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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./T.A. NO. 1486 of /19⁹² Decided on : 22.11.95

J.N. Singh

... Applicant(s)

(By Shri J.K. Bali Advocate)

versus

U.O.I.

... Respondent(s)

(By Shri R.L. Jhawan Advocate)

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THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE SHRI

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1. To be referred to the Reporter or not ? Yes
2. Whether to be circulated to other Benches of the Tribunal ? No

S.R. Adige
(S.R. ADIGE)
Member (A)

(24)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.1486/92

New Delhi this the 22nd Day of November, 1995.

Hon'ble Shri S.R. Adige, Member (A)

Jagdish Narain Singh,
son of Shri Faquir Chand, Formerly
working in Engineering
Control Division, Railway Manager's
Office, Norther Railway, ... Applicant

(By Advocate: Shri J.L. Balli_

Vs

Union of India

1. General Manager,
Northern Railway,
Headquarters Officer,
Baroda House, New Delhi.

2. Divisional Railway Manager,
Northern Railway,
Delhi Division,
State Entry Road
New Delhi.

... Respondents

(By Advocate: Shri R.L. Dhawan)

J U D G E M E N T

Hon'ble Shri S.R. Adige, Member (A)

The grievance of the applicant Shri J.N. Singh, Retired PWI Northern Railway relates to the treatment by the respondents of the period 13.4.1983 to 28.1.1988.

2. His case is that while posted as PW I Grade III (Rs.1400-2300 RPS) Suratgarh, he was deputed to Lucknow on duty on 4.4.1993 and reported there on 6.4.1983. While at Lucknow, he suddenly felt chest pain on 13.4.1983 which the railway medical authorities diagnosed as a heart problem. On

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16.4.1983 he left Lucknow with the Medical authorities permission for Faridabad, where his family doctor prescribed five months rest including two months bed rest, which information along with medical certificate was sent to his parent office at Suratgarh. On 30.9.1983 his condition having worsened he was hospitalised at Faridabad from where he was eventually discharged on 10.10.1983, being prescribed 15 days bed rest. Subsequently he suffered acute mental depression and was also involved in a criminal case along with two others, but eventually all three were acquitted. On his being declared fit for duty by the private doctor he reported for duty in the C.E (Construction) Northern Railway, Keshmere Gate Delhi Office on 29.1.1988 along with his application dated 25.1.1988 praying for duty in Delhi Construction Office. He was sent for a medical examination to DMO, Delhi on 25.3.1988, who issued a fitness certificate on 20.5.1988 (Annexure A-3) advising sedentary work, but on 7.6.1988 (Annexue A-4) C.E (Construction) advised that there being no sedentary job under him, the applicant was being sent to his parent division and he was eventually posted as PW I, Grade III, New Delhi on 15.6.1988, the period from 7.6.1988 to 15.6.1988 being treated as duty (waiting for posting). He retired from that post on 30.6.1991. The applicant alleges that while calculating the amount of pension due to him the period 13.4.1983 to 28.1.1988 (including 13.4.1983 to 28.1.1988 when he was sick and 29.1.1988 to 6.6.1988 when he was waiting for orders) has not been taken into account by the respondents as qualifying service

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for pension. He alleged that his representation dated 28.11.1991 (Annexure A-8) having gone upreplied to, he has been compelled to file this O.A.

3. The respondents have, in their reply, repelled the O.A. They deny having received the applicant's representation dated 28.11.1991 and apart from contending that the O.A. is barred by limitation state that the applicant has not availed of the statutory remedy available under Rule 18 (iv) Railway Servants (Disciplinary and Appeal) Rules, 1968. Further they contend that the period from 13.4.1983 to 28.1.1988 is unauthorised absence from duty and from 29.1.1988 to 6.6.1988 leave without pay, and the entire period from 13.4.1983 to 6.6.1988 does not count as qualifying service for pensionary benefits in terms of para 422 of Manual of Railway Pension Rules, 1950.

4. In the rejoinder dated 26.4.1995 filed by the applicants legal heir, who was allowed to be impleaded, the applicant himself having expired in the interim, it has been contended that at no time was the applicant advised that the period from 13.4.1983 to 6.6.1988 would not be treated as qualifying service. The other contents of the O.A. have broadly been reiterated.

5. Examining the case on merits, it is well settled that no leave by a Government servant can be claimed as of right. There is no averment by the applicant that he made any application for leave for

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the period 13.4.1988 to 28.1.1988. Under the circumstances this period of absence from duty was clearly without authorisation and hence unauthorised for which no pay/retiral benefits are admissible. In the absence of proper sanction for leave of absence from duty Railway Board letter dated 9.1.1987 relied upon by the applicant is of no help to him.

6. Regarding the period 29.1.1988 to 6.6.1988, it is clear that upon his attending office after an absence of over four and a half years on grounds of illness, the respondents were required under rules to get the applicant medically examined to certify his fitness for issuing duty. The DMO issued the fitness certificate on 20.5.1988 advising a sedentary job and the Delhi Construction Office made efforts to locate such a job, but none being found under them they repatriated the applicant to his parent organisation on 7.6.1988 and he joined a post there on 15.6.1988. It is clear thereupon that ^{the} period from 29.1.1988 to 6.6.1988 was not one which the applicant could rightfully claim to be treated as duty, and therefore had to be treated ^{as} ~~as~~ leave. Furthermore, it is clear that this period was rightly treated as leave without pay, owing to the applicant admittedly having received leave encashment in full (para 4.12 of O.A) for such period for which leave with pay was due.

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7. In the result I see no reason to intervene in this matter. The application fails and is dismissed. No costs.

S.R. Adige
(S.R. Adige)
Member (A)

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