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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.535 of 1987

Surendra Nath Sirothia Applicant
Vs.

Sri.N.N.Agarwal, Divisional
Railway Manager and 2 others Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

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

This petition u/s.19 of the Administrative Tribunals Act XIII of 1985 was originally filed in the Jabalpur Bench of the Tribunal on 14.11.1986 and later on under an order passed by the Hon'ble Chairman, it was transferred to his Bench on the request of the applicant.

2. The relief claimed by the applicant in the main petition is that the respondents be directed to pay the salary of the applicant for Oct.1986 wrongly deducted by them and they should be further directed to grant loan for law suit and leave for 120 days for doing proper pairwi in his case. It is alleged in the application that he was serving as Telecommunication Maintainer in the Central Railway at Jabalpur and had attended his duty in Oct.1986. The applicant was, however, paid his salary only for 15 days and was not paid the festival advance of Diwali. He was also not granted the 'leave not due' for the purpose of his case as his number of cases were pending at Allahabad and under the influence of the Presiding Officers of the Court, his counsel also refused to do Pairwi in his cases and he is entitled to the reliefs. The respondent no.1 in this case is the Divisional Railway Manager, Central Railway Jabalpur and respondent nos. 2 and 3 are Sr.Divisional Signal

and Telecommunication Engineer and Time Keeper in the office of the Chief Telecommunication Inspector. All the 3 respondents have been impleaded in their personal capacities. .

3. The case has been contested on behalf of the respondents and in the reply filed by the Sr. Divisional Signal and Telecommunication Engineer respondent no.2, it was stated that the petition filed by the applicant against the respondents in their personal capacity without impleading the employer-the Union of India as party, is not maintainable. It is also not maintainable on the ground that the applicant did not exhaust his departmental remedy. In half pay, the month of Oct. 1986, the applicant was sanctioned/leave upto 15.10.1986. The applicant was absent from 16.10.86 to 27.10.86 and he resumed his duty only on 28.10.86. As no kind of leave was due to the applicant, he could not be granted any leave for the period of his absence and he was paid the wages for 4 days from 28.10.86 to 31.10.86 as per pay sheet, copy annexure R-1. No additional amount is due to the applicant in respect of his pay for Oct. 1986. 'Leave not due' is sanctioned in exceptional cases in sickness when no other leave is due and as such, leave cannot be granted to the applicant under the rules. Other allegations made by the applicant are not relevant for the purpose of the case and the allegation of the applicant about his harassment is not correct.

4. In his rejoinder the applicant stated that the respondents are Govt. officers and the applicant is their subordinate and as such, the petition against them is maintainable.

5. The applicant has been moving applications after applications in this case. The prayers made in some

applications are different than the titles noted on them and there are other inconsistencies as well in the said applications. Except the last application, no other application was pressed by him at the time of hearing. The applicant has conducted the case himself and on the last date of hearing, he pressed the main petition and dated 8.7.88. The title of the miscellaneous application his miscellaneous application is 'withdrawal of case for remedy under Art.32'. The title thus shows that the applicant wants to withdraw his application, i.e. the main petition with a view to approach the Hon. Supreme Court under Art.32 of the Constitution. The prayer in the application, however, is that the Court should direct the respondents to pay him atleast 3 months substantive pay to seek a remedy under Art.32 by way of loan for law suit as provided under the Railway Establishment Manual, or in the alternative, suitable order on his miscellaneous application dated 10.7.1987 be passed.

6. In the ^{an} earlier miscellaneous application moved by the applicant he had alleged that soon after his filing the main petition, the respondents dismissed him from service. In one application, he made allegation that he ^{was} being kept under suspension. He has ^{also} made an allegation that the order of his dismissal has been cancelled by the respondents but the pay has not been ^{exact suspension order} paid to him. The copies of the necessary orders have, however, not been filed and in the absence of the proper help from the side of the respondents, we are unable to know the exact position of the case of the applicant regarding these allegations. The respondents did not choose to file any reply to the various miscellaneous applications moved by the applicant. The applicant himself ^{could} ~~can~~ not be of much use to us to explain his case.

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In case the applicant is not in service, the prayer contained in his last miscellaneous application pressed before us for granting him 3 months pay as loan cannot be granted. We are of the opinion that to obtain loan from the Govt. is not a right of any government servant. This facility has been extended to the Govt. servants and the discretion always rests with the competent authority to grant the loan in proper cases when such grant is deemed necessary and the official is in a position to repay the loan during the period of his remaining service. The applicant is an ex-service man and was reemployed in the Central Railway as alleged in the petition itself. We are, therefore, neither in a position to say whether the applicant continues to be in service nor in a position to say that if loan is granted to him, ~~whether~~^{whether} it will be repaid by him. The main prayer of the miscellaneous application for loan, therefore, cannot be granted.

7. Regarding his ~~interim~~^{other} prayer for granting the relief prayed in his application dated 10.7.1987, it is to be stated that in this application it has been stated by the applicant that his services were terminated by the respondents on 15.11.1986 in contravention of the provisions of the Railway Establishment Manual and ~~they~~^{did} not pay him any salary with a view to harass him and the Industrial Disputes Act is applicable to the Tribunal and the respondents should be restrained from depriving the applicant of his salary from the date of his termination and make an order for the payment of his salary from 9.11.86 ~~to~~ with compensation to the extent of 30 times and Rs.500 as costs. The applicant has not produced any order of termination of his service. As a matter of fact, he should have sought

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a proper relief either by way of an amendment or by filing a fresh petition for the cancellation of the order of termination and arrears of pay. In the absence of the same, even this request of the applicant cannot be accepted and no order for the payment of his salary or compensation can be made under the law.

8. Coming to the relief claimed in the main petition, we are of the view that the annexures filed by respondent no.2 with his reply go to show that the applicatn was partly on leave and partly absent without leave in Oct.1986 and the salary for that month was rightly calculated and paid to him and he is not entitled to the full salary for Oct.1986. He is also not entitled to any loan for litigation as well as no leave without pay as of right without any satisfactory cause.

9. The petition is accordingly dismissed without any order as to costs.

J. Narula
MEMBER (J)

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MEMBER (A)

Dated 19.9.1988
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