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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. 479/93

New Delhi, This The 20th day of January 1994

Shri J.P. Sharma, Member (J)

Shri J.P. Kapoor s/o Sh. M.C. Kapoor,
Station Master, Delhi Sadar Bazar,
Northern Railway, Bikaner Division,
R/O T-58-D, Serai Phasse Railway Colony, Delhi.

...Applicant

By Advocate Shri B.K. Batra

Versus

1. Union of India, Through
General Manager,
Northern Railway,
Bareda House, New Delhi.
2. Divisional Rail Manager,
Northern Railway,
Bikaner.

...Respondents

By Advocate Shri R.L. Dhawan

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

The applicant was working as a Station Master in the grade Rs.1600-2660 with a basic pay of Rs.2480/- and retired from service on 28 Feb 1993. The respondent issued a memo dated 12 Feb 93 re-fixing the pay of the applicant on account of the applicant being under unauthorised absence from time to time for the period from 3 Feb 1981 to 31 Aug 1989. It is further observed that the note appended at the bottom of the memo that on unauthorised absent with effect from 3-11-81 to 24-1-83 he was not due for preferential fixation with effect from 1 Aug 82 in cadre re-structuring of ASMs. He was allowed preferential fixation with effect from 21 Jan 1983 on resumption of duty. Since the applicant was to retire on 28 Feb 93

he filed the application on 23 Feb 93 and the case came before the Tribunal on 24th Feb 93 whereby the operation of the impugned order dated 12 Feb 93 was stayed. The application was finally admitted on 20th May 1993. The respondent did not file any reply to the application despite opportunities given to them time to time. By the order dated 20 July 93 the case was ordered to be heard for final hearing ex-parte. Further on 19 Aug 93, 21 Sep 93, 23 Feb 93, further time was given to file the reply but the same was not filed. On 25-11-93 the right of filing the counter on behalf of the respondent was forfeited. The matter has been heard to-day and Shri R.L. Dhawan appeared for the respondent.

2. The case of the applicant is that he was posted at Pili Banga and there being no Railway dispensary available in the vicinity he reported sick with the qualified M.B.B.S Doctor and was under his treatment from 3 Nov 81 to 24 Jan 83 about which information was sent to concerned officers in time. On recovery from sickness the applicant reported for duty to his controlling officer who directed him to Railway Medical Officer, Northern Railway, Bikaner, who after examination issued a fit certificate and consequently, the applicant was put back on duty with effect from 25-1-83. The contention of the applicant is that he had not been given any opportunity for refixing his pay with effect from 1 Aug 82 and the respondent unilaterally passed the impugned order dated 12 Feb 93.

4. Since there was no reply from the respondent and the right to file the counter had been forfeited the application has been heard and to be decided on the basis of pleadings after hearing the counsel for the respondent Shri RL Dhawan.

5. The contention of the learned counsel for the respondent is that the application under section 19 AJ Act 1985

is not maintainable as the remedy of statutory appeal provided under Rule 18(4)(a) of the Disciplinary Appeal Rules 1968 has not been exhausted. The learned counsel for the respondent also relied on the decision of Shri SS Rathore Vs State of MP reported in AIR 1990 SC Page 10. Under Section 20 of the CAT Act 1985, the aggrieved party has to exhaust the remedy departmentally. Further in this case, the impugned order had the effect of adversely affecting the last pay drawn by the applicant and that order was passed only on 12 Feb 93, communicated on 22 Feb 93, the date of superannuation being on 28-2-93 so that the applicant sought for permission of waiving this hurdle. In fact the respondent had not appeared at all till the matter was admitted. Now it is open to the respondent to non-suit the applicant on this account. The contention of the learned counsel of the respondent has therefore no force.

6. The respondent have not given any show cause notice while re-fixing the pay of the applicant on the ground that he remained on unauthorised absence from duty from 3-11-81 to 24 Jan 83. This re-fixing involved civil consequences by which the pay of the applicant was reduced and in such case as held by the Hon'ble Supreme Court in Bina Pani's case reported in AIR 1967 SC page 1267 it has been held that the principles of natural justice should be observed in the administrative orders which involves civil consequences. The Principal Bench of the CAT also in the case of Govinda Singh and others Versus Garrison Engineers and others reported in 1991 (1) CAT page 74 has held that in the matter of fixation of pay where ^{subsequently} ~~a~~ rectification is made which is adverse to the person affected the employee cannot be condemned without issuing him a show cause notice. The re-fixation in the present case would result in recovery amounting to thousands of rupees which would automatically result in hardship when the applicant was

to retire only within 15 days from issue of the order.

If the applicant has unauthorisely absent^{ed} himself in that case the respondent were free to draw disciplinary proceedings against him. Thus the impugned order has been passed without pursuing the principles of natural justice and without hearing him.

7. On merits also it appears that the applicant was also allowed to join when the respondents were satisfied about the sickness of the applicant and he was declared medically fit by the Railway Doctor. The learned counsel for the applicant has referred to the Railway Establishment Manual Volume I para 608 and the circular issued by the Railway Board that certificate from registered medical practitioner may grant leave on medical grounds produced by non -gazetted railway staff may normally be accepted. The learned counsel also referred to the fact that extra-ordinary leave has been granted and the extra-ordinary leave taken by him will count for increment in the time scale. He has referred to Railway Circular No.F(E) 61 IC/1 of 6th Mar 1962. The learned counsel for the respondent further referred to para 521 of the Indian Railway Establishment Code Vol I 1985 Edition. But this does not help at all the respondent because what is laid down is that the affected party may accept the certificate or in case where reasons to suspect the bona fides of the same refer the case to the Divisional Medical Officer for advice or investigation. In the present case the applicant has already been declared fit by the Railway Board Doctor and therefore he was allowed to join the service with effect from 25-1-1983.

8. The learned counsel for the applicant has also relied on the decisions of the Principal Bench reported in AIR 1988 Volume II CAT page 510 Shri CS Bedi Vs Union of

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India and others. The facts of the case are also akin to the present case. The Bench after considering the matter held that the rectification order resulting in serious civil consequences to an employee cannot be done without issuing him show cause notice setting out all the circumstances and affording him an opportunity of hearing to state his case which is the basic requirement of the principles of natural justice. In that case the Bench quashed the order. In the present case also the fixation was done taking into account the leave sanctioned to the applicant though ~~1/2~~ ^{without} pay for the period from 3 Nov 1981 to 24 Jan 1983 and subsequently in Feb 93 this period is taken to be unauthorised absence though extra-ordinary leave without pay has been sanctioned at the relevant time. In such a circumstance the order impugned in this case cannot stand.

9. The application is therefore allowed. The impugned order dated 12 Feb 93 is quashed and set aside with the direction to the respondents to withdraw the re-fixing and giving the benefit of the applicant on earlier fixation and re-fix his pensionary benefits also as if no re-fixation has been done in his case. In the circumstances the parties to bear their own costs. The respondents to comply in four months from the receipt of the copy of the judgement.

Reee
(J.P. SHARMA)
Member (J)

LCP