

Reserved On 04.11.2020

(Written arguments filed on 09.11.2020)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD**

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(This the 16th Day of December, 2020)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (Judicial)

Original Application No.330/1216/2017

Dinesh Chandra Kakkar son of Harish Chandra Kakkar, Resident of 527/G Kakkar Nagar Dariyabad Allahabad.

..... **Applicant**

By Advocate: Shri Kaushal Kishore Mishra

Versus

1. Union of India through the General Manager Northern Railway, Baroda House New Delhi.
2. Divisional Railway Manager Northern Railway Hazarat Ganj, Lucknow.
3. Senior Divisional Operation Manager Northern Railway Hazarat Ganj, Lucknow.
4. Divisional Railway Manager (P) Northern Railway Hazarat Ganj, Lucknow.

..... **Respondents**

By Advocate: Shri Sanjay Kumar Ray

ORDER

The applicant by means of the instant Original Application (OA) has prayed for the following relief(s):-

“(1) To quash/modify the letter/orders dated 27.01.2017 passed by the Divisional Railway Manager (P) Northern Railway Lucknow (Annexure A-1).

(2) To re-fix the regular salary without any break adding yearly increment in accordance with sixth pay commission and giving the benefit of seventh pay commission also.

(3) To pay entire arrears of salary of the applicant as early as possible.

- (4) ***To fix the pension after fixing the salary as prayed above in accordance with law and pay other retiral benefit to applicant in short span of time.***
- (5) ***To pass any other order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case.***
- (6) ***To award the cost in favour of applicant."***

2. Heard learned counsel for the parties, both of whom have also filed their written submissions on 09.11.2020. Perused the record.
3. Some relevant facts in brief are that the applicant was working as Chief Assistant Clerk at Phulpur, Railway Station, Northern Railway. On 20.10.2005 some scuffle took place between him and one employee of IFFCO, Phulpur, in which the applicant got head injury and had to undergo medical treatment from 20.10.2005 up to month of July, 2006. This period was treated as Hurt of Duty. Further, the respondents sanctioned leave (LAP/Leave Average Pay) to the applicant from 25.08.2006 to 24.11.2006. However, the applicant still having problems like dizziness and Red-Yellow colours floating in front of his eyes etc., he had to remain on sick leave from 22.02.2007 to 09.04.2007. During this period he was referred to Chief Medical Superintendent, Northern Railway, Lucknow for his medical examination. As per medical report dated 05.04.2007, he was found fit to perform only the Desk Work Job.
4. The applicant again took sick leave (RMC/Railway Medical Certificate) from 17.04.2007 to 17.07.2007. On 18.07.2007, the applicant reported for duty to Station superintendent, Phulpur,

Allahabad. Since there was no post of "Desk Work Job" nature at Railway Station Phulpur, the applicant could not be assigned any work. Thereafter, under the orders of this Tribunal in an OA filed earlier by the applicant, the applicant was permitted to join duty on 22.09.2010 with condition that after joining duty, he will have to undergo his medical examination and then a final duty would be assigned to him.

5. It is pertinent to mention that it is the 4th round of litigation by the applicant. Earlier the OA No.706 of 2008 was filed by him, which was disposed of by this Tribunal on 11.07.2008 with the observation that "*since the respondents have given an assurance by this the same is recorded and the OA is disposed of without any further observation. In case, the applicant is further aggrieved he would be liberty to redressal in accordance with law. No costs.*"

6. However, despite giving assurance, the respondents did not provide any "Desk Work Job" to the applicant and sent him to Chief Medical Superintendent Office, Lucknow on 22.07.2008 for medical examination, in compliance of which the applicant got admitted himself for medical checkup in the Divisional Railway Hospital from 21.07.2008 to 25.07.2008 and then again on 30.07.2008 till 05.08.2008, but as no medical examination was conducted between this period, the applicant had to return home due to financial problem. The respondents once again passed an order on 30.09.2008, directing the applicant to appear before Railway Hospital for medical examination. The applicant moved a

representation dated 23.10.2008 praying to the respondents to permit him to join duty first on some "Desk Work Job" and to pay him salary etc. thereafter, send him for medical examination, but when no order was passed on his representation, the applicant filed another OA No.438 of 2010 (2nd OA) before this Tribunal, which was decided vide order dated 06.04.2010 whereby, the General Manager, Northern Railway, Baroda House, New Delhi (Respondent No.2) was directed to decide the representation dated 23.10.2009 by a reasoned and speaking order within three months from the date of receipt of certified copy of the Tribunal's order and to communicate the decision to the applicant. The respondents being unable to comply the aforesaid order within the stipulated time, moved a time extension application before this Tribunal, which was allowed by giving two months further time to the respondents for deciding the representation. In compliance, the respondents passed four orders and by all these orders, the applicant was informed that he has been appointed w.e.f 08.09.2010 on temporary basis and final appointment will be made after his medical examination and on the basis of the report sent by Medical Officer.

