction of a Railway doctor requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. Such a certificate should be, as nearly as possible, in the prescribed form as given in Annexure X, and should state the nature of the illness and the period for which the Railway employee is likely to be unable to perform his duties. The competent authority may, at its discretion, accept the certificate or, in cases where it has reasons to suspect the bona fides, refer the case to the Divisional Medical Officer for advice or investigation. The medical certificates from registered private practitioners produced by Railway employees in support of their applications for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verification and on the basis of the advice tendered by him after such verifications.

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Note-Ordinarily, the jurisdiction of a Railway doctor will be taken to cover Railway employees residing within a radius of 2.5 kilometres of the Railway hospital or health unit to which the doctor is attached, and within a radius of one kilometre of a Railway station of the doctor's beat."

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A perusal of Annexure A/1 reveals that the Respondents have not considered the implications and effect of paragraph 535 of the Manual. In view thereof, the appropriate order to be made and which we hereby make in respect of the aforesaid claim is that the Respondents shall consider the claim of the Applicant for treating the periods from 25.9.86 to 10.10.86 and 13.10.86 to 30.1.87 in the light of the provisions of paragraph 535 of the Manual within a period of three months from today. The Respondents are directed to make a fresh order in this behalf after giving a show cause notice/an opportunity of hearing to the Applicant. Respondents are further directed that Applicant's claim for payment of salary including the salary for leave period, increment and the dues flowing from the fresh order, if any, shall also be determined and paid to the Applicant within a further period of two months thereafter after passing a fresh order.

7. The Application is disposed of in the terms stated here-in-above. In the circumstances, we make no order as to costs.

Clear 16/4/1991

(P.C. JAIN)
ADMINISTRATIVE MEMBER

B.S. Sekhon
(B.S. SEKHON)
VICE CHAIRMAN

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