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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 165 of 1985
T.A. No.

DATE OF DECISION 30th April 1986

Shri B.M. Anand Petitioner

Shri H.S. Dhir Advocate for the Petitioner(s)

Versus

Union of India & another Respondent

Shri K.N.R. Pillai Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, Member

The Hon'ble Mr. H.P. BAGCHI, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGMENT :

The petitioner has come up under section 19 of the Administrative Tribunals Act praying that the respondent No. 2, General Manager, Northern Railway, be directed to treat the petitioner on leave on medical grounds and pay his salary and allowances by quashing the order of 5th December 1985 annexed as A-9 to the petition. It has also been prayed that the

memorandum dated 18.2.1986 which is Annexure A-16 to the petition proposing to hold an inquiry under Rule 9 of the Discipline & Appeal Rules against the applicant for unauthorised absence and for not complying with the transfer order dated 18.4.85 transferring him from New Delhi to Allahabad, should be quashed.

2. The brief facts of the case which are not in dispute can be summarised as follows. The petitioner while working as Assistant Commercial Officer (Catering) in Parliament Annex in New Delhi had been on leave "due to some unavoidable and domestic problems" from 31st January 1985. The leave was extended as applied for by him for the same reasons till 3rd May 1985. During the period of leave the order of transfer dated 18.4.85 was passed transferring him to Allahabad Division as Assistant Commercial Officer (Catering) Allahabad on return from leave on or about 4.8.85. On 1.5.85 the applicant for the first time since 31.1.85 applied for leave on medical grounds referring to brain haemorrhage for which he had undergone treatment in the past in the All India Institute of Medical Sciences (AIIMS) and saying that he had been having attacks of headaches during the previous few months. He also mentioned that he was undergoing specialised treatment of Dr. S.S. Roy, Orthopaedic Surgeon, Ram Manohar Lohia Hospital since 30.4.1985 and due to the demise of his father his condition had been

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adversely affected. Accordingly he indicated that he was not in a position to move out of Delhi because of the medical treatment which was not available at Allahabad. He prayed that till he recovers from illness and declared fit to join duty his ~~pay~~ and allowances be continued to be charged in the Headquarters Office. He mentioned that the medical certificate will follow. During the course of the argument the learned counsel for the petitioner indicated that his father died when the order of transfer dated 18.4.85 was served on him on 24.4.85. The petitioner's condition further deteriorated and he shifted from his official residence at Bengali Market to North Avenue when he had a severe attack on 30.4.85. He was treated by the doctors of the Ram Manohar Lohia Hospital which was the nearest hospital from North Avenue. He remained under the treatment of that hospital till 14.3.86 when under the direction of the Tribunal, he appeared before the Railway doctor who found him ill and recommended on 14.3.86 ten days rest and asked him to report to the AIIMS. He also referred him to the Department of Psychiatry of AIIMS for check up and expert opinion regarding the line of treatment and fitness for duty or further rest.

3. Reverting back to his first application dated 1.5.85 seeking medical leave, the General Manager, Northern Railway, vide his letter dated 29.5.85 (Annexure A-7 to the petition) accepted his request to charge his pay on Head Quarter Office during the period of his sickness and mentioned that he was on sick leave from 30.4.85 and was undergoing specialised treatment in the Ram Manohar Lohia Hospital. On 10.10.85 the petitioner sent copies of sick certificates issued by the Ram Manohar Lohia Hospital between 30.4.85 and 7.12.85. On December 5, 1985 the General Manager, wrote to the

petitioner drawing his attention to para 537 of the Indian Railways Medical Manual under which the petitioner was required to submit sick certificates from the competent Railway doctor for the purpose of sanction of leave. Accordingly the sick certificates submitted by him were not accepted by the competent authority and the petitioner was informed that he was treated as on unauthorised absence from duty with effect from 4.5.85. In the same letter the petitioner was directed to join duty at Allahabad in terms of the transfer order of 18.4.85 within a week failing which he would be liable to face the consequences of remaining on unauthorised absence from duty. The petitioner on 7.12.85 represented against the order of 5th December 1985 to the G.M. drawing the latters attention to the letter of 29.5.85 in which the G.M. had accepted the specialised treatment being undergone by the petitioner at the Ram Manohar Lohia Hospital and his being on sick leave and therefore the question of reporting to Allahabad and argued that the direction to him to report to Allahabad within a week's time was mala fide with a view to harass the applicant. On 8.1.86 the applicant was given a notice to vacate the railway accommodation with effect from 4th May 1985 retrospectively against which he represented. On 18th February 1986 the impugned memorandum was issued initiating inquiry against the applicant for unauthorised absence since 4.5.85 and non-compliance with the order transferring him to Allahabad. The learned counsel for the petitioner during the course of arguments also brought to our notice the order No. E-141/521/Vig./E.(D&A) dated 31st March 1986 whereunder the

petitioner was placed under suspension from 31.3.86 because "a case against Shri B.M. Anand, ACO(Catering)/ ALD in respect of criminal offence is under investigation." In the same order the petitioner has been directed not to leave the headquarters without the permission of the competent authority ~~was informed~~ and that he would be paid subsistence allowance as admissible under the Rules.

