

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO.105/91

DATE OF DECISION : 13.3.92

SHRI MADAN MOHAN SABHARWAL

...APPLICANT

VS.

GENERAL MANAGER, NORTHERN
RAILWAY & ORS.

...RESPONDENTS

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SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI B.S. CHARYA

FOR THE RESPONDENTS

...SHRI ROMESH GAUTAM

1. Whether Reporters of local papers may be allowed to see the Judgement? *VS*

2. To be referred to the Reporter or not? *VS*

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant, Electrical Teleprinter, Northern Railway, New Delhi was injured in due course of his employment by sustaining an electric shock after remaining for 87 days under treatment. He was declared fit to join his duties on 19.10.84. The grievance of the applicant is that he has not been paid the leave salary of 87 days when he was hospitalised and he has been given only of 6 days.

The applicant again suffered a shock in 1985, but he was medically declassified and was offered a lower category job which he refused and instead desired that his son be given

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an employment and the applicant be retired prematurely.

On medical de categorisation, the applicant retired w.e.f. 22.1.87, but the son of the applicant was given employment w.e.f. 12.1.88. While the applicant was in service, he was also allotted a Railway Quarter No.72 A/3.

The applicant has also been made to pay the market rate of rent from 23.7.87 to 2.5.88, and after that the gratuity was paid to the applicant in November, 1989 after deducting the damages for retention of the Railway quarter beyond retirement. The said Railway quarter has since been regularised in the name of the son.

2. The applicant has claimed encashment of leave of the period from 4.8.84 to 28.10.84. He also claimed his retirement w.e.f. 12.1.88 when his son got employment. He also claimed the refund of the amount deducted from the DCRG along with 18% interest and also prayed for restoration of family passes.

3. The respondents contested the application and stated that the application is barred by time; but the same has been filed on 19.12.90, while the applicant claims relief of the period from August, 1984 to October, 1984 after his retirement w.e.f. 22.1.87. The applicant should have come within one and a half year after making a representation and

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since he has not come in time, so he cannot press his claim being barred by time. It is further stated that the applicant was under treatment of the Railway doctor from 4.8.84 to 29.10.84, but the applicant remained on HOD for 6 days, i.e., from 4.8.84 to 9.8.84 and for the remaining period, he was treated on non HOD by the competent medical authority and on this account he is not entitled to any hospital leave. The applicant has been negligent in the discharge of the duties and he got electric shock in 1980, again in 1984, then again in 1985 and so when he was medically de-categorised, the Medical Board recommended him a job where he had not to do typing, signalling and handling of cash involving crossing of and running of trains. So he was offered the post of Clerk in the grade of Rs.260-400 which he refused and consequently he was retired from the Railway service w.e.f. 22.1.1987. The applicant refused to accept the same and thereafter his son was given compassionate appointment though there were others in the waiting list. A sum of Rs.8,932 on account of rent and Rs.771 on account of electricity bill were deducted from the DCRG, i.e., a total amount of Rs.9,703. The applicant could not be paid salary up to the date as son was given compassionate appointment as there is no rule in that regard. The applicant himself did not vacate the Railway quarter after his retirement as he was unauthorised occupant in the same and was liable to pay the penal rent. The Railway passes could not

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be restored as the applicant did not vacate the Railway quarter.

4. I have heard the learned counsel for the parties at length and have gone through the record of the case. The application, of course, is barred by time, but the applicant has preferred an application for condonation of delay. The applicant has stated that while in employment, he has been getting treatment from recovery of the shock and as such he was not in a fit state of mind to pursue the matter. His condition also became serious on occasions so as to render him ^{unfit} to pursue the legal remedy. In reply to this, the respondents have only denied the contentions raised in the MP for condonation of delay. In view of this fact, the delay in filing the application is condoned and the application is treated within time.

5. It is admitted to the respondents that the applicant was under Railway doctor's treatment from 4.8.84 to 28.10.1984. Though it is written that he was on HOD only for 6 days, but this will not deprive the applicant of his due salary for this period as HOD because the applicant got injuries during the course of his employment. The contention of the respondents that he was only on HOD for

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6 days, cannot be accepted. No rule or circular of the Railway Board has been cited to show that when an employee who has received injuries during the course of the employment being continuously treated in the hospital has not been treated on HOD for the whole period. The applicant, therefore, is entitled to hospital Leave salary for 87 days as claimed by him.

6. The claim of the applicant that he should be given the salary upto the date his son was employed, cannot be accepted as there is no provision under law for conferring this benefit to a declassified Railway employee because of health. In the present case, compassionate appointment has been given to the son of the applicant and the applicant stands compensated to that extent, so his claim for giving him full salary upto 12.1.1988 when his son got employment has no basis.

7. The applicant has also assailed the deduction from the DCRG to the tune of Rs.9,703, by which the applicant was charged market rate of rent. After retirement, the applicant could have only retained the allotted quarter for a period of four months, but he has retained the quarter beyond that period and the respondents, therefore,

are within their right to charge the rent at the market rate as per Extant Rules. The learned counsel for the respondents has filed the circular of the Railway Board which goes to show the ^{made of} calculations under which the relevant charges are made. The contention of the learned counsel for the applicant is that since the same quarter was regularised in the name of the son, so the normal licence fee be charged, cannot be accepted. The son of the applicant got employment only on 12.1.1988 and is eligible for allotment of the quarter on that date. Earlier to that, the applicant cannot have any right to retain the Railway quarter except after paying the rent as prescribed in the various circular chargeable from unauthorised occupants. This amount has already been deducted from DCRG and the applicant has not come earlier, so it shall not be proper now to order the refund of the amount and ask the respondents to issue the applicant for recovery of that amount. However, the applicant is entitled to interest on the delayed payment of the amount of DCRG from 22.4.1988 till November, 1989 till the date the applicant was paid DCRG @ 10% p.a. The respondents, if not restored, should restore the passes of the applicant as per Extant Rules.

8. In view of the above facts, the application is disposed of in the following manner :-

(a) The respondents are directed to pay the salary as hospital leave of 87 days for the period from 4.8.1984 to 28.10.1984.

(b) The respondents are further directed to pay the interest on the unpaid amount of DCRG @ 10% p.a. from 22.4.1988 to November 1989 till the date the applicant was paid DCRG @ ~~10% p.a.~~

(c) The respondents are also directed, if not ~~post retirement~~ restored, to restore the passes of the applicant as per Extant Rules. The other Reliefs claimed are disallowed. ✓

The respondents shall comply with this order within a period of three months from the date of receipt of a copy of the same. In the circumstances, the parties shall bear their own costs.

J. P. SHARMA
(J. P. SHARMA) 13.3.72
MEMBER (J)