7. The applicant being a permanent employee of the Railway, under the impression that he has been made a temporary employee from a permanent employee, challenge the legality of the aforesaid order by means of OA No.1761 of 2010 (3rd OA) which was decided by this Tribunal vide order dated 13.11.2013. The Tribunal found the apprehension of the applicant, that he had been made a temporary

employee from a permanent employee, unfounded and without any basis. The relevant extract from the order in the aforesaid OA is quoted below:-

“11. The apprehension of the applicant that he has been made a temporary employee from permanent employee does not appear to be based on any sound reasoning. There is nothing uncommon in medical examination of any employee who has been medically and physically found disabled for the duty which he was doing before such occurrence. It is done just to ascertain as to whether the employee has regained his earlier physical status or if he has improved from earlier physical disablement so that the nature of his job may be changed.

12. There appears to be no justification for the applicant in not joining the duty after receiving the orders dated 08.09.2020, 22.09.2010 and 05.10.2010. A perusal of order dated 08.09.2010 (Annexure A-18) shows that the applicant has been allotted the desk job in the Lucknow Division in the Office of Traffic Inspector/MPP, Lucknow temporarily and after joining the duty he will be assigned the job after obtaining fresh report of the competent medical authority. There is no ambiguity in this order and there is no basis to apprehend that the applicant has been made a temporary employee from permanent employee.”

8. The Tribunal disposed of the aforesaid OA vide order dated 13.11.2013 giving with the following three directions to the parties:-

- “(i) The applicant will present himself for joining the duty of desk work in the Office of Traffic Inspector/MPP, Lucknow within a period of 15 days from the date of receipt of a certified copy of this order.***
- (ii) After he joins on the said post, the respondents will get him medically examined approximately within a period of two months to ascertain as to whether he should be continued with the desk work temporarily or to some other job according to medical certificate issued by the competent medical authority.***
- (iii) The respondents will work out and finally decide his salary and other consequential benefits, as per law, payable to the applicant at an early date.”***

9. The applicant, in compliance of the aforesaid direction, joined the duty on 29.11.2013. In pursuance of the second part of the direction, the respondents were required to get the applicant medically examined within a period of two months so to ascertain as to whether he should be continued with 'Desk Work Job' or to some other job in accordance with the medical certificate issued by the competent authority. The respondents in compliance of the aforesaid order, directed the applicant to get him admitted in the hospital for medical examination.

10. However, the grievance of the applicant is that the respondents in order to harass him, had stopped his salary since March, 2014 and had directed him to undergo several kind of medical examination at his own expenses. As the applicant was facing difficult time financially, due to nonpayment of salary, he had to leave the hospital after one week without undergoing the medical examination of A-3 category. Learned counsel for the applicant has contended that the applicant had to leave the Railway Hospital under compelling circumstances and under financial constraints due to nonpayment of his salary.

11. In compliance of the third part of the order dated 21.11.2013, the respondents calculated the salary and other dues payable to the applicant and passed the impugned order dated 27.1.2017, which is under challenge in the present OA. Learned counsel for the applicant has vehemently argued that the respondents have illegally

and arbitrarily denied to pay the salary to the applicant of the periods, mentioned in the impugned order.

12. Per contra, learned counsel for the respondents has contended that the Railways being very sensitive department and in view of security of people, only healthy persons are required to be kept on duty. Therefore, the medical examination of the applicant in A-3 category was very necessary. The applicant was called for A-3 category medical test several times, but due to fear of being medically de-categorized, he did not appear for medical test and every time, instead of presenting himself for medical examination, he approached the Tribunal. He got admitted on 30.07.2018 for final medical test but left the Railway Hospital on his own on the pretext of arranging money. Earlier also, he had left the hospital without undergoing the medical test, which is evident from a perusal of Annexure No.A-13 and also by the letter dated 30.09.2008 issued by Senior Divisional Medical Officer, Northern Railway, Lucknow (Annexure A-14 to the OA) which clearly mentions that the applicant absconded from 07.08.2008 from Railway Hospital.

13. Learned counsel for the respondents has further contended that the ground taken by the applicant that he had to leave hospital due to money problem has no legs to stand. The applicant had plenty of money to file six court cases including four OAs and two contempt petitions but he had no money for his medical examination. Moreover, the applicant being a permanent Railway Employee, was admitted in Railway Hospital where the rates are

subsidized therefore there was no extraordinary financial pressure on him. As he left the Hospital at his own sweet will and remained absent from office, being over busy in litigating various court cases, the period spent by him in fighting court cases could not be held as the period spent on duty and therefore, he was not found entitled to receive salary for the aforesaid period. There is no illegality or irregularity in the order impugned which has been passed in accordance with the relevant rules regarding the sanctioned leaves to the Railway Employees.

