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OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 10th day of MARCH 2005.

Original Application no. 1642 of 2001.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Kamla Kant Sharma, S/o Sri B. Prasad,
Retired Tech. Ist, Progress Deptt. P.C.O. N.E. Rly.,
Izzatnagar,
R/o 355 Mohalla Sahukara, Bareilly.

....Applicant

By Adv : Sri A.K. Srivastava

V E R S U S

1. Union of India through the General Manager (P),
N.E. Rly., Headquarters Office,
Gorakhpur.
2. Chief Works Manager (P),
N.E. Rly., Workshop,
Izzatnagar, Bareilly.
3. Chief Medical Officer,
N.E. Rly., Izzatnagar,
Bareilly.

...Respondents

By Adv : Sri D.C. Saxena

O R D E R

The lone question involved in this case is whether the period between 10-10-1996 to 17-11-1997 should be treated as duty and pay for this period is payable to the applicant or not.

2. A vignette of the facts of the case is all that necessary to decide the issue. The applicant

entered the services of the respondent in Feb. 1961 and in 1995 he fell ill. In June, 1996 the applicant was transferred to steel foundry section of the workshop and the applicant requested for his posting at ground floor. However, the applicant was given leave for one month from late July, 1996. When the applicant resumed duty after leave in August, 1996, he was referred to a special medical board on account of administrative function and the applicant duly reported on 10-10-1996. It was till 03-12-1996 that the Chief Medical Officer detained the applicant and recommended for sedentary duty and the applicant reported on the said date. However, the respondents did not allot any sedentary function and retained him further and it was on 15-03-1997 that the applicant was asked to attend the fit job inquiry scheduled on 19-03-1997. Thereafter, on 18th November, 1997 only the respondents had permitted the applicant to do the sedentary work.

3. The applicant was not paid his salary from 10-10-1996 to 17-11-1997. His request for the same was turned down by order dated 05-06-2000 and hence this O.A.

4. Respondents have preferred a customary and conventional reply but they were courteous enough to concede that from 10-10-1996 to 02-12-1996 the applicant was on sick leave and as such this period was regularized as leave due i.e. LAP. The

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respondents did admit the fact that the nominated committee had recommended to absorb the petitioner as Tech Gr II (Tremer) in the scale of Rs 1,200 - 1,800 (Rs 4,000 - 6000) vide letter dated 20-03-1997 and the applicant was granted the sedentary job in Nov. 1997. The respondents have regularized the absence of the applicant as under:-

- (a) 03-12-1996 to 02-01-1997 - LAP
- (b) 03-01-1997 to 27-05-1997 - LHAP
- (c) 28-05-1997 to 18-11-1997 - Extra ordinary leave.

The above manner of regularization, according to the respondents, was on the basis of Chapter XIII, IREM 1989.

5. The case has been considered by hearing the arguments by the counsel for the parties as well as by perusing the entire pleadings. Admittedly it was the respondents who had recommended for reference to a specially nominated Medical Board in December, 1996 and the applicant had to wait for their recommendation, which came only in March 1997. Thereafter, it took almost eight months for the respondents to assign the applicant sedentary job and thus, for the non working on these periods it is the respondent who is to be blamed. There is no question of regularizing the absence by way of LHAP and EOL, when the applicant was under retention by the Medical Authorities and thereafter, though he was available to do the sedentary job, he was not given any such job. Thus, from 10-10-1996 to 17-

11-1997 the applicant was available for doing sedentary job and as such he is entitled to the full pay and allowances for the above period.

6. In the end, the O.A. succeeds. Order dated 05-06-2000 is hereby quashed. The respondents are directed to treat the period from 10-10-1996 to 17-11-1997 as period of duty and accordingly calculate the pay and allowances due to the applicant from 10-10-1996 to 17-11-1997 and the amount due shall be paid to the applicant along with simple interest @ 6% per annum from 1998 till the date of payment. A period of three months is granted to comply with the orders.

7. Under these circumstances, no order as to cost.



Member (J)

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