4. The petitioner's case is that the respondents have all along been actuated by malafide intentions to harass and harm the petitioner firstly by transferring him to Allahabad and not recognising the sick certificate issued by the doctors of Ram Manohar Lohia Hospital and thereafter initiating disciplinary proceedings followed by suspension during the period of leave.

5. The learned counsel for the respondents on the other hand has argued that the Railway authorities have been very indulgent towards the petitioner and any question of any malafide intention to harass him did not arise. From 31.1.85 his applications for leave which were not on medical grounds but on private affairs were sanctioned promptly. It was only after order of his transfer to Allahabad was issued that the petitioner started applying for leave on medical grounds. This was also accepted by the Railway authorities initially but when the petitioner consistently and purposely did not appear before an authorised Railway doctor or getting the sick certificates issued by the doctors of Ram Manohar Lohia Hospital duly endorsed by an authorised Railway doctor, suspicion was created

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in the minds of the authorities that the petitioner is malingering on the excuse of sickness to avoid reporting at Allahabad. The Railway doctor at the instance of the respondents visited the residence of the petitioner on 29.11.85 and reported on 30.11.85 that "he was suffering from acute depression for which I prescribe him....." In the same report the Railway doctor indicated that "Shri B.M.Anand has not asked for any rest or medical certificate of sickness and I also feel that he does not need any rest so any sick certificate or leave on medical grounds has not been recommended by me to him." It was also recalled by the learned counsel for the respondents that the petitioner in his letter of 1.5.85 did not mention anything about his shifting to North Avenue residential accommodation from his official residence at Bengal Market and no information about the change of address had been given by him. The argument of change of address to North Avenue from Bengal Market has been advanced by the petitioner to cover up the justification of his being treated by the Ram Manohar Lohia Hospital doctors instead of the Railway doctor as his official residence at Bengal Market falls within the jurisdiction of a Railway doctor and by coming over to North Avenue he placed himself at a distance of more than 2.5 Kms from the Railway Hospital and therefore beyond the jurisdiction of a Railway doctor. It has also been argued by the learned counsel for the respondents that apart from admissibility of the sick certificates issued by the Ram Manohar Lohia

Hospital doctors, even these certificates were not annexed with his letter of 1st May 1985 whereas under the relevant rules the medical certificates have to be produced within 48 hours after applying for medical leave. It has also been averred by the learned counsel for the respondents that since the applicant has not sought relief for quashing of transfer order dated 18.4.85 he cannot ask for the cancellation of transfer order at this stage.

6. We have heard the arguments of the learned counsel for both the parties at length and gone through the various documents carefully. We have no doubt in our mind that the respondents including the Railway authorities did not deal with the petitioner with any tincture of malice or malafide. They granted him leave when applied for personal and domestic reasons unquestioningly and promptly from 31.1.85 till 3rd May 1985. It was only after receiving the transfer orders that the applicant for the first time sought leave on medical grounds without mentioning the shifting of his residence from the official residence at Bengal Market within the jurisdiction of the Railway Hospital to North Avenue near the Ram Manohar Lohia Hospital. It was incumbent upon the petitioner to inform the respondents about change of address if there was really such a change. These omissions on his part can be explained only by presuming that the story of his shifting the residence has been made up now as a cover which the petitioner wants to

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take for non-production of sick certificates from the Railway doctors. The respondents were justifiably intrigued and were fully within their rights and powers to call upon the petitioner to produce valid medical certificate from a Railway doctor or certificates endorsed by Railway doctors. The learned counsel for both the parties repeatedly drew our attention to relevant portions of paras 537 and 538 of the Indian Railway Medical Manual. For the sake of convenience the relevant portions are extracted below:

"Para 537.It is, however, essential that if leave of absence is required on medical certificate, a request for such leave should be supported by a sick certificate from the Railway doctor.

537(4) When a Railway employee residing outside 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 VIII 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 bonafides, 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 verifications and on the basis of the advice tendered by him after such verifications. However, where the Railway Medical Officer could not be deputed for such verification, the certificate from the registered medical practitioner may be accepted straightway.

NOTE-(1) 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.

"538. Continuation sick certificate -

(1) x x x x x x x x x x x x x x x x

(2) When a Railway employee who is residing outside the jurisdiction of the authorised medical attendant and is under the treatment of a non-Railway registered medical practitioner requires further extension of leave, he should submit a continuation certificate from the non-Railway Medical Practitioner to the competent authority who may at his discretion accept the certificate or refer the case to the Railway Medical Officer for advice or investigation and then deal with it as circumstances may require."