14. On the aforesaid grounds, it was prayed by learned counsel for the respondents, that OA, being devoid of merits, is liable to be dismissed.

15. I have given my thoughtful consideration to the rival submissions made by learned counsel for the parties.

16. The impugned order dated 27.1.2017, for a ready reference is quoted below:-

<p style="text-align: center;">“Northern Railway No.757E/5-47 CTNC/D.C.K./Phoolpur Sh. Dinesh Chandra Kakkar S/o Sh. Harish Chandra Kakkar R/o 910/527/G. Kakkar Nagar, Dariyabad, Allahabad.</p>	<p style="text-align: center;">Divisional Office Lucknow Dt.27.01.2017</p>
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*Sub: Compliance of Judgment/order dated 21.11.2013
passed by Hon'ble CAT/ALD in OA No.1761 of 2010 –
Dinesh Chandra Kakkar v. UOI through CM/NR/NDLS &
Ors.*

Hon'ble CAT/ALD vide order dated 21.11.13 has disposed off the subject OA with following direction:-

- "(i) The applicant will present himself for joining the duty of desk work in the Office of Traffic Inspector/MPP, Lucknow within a period of 15 days from the date of receipt of a certified copy of this order.*
- (ii) After he joins on the said post, the respondents will get him medically examined approximately within a period of two months to ascertain as to whether he should be continued with the desk work temporarily or to some other job according to medical certificate issued by the competent medical authority.*
- (iii) The respondents will work out and finally decide his salary and other consequential benefits, as per law, payable to the applicant at an early date.*

माननीय न्यायालय के आदेशानुसार उपरोक्त पैरा (1) एवं (2) के अनुपालन में आपको मेडिकल उपरांत एम्सीएम/लोको के पर पर एसएसई/वाराणसी के अधीन डेस्क जॉब पर पदस्थापित कर दिया गया है।

पैरा नं० (3) के अनुपालन में उपलब्ध दस्तावेजों तथा नियमों को ध्यान में रखते हुए यह अवगत कराना है कि आपके द्वारा दिनांक 30.8.2007 से 29.11.2013 तक वेतन भुगतान की जो मांग की गयी है वह नहीं दिया जा कसता क्योंकि उपाके खाते में न तो औसत वेतन छुटटी थी और न ही अर्द्ध औसत वेतन छुटटी थी। जहाँ तक आपके द्वारा IRMM Para 524 का जिक किया गया है, के अनुसार यदि कोई कर्मचारी 3 दिन पी.एम.ई. में रहता है तो उसे ड्यूटी माना जायेगा प्राधिकृत मेडिकल प्रमाण पत्र के आधार पर और यदि इससे अधिक दिन तक कर्मचारी उपचाराधीन रहता है तो उस अवधि को सीक लीव माना जाता है। चूंकि आपके खाते में किसी प्रकार का लीव शेष नहीं था इसलिए आपकी लीव को एल.डब्ल्यू.पी. माना जाता है। अतः आपको उक्त अवधि का कोई भी छुटटी वेतन देय नहीं बनता है।

जहाँ तक दिनांक मार्च 2014 से दिसम्बर 2014 तक के वेतन भुगतान का प्रश्न है, अवकाश खाता के अनुसार निम्नलिखित भुगतान देय बनता है:-

दिनांक 22.02.14 to 15.03.14 = 18 Days दिन परिवर्तित धि0अवकाश. 36 (HP) भुगतान देय
 दिनांक 16.03.14 to 15.04.14 = 31 Days RMC = LAP 31 भुगतान देय
 दिनांक 16.04.14 to 29.04.14 = 14 Days RMC = LAP 14 भुगतान देय
 दिनांक 30.04.14 to 15.05.14 = 16 Days RMC = LWP भुगतान देय नहीं है
 दिनांक 16.05.14 to 15.12.14 = 214 Days RMC = LWP भुगतान देय नहीं है"

17. The applicant, in para 4.39 of the OA has challenged the legality of the aforesaid order by stating as under:-

I. The salary dated 30.08.2007 to 29.11.2013 is not payable as applicant have no any payable leave in his account.

II. The time period of 30.11.2013 to 21.2.2014 has not been explained.

III. The time period of 22.2.2014 to 15.3.2014 is payable as LHP.

IV. The time period of 16.3.2014 to 15.4.2014 is payable as LAP.

V. The time period of 16.4.2014 to 29.4.2014 is payable as LAP.

VI. The time period of 30.4.2014 to 15.5.2014 total 16 days RMC= LWP is not payable.

VII. The time period of 16.5.2014 to 15.12.2014 total 214 days RMC= LWP is not payable.

VIII. Apart from letter dated 7.1.2017 the respondent has not paid the salary of applicant since August 2016 to June 2017.

