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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...

O.A. No. 607 of 1988

Dated: 24 March, 1995

Hon. Mr. S. Das Gupta, Member(A)
Hon. Mr. T.L. Verma, Member (J)

Uma Shanker Srivastava, son of Sri M.S.
Srivastava, Resident of 73, Ram Bagh,
Allahabad. ... Applicant.

(By Advocate Sri A.K.Sinha)

Versus

1. The Union of India, through the
A.D.R.M.(Operating), Northern Railway,
Allahabad.
2. Senior D.M.E., Northern Railway,
Allahabad.
3. D.P.O. Northern Railway,
Allahabad. ... Respondents.

(By Advocate Sri A. Sthaleker)

O R D E R

(By Hon. Mr. S. Das Gupta, Member(A))

This application was filed by Sri Uma Shanker Srivastava under Sec. 19 of the Administrative Tribunals Act, 1985 praying for the relief of quashing of the impugned order dated 4.2.1987 and a direction to the respondents to pay back to him the entire amount recovered from his salary with 18% interest thereon and also to grant to him all other consequential benefits which he would have been entitled to if the impugned order dated 4.2.1987 had not been passed.

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During the pendency of the application, the applicant died and he was substituted by his widow and other legal heirs. The Original Application was working as an Assistant Superintendent in the office of the respondent no. 2. He claimed that he was suffering from fissure for some time and he started Homeopathic treatment ^{instead} ~~inspite~~ of undergoing surgical operation as advised by the Railway Doctor. He is stated to have been advised by the Private Homeopath Practitioner to take complete rest and hence he ~~proceeded~~ proceeded on leave w.e.f. 12.5.1986. He claims that he has been regularly sending private medical certificate to the office of the respondents till 11.11.1986 and was being paid full salary and other allowances every month upto December, 1986. He was declared medically fit by the Railway Doctor and he resumed his duties in the office of the respondent no.2 w.e.f. 19.11.1986. On his resumption of duties, he was served with an order transferring him from the office of the respondent no. 2 to the Engineering Branch in the D.R.M's office. He was also served with a major penalty charge memo for allegedly avoiding making ^{duty} other charge of office record and documents on his transfer by abstaining from attending office w.e.f. 12.5.1986 reporting sick under a private doctor when he was residing within the jurisdiction of a railway doctor and did not act according to extant rules on the subject.

2. The applicant has alleged that the said

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transfer was made on the basis of some complaints received by the respondent no. 2 from some Members of the Parliament. He, however, accepted the order of transfer and joined his duties in the Engineering Branch. However, he received Rs. 800/- less from his salary of January, 1987 without any notice. He submitted a representation to the Senior D.P.O. on 4.2.1987 requesting the latter to disclose the reason for these deductions, whereupon, the respondent no. 3 issued a communication dated 4.2.1987 addressed to the Superintendent Works Branch stating therein that the period of absence of the applicant from 12.5.1986 to 18.11.1986 has been treated as leave without pay by the competent authority as private medical certificates submitted by him were not acceptable. He preferred an appeal to the respondent no. 1 praying for quashing of the order dated 4.2.1987 and to stop monthly deduction from his salary which was continuing meanwhile. This was followed by reminders but there was no response. Meanwhile, the inquiry into the charges levelled against him was not being progressed and he retired on 31.8.1987 till then a recovery of Rs. 6400/- was made from his salary and another Rs. 5867.40 was recovered from the amount of leave encashment due to the applicant at the time of final settlement. Thus, a total sum of Rs. 12267.40 was recovered from the applicant for non-acceptance of the Private Medical Certificates treating the period from 12.5.1986 to 18.11.1986

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as leave without pay. This inturn has also affected ~~the quantum~~ ~~has also affected the quantum~~ of pension and other retiral benefits.

