

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. No. 565/88

Date of decision : 18.8.1993

Ms. Naseem Nawab

Petitioner

VS.

Union of India

Respondents

Conclam:

The Hon'ble Mr. I.K. Rasgotra, Member (A)

The Hon'ble Mr. B.S. Hegde, Member (J)

For the Petitioner

None

For the respondents

None

Neither the petitioner nor his counsel is present. None represents the respondents either.

We waited for some time, but no one appeared for either of the parties. The case is on the cause list since 6.8.1993. On that date the case was adjourned to 16.8.1993 with a view to provide an opportunity to the parties to appear before the court. The case was not reached on 16.8.1993 and it remained on Board. Since this is an old matter we proceed to dispose of the case on merits after considering the material on record. The case of the petitioner is that Ms. Naseem Nawab was appointed as Clerk scale Rs. 260-400 on 27.7.1982 on compassionate grounds as her mother was ~~been~~ medically invalidated. Thereafter the mother of the petitioner after long illness died in April 1985. This caused the petitioner great mental depression and "anxiety neurosis". The applicant thereafter was allegedly taken to Bombay for treatment of mental illness for which she submitted information to the respondents. She also contends that she had submitted medical certificate from her doctor to the office of the Respondents.

A copy of the certificate submitted by the petitioner is at annexure 'A'. The petitioner submits that she was advised vide letter dated 24.11.1986 that she was treated on leave upto 11.6.1986. The petitioner submitted Fit Certificate on 16.5.1987 and reported for duty on 18.5.1987. She was, however, not allowed to resume duty. The applicant was served with charge sheet for major penalty for the charge of alleged unauthorised absence. She had an interview with the General Manager in August 1987 and was told that her case was referred to Railway Board. It is against the above background that petitioner had filed this O.A. under Section 19 of the Administrative Tribunal Act 1985 praying for the following reliefs:

1. To allow the applicant to resume duty forthwith;
2. To pay full wages from 18.5.1987 (onwards);

The stand of the respondent as articulated in their counter affidavit is that the petitioner remained absent from duty for the period exceeding one and a half year. A temporary employee can only be sanctioned L.W.P. for a maximum period of 18 months in terms of Railway Board's letter dated 11.3.1977 for treatment of Cancer, Leprosy, T.B. etc. and otherwise for a period of 6 months only (copy placed at Annexure R I) subject to production of medicals certificate. The said instructions further provide that in terms of sub-clause (a) of the second proviso to Rule 742 RI temporary railway servants are not entitled to any 'leave not

due' under 1740 RI. In order to mitigate the hardship of the temporary Railway servants, who are suffering from TB, leprosy, cancer or Mental illness, 'leave not due' can however be granted to such railway servants for a period not exceeding 360 days during the entire service subject to the fulfilment of the following conditions:

- i) That the railway servant has put in a minimum one year's service;
- ii) That the post from which the railway servant proceeds on leave is likely to last till his return to duty;
- iii) That the result for grant of such 'leave is supported by a medical certificate as envisaged in Rule 732 PI;
That the authority competent to sanction leave is satisfied that there is a reasonable prospects of the railway servant returning to duty on its expiry and earning an equal amount of half-average pay leave thereafter; and
- iv) That 'leave not due' shall be limited to the half average pay leave he is likely to earn thereafter and shall be debited against such half average pay leave.

Since the petitioner was absent for more than the stipulated period and there was no leave due to her, the Railway Administration was not competent to take her back on duty and regularise her absence. The petitioner was a temporary clerk grade 260-400 to which

she was appointed on 27.7.1982. The post against which she was appointed was a temporary post as is apparent from R II filed with the counter affidavit. She had no lien on a permanent post. The petitioner remained absent from duty with effect from 1.1.1985 till 18.5.1987. She was informed vide letter dated 1.5.1985 to resume duty without further delay. In response the petitioner vide her letter dated 9.5.1985 submitted three medical certificates from a Private Medical Practitioner for the following period:

1.1.1985 to 1.3.1985

2.3.1985 to 16.4.1985; and

17.4.1985 to 31.5.1985

She further informed the respondents that she had left Delhi for Bombay for "change of scene". The respondents contend that under Rule 78 and 74(2) of Section IV of Chapter XIV of the I.R.E. Manual, the petitioner was required to report to the concerned ADMO within 48 hours if she was sick and under treatment of private medical practitioner. She neither obtained prior permission to leave the station from the competent authority nor she did she report to Railway Medical Officer within the prescribed time. Since she was a temporary employee appointed against a temporary post, having no leave at her credit, she was asked from time to time to resume duty. She, however, did not resume duty. The respondents have also placed copies of the reminders sent to her asking her to resume duty at Annexures R5, R6 and R7 counter affidavit. When she did not report for duty, despite the reminders, she was advised and directed

vide letter dated 22.5.1986 to report to the nearest Medical Officer. She reported to D.M.O. Bandra, Western Railway on 11.6.1986 where she availed treatment for 15 days only. She did not submit medical certificates for the period earlier than 11.6.1986 as was required. She reported for duty on 16.1.1987 with journey certificate from DMO/Bandra, Western Railways and some P.M.Cs, when she was directed to ADMO/Lajpat Nagar for examination alongwith the medical certificates she had submitted. She was declared fit by ADMO, Lajpat Nagar on 16.5.1987. She was not allowed to resume duty, as her period of absence exceeded the period prescribed under the rules. She was served a charge sheet in terms of Rule 732 RI. The enquiry in the said proceedings is pending. Under the circumstances the respondents contended that she is not due for wages for the period she remained absent. The enquiry is stated to be under way. Under the circumstances the respondents contend that the petitioner is not entitled to payment of salary etc. for the period of absence.

The petitioner has filed the rejoinder. She has contended that the respondents cannot deny her right to duty after she produced the fitness certificate. We have considered the record carefully. The petitioner was appointed as a temporary clerk against a temporary post. She has been served a charged memo for having remained on unauthorised absence for a period extending 18 months. The enquiry is stated to be under way and ^{final} trial order is yet to be passed on conclusion of the enquiry. In these circumstances we are of the opinion that the petition is pre-mature in as such as the the petitioner has been served a charge sheet and the

-: 6 :-

disciplinary proceedings are pending against her. The Disciplinary / Appellate Authorities ^{are} yet to pass final orders ^{at} conclusion of the enquiry in accordance with law. At this stage we do not see any justification to interfere in the matter. The O.A. is therefore dismissed as pre-mature. If after final order is passed by the respondents on the conclusion of the disciplinary proceedings, ^{at} the petitioner is aggrieved by the said order, she shall be at liberty to approach the Tribunal in accordance with the law, if so advised. No costs.


(B.S. Hegde)
Member (J).


(I.K. Rasgotra)
Member (A)

Mittal