

(7)

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.684 of 2005.

Allahabad, this the 21<sup>st</sup> day of November, 2006

Hon'ble Dr. K.B.S. Rajan, Member-J  
Hon'ble Mr. P.K. Chatterji, Member-A

Mohd. Tariq Siddiqui,  
S/oLate Mohd. Aquil Siddiqui,  
Aged about 62 years  
Resident of 171, Shahganj,  
Allahabad. ....Applicant.

(By Advocate :Shri S.S. Sharma)

**Versus**

1. Union of India, through the General Manager, Central Organisation Railway Electrification Headquarters Office, Allahabad.
2. The General Manager/Personnel, Central Organisation, Railway Electrification, Headquarters Office, Allahabad.
3. The Financial Adviser & Chief Accounts Officer (Administration), Central Organisation, Railway Electrification, Headquarters Office, Allahabad.
4. The General Manager, Diesel Locomotive Works, Varanasi. ....Respondents.

(By Advocate : Shri Zafar Moonis)

**ORDER**

**By Hon'ble Dr. K.B.S. Rajan, J.M. :**

The brief fact of the case is that the applicant, originally belonging to General Manager D.L.W., was on deputation to General Manager Electrical, Allahabad. Some times in August, 2001 he was repatriated back to D.L.W. but before he could be relieved, he fell ill and

requested for leave with the support of Medical Certificate from Registered medical practitioner. Simultaneously, the applicant had also requested for voluntary retirement.

2. In so far as voluntary retirement is concerned, in OA No.1553/2001 vide order dated 27.12.2001 a direction was given to respondent No.2 to consider the request of the applicant to finalise his application of voluntary retirement as per rules and to retain the applicant till his application was finalized. In pursuance of the same, the General Manager (P), D.L.W. on 18.1.2002 addressed a communication to General Manager Electrical where the applicant was transferred, stating that it has been decided to permit voluntary retirement of the applicant w.e.f. 31.1.2002. In pursuance of the aforesaid letter General Manager Electrical by order dated 23.1.2002 (Annexure-A-8) had indicated that the applicant would be relieved on 31.1.2002.

3. In so far as the leave application was concerned earlier by Annexure-A-4, the applicant was advised to report to Railway Doctor and send the Railway Doctor's report to General Manager (P) DLW/BBS failing which whole period will be treated as unauthorized absence from duty. However the applicant continued to send his leave application only to the Chief Personnel Officer Railway Electrification vide Annexure-A-9.

4. Learned counsel for the applicant submitted that grant of extraordinary leave by the respondents vide Annexure-A-1 order dated 3.5.2005 (impugned) is illegal as extraordinary leave cannot be granted except under the

circumstances as provided in rule 530, which is as under :

530. Extraordinary Leave- (1) Extraordinary leave may be granted to a railway servant in special circumstances :-

- (a) when no other leave is admissible, and
- (b) when other leave is admissible, but the railway servant applies in writing for the grant of extraordinary leave.

In addition, it has been submitted by the counsel for the applicant that even in respect of medical re-examination specific provision exist vide rule 521 of the said code para-2 , which reads as under :

"When a Railway Servant residing outside the jurisdiction of a Railway Medical Officer requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. Such a certificate should be, as nearly as possible, in the prescribed form as given in Annexure III and should state the nature of the illness and the period for which the Railway servant is likely to be unable to perform his duties. The competent authority may, at its discretion accept the certificate or, in cases where it has reasons to suspect the bonafides, refer the case to the Divisional Medical Officer for advice or investigation. The medical certificate from registered private practitioners produced by Railway servant in support of their application for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verification and on the basis of the advice tendered by him after such verifications."

Learned counsel for the applicant further submitted that admittedly the applicant has 254 days leave in his credit and he has not requested for grant of Extraordinary leave etc. Under the such circumstances the learned counsel submits

that the impugned order is violative of rule and regulations and the same may be quashed and set-aside.

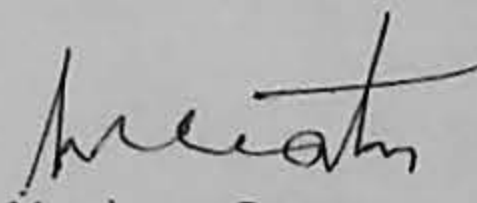
5. Learned counsel for the respondents submitted that within days of submitting the application for medical leave the applicant had applied for voluntary retirement which reflects his intention not to work any long term. It is further submitted that order dated 12.12.2001 (Annexure-4) clearly directed the applicant to report to Railway Doctor and also communicate only with G.M.(DLW) and this has not been followed.


6. We have heard counsel for the parties and perused the records.

7. The applicant remained under General Manager Electrical, Allahabad till 31.1.2002 which is evident from annexure-A-7 and A-8 communication. As such his action in forwarding all the Medical Certificate and leave application to General Manager, Allahabad, is fully justified. If General Manager, Allahabad was not satisfied with the Medical Certificate, he should have taken records to the provisions as per Rules 521 (2) of Indian Railway Establishment Code as per which the authority may refer the case to Divisional Railway Medical Officer for advising and investigation whether the Medical Certificate from the Register private practitioner produced by the Railway servant is as per rules and before rejecting the leave of the applicant by the competent authority it should have been verified by the medical authorities. Admittedly, this drill was not performed by the respondents. As

such the impugned order dated 3.5.2005 (Annexure-1) has been passed without any authority, as the applicant has LHAP to the extent of 245 days vide para 19 of the counter and the same has also been incapable encashment the period from 6.9.2001 to 6.1.2002 with the support of Medical Certificate shall have to be adjusted against the aforesaid LHAP at the credit of the applicant and the applicant is entitled to pay leave salary for the aforesaid period.

8. In view of the above, the OA is allowed and order dated 3.5.2005 (Annexure-1) is quashed and set-aside. It is directed that the respondents shall pass a suitable order sanctioning the necessary leave on LHAP from 6.9.2001 to 6.1.2002 on the strength of Medical Certificate furnished by the applicant on the material time of point and work out pay allowances due to the applicant and remit the same within a period of three months from the date of communication of this order. No order as to costs.

  
Member-A

  
Member-J

RKM/