

(87/1)

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.428 of 1986.

Radha Krishna Misra                      .....      Plaintiff  
Vs.

1. Union of India
2. The Divisional Railway  
Manager, Northern Railway  
Allahabad.
3. Sri Charanjeet Singh,  
Senior Divisional  
Mechanical Engineer                      .....      Defendants.  
(Carriage & Wagon),  
Northern Railway, Allahabad.

Hon. D.S.Misra, AM  
Hon. G.S.Sharma, JM

( By Hon. G.S.Sharma, JM)

This suit no. 384 of 1984 for declaration and mandatory injunction has been received by transfer from the Court of Munsif, Fatehabad (at Agra) under Section 29 of the Administrative Tribunals Act XIII of 1985.

2.            The case of the plaintiff is that upto May, 1984, the plaintiff was posted as Carriage and Wagon Superintendent, Northern Railway at C&W Depot, Tundla. Due to the loyalty of the plaintiff, his appreciation towards work to rule and his faithfulness in law and order, the Senior Divisional Mechanical Engineer (in short DME} (C&W)), Allahabad- defendant no.3 felt annoyed with him and out of prejudice, issued the following illegal and unconstitutional order on



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14.2.1984 and communicating the same on telephone, spared the plaintiff from duty w.e.f. 14.2.1984 :-

" With immediate effect you proceed on 31 days leave as instructed you on phone and Sri P.N.Sharma CWI/TDL will look after the Depot."

The defendant no.3 vide his D.O. dated 15.2.1984 confirmed the aforesaid telephonic order illegally charging the plaintiff with breach of duties. With a malafide intention and to cause humiliation to the plaintiff, the defendant no.3 extended the forced leave of the plaintiff till the arrival of Sri Charanjeet Singh, Sr.DME. The said orders passed by the defendant no.3 do not have the sanction of law and are also in contravention of the provisions of Art.311 of the Constitution. The appeal submitted by the plaintiff to the defendant no.2 against the said orders proved ineffective and the defendant no.3 revoked the order dated 16.3.1984 on 11.4.1984 and allowed the plaintiff to resume the duty with immediate effect. The plaintiff has, thus, suffered a monetary loss on account of his proceeding on forced leave as at the time of retirement, he will not get the benefit of encashment of this forced leave from 15.2.1984 to 11.4.1984 and despite the



service of a notice under Section 80 Code of Civil Procedure, the plaintiff did not get any redress, he accordingly filed the suit for declaration that the orders dated 14.2.1984, 15.2.1984 and 16.3.1984 passed by the defendant no.3 placing the plaintiff on forced leave from 15.2.1984 to 11.4.1984 are null and void and for a mandatory injunction to direct the defendants to adjust the period of forced leave of the plaintiff without affecting his leave account.

3. The suit has been contested on behalf of the defendants and it has been stated by them in their written statement that the defendant no.3 had personally instructed the plaintiff on 14.2.1984 to go to the site of accident at a distance of 90 kms., from Tundla but he neither himself went to the site nor sent the required staff and his existence at Tundla would have deteriorated the position of discipline at that time. The action taken against the plaintiff was not based on any personal considerations or prejudice and it did not amount to punishment and the allegations to the contrary are incorrect. As the orders asking the plaintiff to proceed on leave were made in the interest of administration, the defendants are not responsible for the monetary loss, if any, likely to be sustained by the plaintiff. The impugned orders were absolutely legal and binding on the plaintiff and



his period of leave cannot be adjusted on railway risk without affecting his leave account. The plaintiff has been recently promoted to higher grade and the allegations of harassment and prejudice made by him are incorrect. Certain legal pleas, namely, the bar of Section 80CPC, under valuation and bar of certain provisions of Specific Relief Act were also raised.

4. The learned Munsif had framed 8 issues in the case. The oral evidence of the plaintiff was also recorded by the trial Court but before the date fixed for the oral evidence of the defendants, the case was transferred to the Central Administrative Tribunal. As normally <sup>oral &</sup> no evidence is taken by the Tribunal and the defendants could not have the opportunity to adduce oral evidence, we decided to try this case de-novo excluding the oral evidence of the plaintiff. The parties had filed certain documents in the case. The plaintiff appeared in person and on behalf of the defendants, Sri Lalji Sinha, Advocate had appeared and we had the advantage of hearing their arguments.

5. We have carefully gone through the record in the light of the submissions made before us and find that the main question arising for determination in this case is whether the



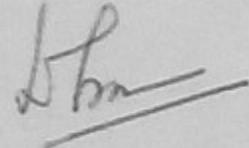
defendants could ask the plaintiff, an officer of the Railway, to proceed on forced leave in the interest of Railway administration at his own risk ? The only allegation of the defendants made in this connection in the written statement is that on account of the failure of the plaintiff to reach or send the relief to the site of accident, the situation would have deteriorated in case the plaintiff <sup>been</sup> ~~was~~ not asked to proceed on leave and it was in the interest of administration that such order was issued. Despite our anxiety, Sri Sinha could not show any law, rule or administrative instructions issued by the Railway Board in support of the action taken by the defendant no.3 against the plaintiff. On the other hand, this order has adversely affected the plaintiff as his earned leave account has been debit-ed to the extent of remaining <sup>for the period of his</sup> on forced leave and as such, he has been deprived of the advantage of enjoying or encashing the earned leave for 57 days. This amounts to punishment without affording him any opportunity of showing cause and as such, is contrary to the principle of natural justice and the rules of service. We are, therefore, unable to maintain this order. It further appears from the own act of the defendants that the plaintiff has been promoted to the higher post in the meantime and had he been guilty of <sup>any</sup> ~~any~~ serious lapses, he should have been charge sheeted and his promotion could also not be made. The plaintiff has, thus, been <sup>without any fault and</sup> punished without giving him any opportunity of showing cause and he is entitled to the reliefs claimed.

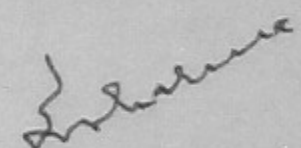


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6. Regarding the legal pleas taken by the defendants, we find that the plaintiff had given a proper notice under Section 80 CPC to the defendants before filing the suit and his suit is not otherwise barred by any provisions of the Specific Relief Act. In any case, no such defect in the suit of the plaintiff has been pointed out by the defendants before us.

7. We accordingly allow the claim of the plaintiff and as the orders passed by the defendant no.3 asking the plaintiff to remain on forced leave from 15.2.1984 to 11.4.1984 were arbitrary and illegal, the same are set aside and the defendants are directed to regularise this period of absence of the plaintiff without affecting the interest or leave account of the plaintiff in any manner. There will, however, be no order as to costs.

  
12.1.1987  
Member (A)

  
12.1.1987  
Member (J)

Dated 12.1.1987  
kkb