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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.825/90

DATE OF DECISION: 6-11-1990

DR. A.K. BHALLA

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS.

SHRI K.C. MITTAL

...

ADVOCATE FOR THE APPLICANT

SHRI O.N. MOOLRI

...

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, JUDICIAL MEMBER

THE HON'BLE MR. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

J U D G E M E N T

(DELIVERED BY HON'BLE MR. I.K. RASGOTRA, MEMBER (A))

Dr. A.K. Bhalla has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 against the following orders:

- i) No.730-E/757/EIA dated 1.3.1990 and;
- ii) No.730-E/923-PU dated 15.3.1990.

In both the above orders the respondents have rejected request of the applicant for regularisation of the period of his absence from 5.9.1985 to 19.11.1985 and 20.11.1985 to 15.1.1986 as leave due, i.e. Leave on Average Pay/Half Average Pay (L.A.P./H.A.P.) instead of leave without pay (L.W.P.).

2. The brief facts of the case are that the applicant met with an accident on 5.9.1985 and was under treatment of the Lok Nayak Jai Prakash Narain Hospital upto 19.11.1985. On being certified fit, he reported for duty on 19.11.1985 when he was directed to proceed to Bhatinda to join duty there as ADMO (Line) with effect from 21.11.1985. The applicant, however, is said to have been

2 Contd..2



again involved in an accident on 21.11.1985 necessitating his treatment in Hindu Rao Hospital. The applicant is said to have kept his superior authority informed of the two mishaps at the requisite time. On 16.1.1986 on being declared fit, after treatment after the second accident the applicant reported for duty along with sick and fit certificates to the Medical Superintendent, Northern Railway. He also submitted his voluntary resignation from Railway service on 16.1.1986, which was duly accepted by the competent authority on 3.4.1986. Although, the applicant had stopped attending the hospital w.e.f. 17.3.1986. According to the applicant, he was entitled to leave on average pay for 51 days and half average pay for 63 days. On 19.1.1987, the respondents advised the applicant that a sum of Rs.3755.50 was due from him on account of excess payment on account of normal payment made against LWP periods. This amount was subsequently revised to Rs.11,282. The contention of the applicant is that the amount shown as recoverable from him is on account of non-regularisation of the period of absence of 131 days as leave due. The applicant represented to the respondents, seeking regularisation of LWP periods. His requests, however, were rejected. He has, therefore, prayed that impugned orders dated 29.10.1986, 1.3.1990 and 15.3.1990, wherein the respondents refused to regularise the leave period of the applicant from 5.9.1985 to 19.11.1985 and 21.11.1985 to 15.1.1986, may be set aside by the Tribunal with the direction to the respondents to regularise the same.

The respondents in their written statement have explained that the leave due to the applicant works to:-

Contd...3



Total Leave Earned	Total Leave Availed	Total Excess payment made
LAP = 185 days	328 days LAP	-143 days
HAP = 120 days	12 days commuted	+108 days balance

3. The applicant in his rejoinder has reiterated that he is entitled even according to the respondents' own account of LAP and LHAP which works out to 185 days (LAP) and 108 days (HAP), while the period when the applicant was in hospital/treatment total upto only 131 days. He has contended that the action of the respondents to treat the period of his absence during the two accidents he met with as LWP is highly arbitrary and malafide. If he is allowed to commute his LHAP 120 days to cover the period of sickness, no dispute will survive. He has further contended that the period of his sickness is bonafide, as the same is covered by the Hospital certificates and can be available for being subjected to verification from the records of the Lok Nayak Jai Prakash Narian Hospital and Hindu Rao Hospital.

4. The learned counsel for the respondents, Shri O.N. Moolri, pleaded that the applicant being a Railway employee should have sought medical treatment from the Railway hospital in accordance with the rules. Further he should have obtained sick and fit certificates on each occasion in accordance with Rule-521 R-1 from the Railway Medical Authority. As he did not do so, the Railway authorities were not satisfied in regard to the reasons given for his absence.

5. Shri K.C. Mittal, learned counsel for the applicant contested the contention of the learned counsel of the respondents and submitted that it was unfortunate that the applicant met with two accidents in quick succession and had to seek treatment in the respective



civil hospitals near to the place of accident. The learned counsel stressed that it was not always possible nor feasible to reach a Railway hospital when one is involved in an accident. The accidents, from their very nature, are sudden, and unanticipated, and could not be expected to take place, near a particular spot. In such situation, the primary need is to reach the nearest hospital where medical aid can be obtained.

5. We have heard the learned counsel of both the parties. Since the periods of absence of the applicant are covered by sick and fit certificates issued by Government Hospitals Viz. Lok Nayak Jai Prakash Narain Hospital and Hindu Rao Hospital, there is no reason to doubt the veracity of the documents certifying the accidents and the period of treatment covered by the relevant certificates issued by the respective hospitals. We also find from the page 13 of the paper book that the medical board convened by the Railway, had also certified the applicant fit on 20.11.1985, after he reported for duty along with medical certificates from Lok Nayak Jai Prakash Narain Hospital. Similar procedure could have been adopted by the respondents in the case of his second absence consequent to the second accident. In the circumstances of the case the respondents appear to have no rational ground to not to accept the certificate issued by Hindu Rao Hospital.

In the facts and circumstances of the case, we order and direct that the period of absence from 5.9.1985 to 19.11.1985 and 20.11.1985 to 15.1.1986 should be regularised as leave due against the LAP and LHAP, due to the applicant, duly commuting, ^{L.H.A.P.} as required. Any amount due to the applicant should, accordingly, be released to him, if not already done.

There will be no orders as to costs.

(Signature)
(I.K. RASGOTRA)
Member(A) 6/11/1990

(Signature) 6.11.90
(T.S. OBEROI)
Member(J)