IX. That in the month of November 2016 the basic pay of applicant has been fixed as Rs.50500/- and Total of Rs.54460/- but thereafter he was shifted in pay of Rs.49000/- Scale/grade pay 4200/- without showing any reason.

Though the applicant is entitled to get regular salary and other consequential benefit till his retirement with yearly increment by fixing the salary according to the six pay commission adding the benefit of seventh pay commission.”

Thus, it clearly shows that applicant has merely repeated the impugned order, without pointing out any illegality in it.

18. The respondent in Para 41 of their counter affidavit have replied to the contents of Para-4.39 of the OA, as under:-

“41. That the contents of para 4.39 of the original application are not admitted as stated and are denied. The order dated 27.01.2017 has been passed in accordance with law. While passing the order dated 27.01.2017 it was categorically stated that the demand of salary for the period 30.08.2007 to 29.11.2013 is not tenable for the reason that applicant had neither Average Salary Leave nor Semi-Average Salary Leave in his credit. In so far as IRMM Para-524 is concerned, it was stated that according to IRMM Para-524, PME for three days will be treated as duty on the basis of authorized medical

certificate and the period of hospitalization beyond that period will be treated as sick leave. Since, no leave in balance was in his credit, therefore, the sick leave of applicant was treated as LWP (Leave Without Pay). Therefore, the applicant is not entitled for the said period. In so far as the payment of salary for the period March, 2014 to December, 2014 is concerned, the applicant was found entitled for the following dues:-

22.02.2014 to 15.03.2014 = 18 days RMC converted to medical leave = 36 (LHP)

*16.03.2014 to 15.04.2014 = 31 days RMC = LAP 31
15.04.2014 to 29.04.2014 = 14 days RMC = LAP 14*

But the applicant was not found entitled for the following dues:-

*30.04.2014 to 15.06.2014 = 16 days RMC = LWP
10.05.2014 to 15.12.2014 = 214 days RMC = LWP”*

19. The applicant in Para-44 of the Rejoinder Affidavit has not made any specific denial of the fact states above and has made only a general statement that as the applicant was not given the permission for joining and sent for medical examination, therefore, he is entitled to get salary since 30.08.2007 to 29.11.2013.

20. In view of the above, the applicant's claim for salary from 30.08.2007 to 29.11.2013 is not tenable. There does not appear any illegality or irregularity in the impugned order dated 27.1.20017 passed by the D.R.M.(P) Northern Railway, Lucknow (Annexure A-26). The facts as mentioned above clearly indicate that the applicant himself had left the hospital without undergoing medical examination of A-3 category, which was necessary for a person serving in Railways, where the risk on life of several persons is involved or remain absent. There was no fault on the part of the

respondents. Therefore, relief (1) to quash the order dated 27.01.2017 is denied.

21. In so far as the reliefs (2), (3) and (4) are concerned, which are related to the benefits of 6th and 7th Pay Commission and to fix his pension and other retiral benefits accordingly, these benefits can be granted to him in accordance with the policy and circulars of Railways department and whether the other similarly placed employees have been granted such benefit or not.

22. It is noteworthy that the applicant has stated in Para 4.31 that a detailed representation sent by registered post on 31.08.2017 to the respondent No.2 is still pending consideration before them but no order has been passed on his representation till today. Despite the fact that a reminder was also sent on 11.09.2017, the respondents are sitting tight over the matter without paying any heed. The photocopies of the both the representations have been filed by the applicant collectively as Annexure A-32 to the OA. Learned counsel for the applicant has submitted that now the applicant has retired and no one is listening to his grievance.

23. Considering the fact that the representation dated 31.08.2017 and reminder dated 11.09.2017 sent by the registered post to the respondents are still pending consideration, the OA in respect of reliefs (2), (3) and (4) are disposed of with the following directions to both the parties:-

- (i) The applicant shall move a fresh representation ventilating all his grievances with respect to reliefs (ii), (iii) and (iv) only, as mentioned in OA, before the Competent Authority amongst the respondents within a period of four weeks along with certified copy of this order.
- (ii) The respondents within a period of three months from the date of receipt of certified copy of this order along with the representation moved by the applicant, shall decide it by reasoned and speaking order, in accordance with law and relevant rules.
- (iii) The order so passed shall be communicated to the applicant without any delay.

24. With the aforesaid directions, the OA is disposed of.

25. There shall be no order as to costs.

(Justice Vijay Lakshmi)
Member (J)

Sushil