

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

ORIGINAL APPLICATION NO.357 OF 1998.

ALLAHABAD THIS THE 24TH DAY OF AUGUST 2006.

HON'BLE MR. JUSTICE KHEM KARAN, V.C.

HON'BLE MR. P.K. CHATTERJI, A.M

S.N. Saigal son of late N.B Saigal, R/o 67 GHI, 5th Avenue, Smith Road,
Allahabad.

.....Applicant.

(By Advocate: Sri S.S. Sharma)

Versus.

1. Union of India owning & representing 'Northern Railway' notice to be served to- The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, D.R.M. Office, Nawab Yusuf Road, Allahabad.
3. The Senior Divisional Personnel Officer, Northern Railway, D.R.M Office, Nawab Yusuf Road, Allahabad.

.....Respondents.

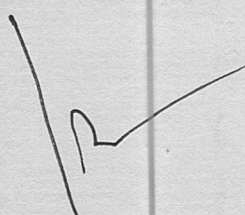
(By Advocate: Sri A.V. Srivastava)

ORDER

BY HON'BLE MR. JUSTICE KHEM KARAN, V.C.

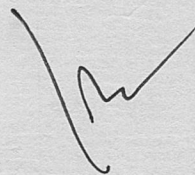
Heard Sri S.S. Sharma counsel for the applicant and Sri A.V. Srivastava counsel for the respondents.

2. The applicant has sought the following reliefs:-

- "(a) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay full salary to the applicant in Grade Rs.1400-2600/- (RPS) for the period from 11.1.96 to 31.5.96 at the rate of Rs.2420/- basic per month and for the period from 01.6.96 to 17.12.96 at the rate of Rs.2480/- basic per month with 30% running allowance on basic pay and necessary allowances thereon as admissible during this period.
 - (b) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to fix the pay of applicant in New pay scale of Vth Pay Commission with effect from 01.1.1996 and make payment of salary for the period from 1.1.96 to 17.12.96 in New Pay Scale.
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- (c) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to pay all the pensionary benefits and retirement dues to the applicant on the basis of fixation of pay in New Pay Scale and on the basis of last pay drawn accordingly on 17.12.1996.
- (d) That the Hon'ble Tribunal may graciously be pleased to award interest at the rate of 18% per annum compounded annually on the amount due to the applicant against this case from the date it is due to the date the payment is made to the applicant.
- (e) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to allow all the consequential benefits in this respect to the applicant.
- (f) That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction or allow any other relief in favour of the applicant which this Hon'ble Tribunal deem fit and proper in the circumstances of the case.
- (g) That the Hon'ble Tribunal may graciously be pleased to award cost of this application to the applicant".

3. There is no dispute that while working as Mail Guard in the scale of Rs.1400-2600 (RPS) in November 1995. He was submitted to periodical medical examination on 15.11.1995. He was found unfit for the post of Guard but was certified to be fit for alternative category. Under the Rules, he was granted leave for 96 days on Average pay and thereafter on Half Average Pay for the period commencing from 9.3.1996 to 18.3.1996 and thereafter Extra Ordinary Leave for the period from 19.3.1996 to 14.9.1996. The Screening Committee envisaged under the relevant Rules met on 11.1.1996 (Annexure A-4) so as to ascertain as to whether the applicant was medically fit for a particular grade or post. It is stated that this Screening Committee certified him as suitable for the alternative grade of Chief Ticket Inspector in the grade of Rs.2000-3200. The alternative employment could not be offered till 9.9.96 in spite of the repeated requests of the applicant (Annexures A-6 and 7). It appears that he was offered alternative employment vide order dated 6.9.96 (Annexure A-8) on the post of Office Superintendent Grade-2 in the grade of Rs.1600-2660,

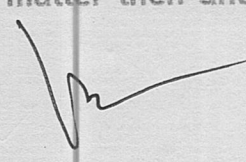


which he refused on the ground that the same was inferior to the grade to which the Screening Committee found him fit in its report dated 11.1.1996. Consequently order dated 21.11.1996 (Annexure A-10) was passed, retiring him on medical grounds.

4. During the course of arguments, learned counsel for the applicant has submitted that at present the grievance of the applicant is confined to grant of leave etc for the period commencing from 11.1.1996 to 17.12.1996. He says that since the Department did not offer him alternative post even after the certificate of the Screening Committee, so period from 11.1.1996 to 9.9.1996 should be treated as period, in waiting and period from 10.9.1996 to 17.12.1996 should be treated as on duty, as the applicant was not at fault.

5. Learned counsel for the respondents has contended that under the relevant Rules, applicant could have been offered alternative job in equivalent grade in which he was working as Mail Guard and so the Screening Committee went out of its jurisdiction in recommending the applicant as fit to work as Chief Inspector Ticket in the scale of Rs.2000-3200. Learned counsel for the respondents goes on to argue that it was for this reason that the Authority concerned could not offer the alternative post to the applicant in the grade of Rs.2000-3200 and the alternative job offered was in the scale of Rs.1600-2600. He says that in this offered grade, 30% of running allowance was also included. Learned counsel for the respondents says that the applicant himself refused to accept this offer, and so he can not claim that entire period right from 11.1.1996 to ~~17.12.1996~~ ^{17.12.96} should be treated as on duty and salary and allowances should be paid to him.

6. We have considered the respective submissions in the light of the relevant Rules, and we are of the view that the period commencing from 11.1.1996 to 17.12.1996 should be treated to be on duty for purpose of leave, pension and salary etc. as the applicant was not at fault. After the Screening Committee declared him fit for a particular grade or post, if the Department was of the view that the grade so certified was not admissible as per Rules, it ought to have decided the matter then and there. They



ought to have issued Annexure A-9 without further loss of time. It took sufficient time in issuing even that letter of appointment. The applicant had no option but to wait for orders. The record reveals that he issued reminders. It was the choice of the applicant to accept, the appointment so offered. Once the applicant refused to accept the alternative job so offered by the department, the department ought to have passed order regarding his retirement on medical grounds, which it did on 17.12.1996. We are of the view that applicant should not suffer after he has retired. There was no misconduct on his part. So the contention if the learned counsel for the applicant that period right from 11.1.1996 to 17.12.1996 should be treated to be on duty for the purpose of pay and pension etc.

7. So this O.A is finally disposed of with a direction to the respondent NO.2 i.e. Divisional Railway Manager, Northern Railway, Allahabad to pay salary, allowance etc. as may be admissible to him for a period of 11.1.1996 to 17.12.1996 treating the said period to be on duty for all purposes including pay, pension etc., within a period of 4 months from the date a certified copy of the order is produced before him.

No costs.

Member-A

Manish/-

Vice-Chairman.