

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 16th OF MARCH 2011)

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. S.N. Shukla, Member (a)

Original Application No. 621 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Suraj Pal S/o: Sri Bihar, Helper/Khalasi,
R/o: Village and post Guwara, Tayyabpur,
Dist. Kaushambi. Applicant

Versus

1. Union of India through General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, N.C. R. Allahabad.
3. Senior Sectional Engineer (Sig), R.R.I. Juhi,
N.C. R. Kanpur.
4. Divisional Personnel Officer, N.C.R. Seed.

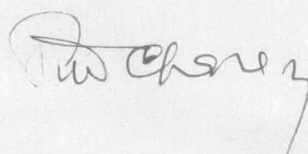
..... Respondents

Present for Applicant : Shri D.P. Mishra
Present for Respondents : Shri Dharmendra Tiwari holdig brief of
Shri A.K. Pandey

ORDER

DELIVERED BY JUSTICE S.C. SHARMA, MEMBER (J)

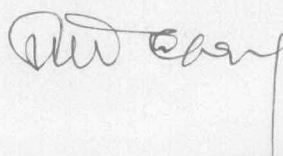
The instant Original Application has been instituted for quashing the order dated 15.3.2002 and 24.4.2002 (Annexure A. 1 & A.2). Further prayers have been made for giving direction to the Respondent No.2 to consider and decide the representation of the applicant dated 18.3.2005 in a positive manner. Further prayer is that a direction be given to the Respondent No.2 and 3 to pay the salary of the applicant



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from April 1999 to 30.2.2001 with 18% penal interest. Further prayer is that Respondent No.2 and 3 be directed to supply copy of the order dated 8.3.1999. Further prayer to Respondent No.2 and 3 to provide further reasonable time for option as mentioned in order dated 8.7.1999. Further the Respondent No.2 and 3 be directed to supply dress to the applicant due from June 1999 till today.

2. The pleadings of the parties may be summarized as follows: The applicant was appointed on 22.8.1979 as Class IV employee in the department of Railway. The applicant had been serving under the control of Respondent No.3 and the promotion of the applicant was due and he was promoted as M.S.M. Grade III in the pay scale of Rs. 3050-4590 vide order dated 19.3.1999. That the applicant was transferred from Juhi to Sarsaul vide order dated 17.5.1999 on promotion as MSM Grade III in the above pay scale and transfer order was issued in pursuance of the promotion. Being aggrieved by the order of transfer an O.A. No. 540/1999 was filed and interim relief was granted to the applicant. The applicant on 24.5.1999, submitted a medical certificate of fitness issued by the competent authority. But the applicant was not permitted to join his duty in a most arbitrary manner. The applicant's salary from April 1999 to 13.2.2001 has not been paid by the respondents. The annual increments for the aforesaid period is also deducted without following the procedure. A representation was submitted but the same was not decided. On the representation of the applicant the order of promotion with transfer was changed vide order 8.7.1999 and he was transferred to Juhi. But this order was not communicated to the applicant and he was not permitted to join at Juhi. Incorrect and misleading facts were pleaded on behalf of the

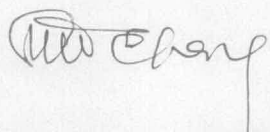


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respondents in O.A. no. 540/1999 that the respondents had not paid the salary of the applicant of the above period. Hence the O.A.

3. The respondents contested the case by filing Counter Reply. It has been alleged by the respondents that the applicant has wrongly stated in the O.A. that he has not ever been awarded any penalty but an order was passed by the Assistant Signal and Telecom Engineer on 30.10.1995 and a major penalty was awarded withholding of increment for a period of two years. On appeal the penalty was reduced. The applicant had been negligent in performing his duty. The applicant is a habitual absentee. In the past due to unauthorized absence from 29.9.1996 to 21.10.1996 one set of privilege pass was withheld by the competent authority which was a sort of minor penalty. On numerous occasions, the applicant remained absent, details have been given. It is wrong to allege that order of transfer or change was not communicated and that the applicant concealed the material facts intentionally. The applicant has undergone surgery on both the eyes and he was declared unfit for the post he was holding and it was detected during the subsequent medical examination. Due to this reason the applicant willfully avoided medical examination. The applicant was required to submit fitness certificate as he proceeded on medical leave but he avoided due to that reason. The applicant had been working in the Signal Unit which is highly safety zone and medical negligence in that cannot be tolerated. No disciplinary action was required in the matter as he remained absent. Hence the O.A. is liable to be dismissed.