7. There is nothing wrong in the respondents expecting the petitioner to produce the necessary certificate from a Railway doctor when nothing had been indicated in the application of the petitioner dated 1st May 1985 that he had changed his residence and gone outside the jurisdiction of the Railway doctor. The respondents had asked the Railway doctor to visit him. This visit was performed on 29.11.85 and the Railway doctor did not find that he needed rest or leave. The petitioner did not approach the Railway doctor till he was directed by this Tribunal on 14.3.86 on his application before us for interim relief, to produce the medical certificate from an Authorised Medical Attendant of a Railway Hospital. According to the respondents it was because of the lapses of the petitioner that the impugned memorandum dated 18.2.86 serving a charge-sheet him was issued. According to the respondents only the inquiry will establish whether the allegations against the petitioner are correct.

8. The petitioner has been heavily depending upon the letter of the General Manager dated 29.5.85

in which he was allowed to charge his pay in Headquarter Office as "he is on sick leave with effect from 13.4.85 and is undergoing specialised treatment of S.S. Roy, Orthopaedic Surgeon, Ram Manohar Lohia Hospital, New Delhi. He has requested that his salary be charged in Headquarter office till he recovers from the illness and is declared fit to join duty." This quotation from the letter gives the impression that what the petitioner had mentioned in his application has been cited in so far as his being on sick leave since 30.4.85 and being under the specialised treatment of Dr. S.S. Roy of Ram Manohar Lohia Hospital is concerned. The letter does not give the petitioner the necessary cover without a proper medical certificate from an authorised Railway doctor, when he had not mentioned anywhere that he had transported himself out of the jurisdiction of the Railway doctor as he has averred in the application before us.

9. The petitioner sent a bunch of sick certificates issued by the Ram Manohar Lohia Hospital on 10.10.85. These were not accepted by the respondents and on 5th December 1985 the General Manager wrote as follows:

"In terms of para 537 of India Railways Medical Manual, you were required to submit sick certificate from the competent Railway Doctor for the purpose of sanction of leave. In view of this position, the sick certificates submitted by you from Dr. Ram Manohar Lohia Hospital, New Delhi, have not been accepted the competent authority. You are, thus, treated as on unauthorised absence from duty w.e.f. 4.5.85.

2. You are directed to join duty as ACO/ctg at Allahabad, in terms of this office notice No. 940-E/15-XXXI/Eia dated 18.4.85 (copy enclosed), within a week certain, failing which you will be liable to face the consequences of remaining on unauthorised absence from duty."


The petitioner replied to this letter by his letter of 7th December 1985 which is Annexure A-12 to his petition.

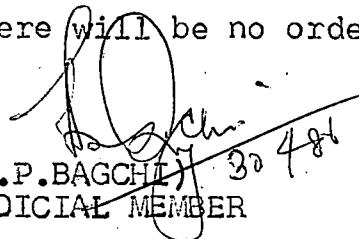
In this detailed letter he never mentioned that he got the services from the doctor of the Ram Manohar Lohia Hospital because he had shifted to North Avenue outside the jurisdiction of the Railway Hospital.

He cannot therefore *prima facie* derive any benefit from sub-para 4 of para 537 or para 538 of the Indian Railway Medical Manual applicable to a case where a Railway employee resides outside the jurisdiction of a Railway doctor.

10. In view of the facts and circumstances mentioned above we do not find any *prima facie* case to intervene in the matter by questioning the need or justification of the respondents holding an inquiry into the whole matter and taking departmental action as they deem fit under the Rules. Since the petitioner had not sought any relief about cancellation of the order of transfer and since it appears the respondents have already suspended the petitioner and have directed him to remain temporarily at New Delhi, it is not necessary to pass any order about his transfer. As regards leave salary, the learned counsel for the respondents stated the petitioner will be sanctioned leave on medical grounds with effect 14.3.86 when the Railway doctor for the first time recommended rest for 10 days. It was also stated that extension of leave on medical grounds will also be sanctioned if the necessary certificates are produced. In so far as the period of absence from 3.5.85 is concerned the nature and period of leave will depend upon the results of the inquiry which has been undertaken by the respondents. It will be in the interest of

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the petitioner if he cooperates with the respondents in completing the inquiry as early as possible so that the period of uncertainty and suspense comes to an end. The learned counsel for the petitioner admitted before us that the petitioner has been paid leave salary upto 30th September 1985. We direct that subject to the ultimate outcome of the inquiry and availability of leave the petitioner be paid purely on a provisional basis leave and leave salary at the same rate ^{at} which he was paid upto 30.9.85, for the period from 1.10.85 till the date of suspension i.e. 31.3.86. Subject to this, the application is rejected. In the circumstances, there will be no order as to costs.


(H.P.BAGCHI) 30/4/86
JUDICIAL MEMBER


(S.P.MUKERJI)
MEMBER