4. We have heard Mr. D.P. Mishra Advocate for the applicant and Shri Dharmendra Tiwari, holding brief of Shri A.K. Pandey and perused the entire records of the case. It has been alleged by the counsel for



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the applicant that the salary has not been paid to the applicant for the period from May 1999 to 13.2.2001. It is admitted fact that the applicant was promoted and transferred from Juhi station to Sarsaul. He was relieved from Juhi station on 7.5.1999 and he was directed to join at Sarsaul. But the applicant did not opt to join at Sarsaul rather a representation was made by the applicant. The applicant's counsel alleged that his representation was decided by the respondents on 8.7.1999 and his order of transfer was changed from Sarsaul to Juhi Station. But it has vehemently been argued by the learned counsel for the applicant that this order of 8.7.1999 was never communicated to the applicant at the same time he was not permitted to join at Juhi station. It has been alleged by the learned counsel for the respondents that firstly the applicant was a habitual absentee. He remained absent on numerous occasions as had been shown in the Counter Reply in para No.6. For considerable period he remained absent. Once he remained absent from 24.4.1995 to 20.7.195 for a period of 92 days and the absence was unauthorized and the same has been on several occasions. The applicant has also been punished twice or thrice with minor and major penalty but in appeal major penalty was reduced. The applicant was promoted and transferred vide order dated 19.3.1999 and he was relieved from Juhi Station on 7.5.1999 and he was directed to join at Sarsaul Station. But he never joined. Even on his representation his station of posting was changed from Sarsaul to Juhi. But again at Juhi Station he remained absent contrary to it learned counsel for the applicant argued that he was not permitted to join at Juhi Station and that is why he had not joined there. But the applicant cannot state that he was totally ignorant about the order of change from Sarsaul to Juhi.

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Juhi. Because in the representation he has stated this fact. Moreover, it had been stated in the various documents that the order was not communicated officially. But he was aware of the order of change. When he was relieved from Juhi Station on 7.5.1999 he proceeded on Medical Leave. Thereafter if a person wants to resume duty then he can be permitted along with a certificate of fitness issued by the competent Doctor. Learned Counsel for the respondents argued that fitness certificate was not filed by the applicant and this was a reason for not permitting to resume the duty. During this period of absence the applicant had undergone an operation on both the eyes. That there was no intimation to the respondent that he had undergone operation. The learned Counsel for the applicant has not disputed this fact but it is a fact that there was no intimation about the operation of the eyes. Therefore he was medically decategorised due to loss of vision. But it has not been shown that any intimation was given to the respondents.


5. It is clear from the facts and circumstances of case that the applicant remained intentionally absent and he was a habitual absentee. It has vehemently been argued by the learned counsel for the applicant that without conducting any enquiry for the absence the respondents cannot deduct salary of the applicant. No enquiry was conducted by the respondents in the matter. But it is a fact that the applicant remained absent from 14.5.1999 to 14.2.2001. The applicant disputed this date but according to the respondents the applicant resumed duty on 14.2.2001. We tried to enquire from the learned counsel for the applicant that under what rule it has been provided that without conducting any inquiry salary cannot be deducted in case of an established fact that an employee remained absent. The learned

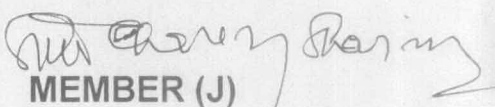
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counsel for the applicant could not produce any such rule in which an inquiry is a must and without departmental inquiry salary can be deducted. Under these circumstances in our opinion, there is no such mandatory rule to conduct the departmental inquiry in case of absence prior to deducting the salary for the period of absence. In para 18 of the Counter Reply the respondents has stated that *"moreover the applicant has neither submitted any application for sanction of leave during the period of unauthorized absence nor the same has been sanctioned by the Competent Authority. Moreover, no leave of the applicant is due in the applicant's account during the relevant period. As such on the principle of no work no pay the applicant is not entitled to any wages during the period of his unauthorized absence. The applicant is, therefore, not entitled to the relief claimed by him in the present Original Application as he himself had forgone his promotion and flouted the orders of transfer and remained unauthorized absent from 8.5.1999 to 21.1.2001. Thereafter he was medically examined and de-categorised and joined duties w.e.f. 14.2.2001"*.

6. For the reasons mentioned, we are of the opinion that the applicant is a habitual absentee. He remained absent from 8.5.1999 to 14.2.2001 and respondents had not rightly paid the salary of this period and rightly deducted the salary. The O.A. lacks merit and liable to be dismissed. Accordingly the same is dismissed. No order as to costs.


MEMBER (A)


MEMBER (J)

SJ*