3. The applicant's case is that as his residence ^{is at} a distance of about 4.1/2 Kms. from the Railway Hospital, he did not come within the jurisdiction of the said hospital and, therefore, in terms of para 537(4) and 538(2) of the Indian Railway Medical Manual, the respondents could not have rejected the certificates from private medical practicner and treat the entire period of absence as leave without pay . Moreover, these certificates were earlier accepted by the authorities and he was paid full ^{pay} and allowances till the month of December, 1986. Thus, the action of the respondents in recovering Rs.12267.40 from the salary as well as leave encashment of the applicant is illegal and against the principle of natural justice.

3. The respondents have filed the counter affidavit in which it has been stated that the applicant was working in the Power Account Section in the mechanical branch for more than 3 years dealing with contractors and general ~~and~~ public and, therefore, his turn for rotation came after 3 years and he was accordingly transferred to another branch. They have averred that the payment of full salary to the petitioner was wrongly made by the administration and when this case was put up for consideration of the competent authority, it was decided to treat the entire period of absence as leave without pay.

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The respondents have alleged that the applicant should have obtained medical certificate only from the Railway Doctor since he was residing within the jurisdiction of the Railway Doctor, Rambagh, N.E. Railway, Allahabad which is half a Kilometer from his residence. Moreover, the applicant indicate his home address in the private medical certificate, thus, violating the provisions of para- 12 of Chapter-3 of the Railway Medical Manual. It has been further submitted that the deductions made from the salary of the applicant was not by way of punishment. It was due to payment wrongly made to the applicant. Denying the contentions of the applicant that the respondent no.2 was not competent to take action against him as he stood transferred out of the machanical branch, the respondents have stated that the respondent no. 2 was fully competent to take action against the applicant for anything that he had done during his working in the Mechanical Branch. It has been claimed that the representation made by the applicant to the respondent no.1 was turned down. As regards the disciplinary action initiated against the applicant, it has been stated that only a minor penalty was imposed on him and it was not necessary to hold an inquiry under the disciplinary and appeal rules.

4. The applicant has filed a rejoinder affidavit reiterating the contentions made in the original

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application. It has been further stated that every railway is a separate zone having its own medical hospitals and health units and and all the employees of A Zone are to take treatment from the hospitals and health units of that zone only. The applicant being an employee of the Northern Railway, he should not have been within the jurisdiction of Rambagh Railway Health Unit which is under the jurisdiction of the N.E. Railway in the absence of any notification to the contrary. He has also denied that he did not give his address in the private medical certificates. The address of the applicant was available in the service records and the personal file. He has also contended that a minor penalty which affects the retiral benefits cannot be imposed without a full fledged inquiry.

5. We have heard the learned counsel for the parties and have gone through the pleadings of the present case.

6. The only controversy in this case is whether the respondent's action in treating the period of absence of the applicant on medical ground as leave without pay discarding the medical certificates submitted by him from a private medical practitioner. It has not been denied by the respondents that the applicant was suffering from fissure and he was earlier under treatment of Railway Doctor who advised him

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surgical treatment. It has also not^{been} denied that the applicant has been submitting medical certificates in support of his request for leave on medical ground @ from a private Homeopathic Medical Practitioner.

7. The relevant rules on this subject are contained in para 537(4) of the Indian Railway Medical Manual . An extract of the Rule~~20~~ has been made available by the applicant filing filing Annexure- A 11. The relevant rule is quoted below;

"537. Sick Certificate (1)

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(4) When a Railway employee residing outside the jurisdiction of a Railway doctor 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- VIII and should state the nature of the illness and the period for which the Railway employee 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 certificates from registered private practitioners produced by Railway employees in support of their applications for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications. However, where the Railway Medical Officer could not be deputed for such

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verifications, the certificate from the registered medical practitioner may be accepted straightway.

Note:- (1) Ordinarily, the jurisdiction of a Railway doctor will be taken to cover Railway employees residing within a radius of 2.5 kilometres of the Railway hospital for health unit to which the doctor is attached, and within a radius of one Kilometre of a Railway station of the doctor's beat."

8. It is clear from a simple reading of the provisions of the Rule that if a Railway Employee is not residing within a radius of 2.5 Kilometres of the Railway Hospital or Health Unit to which the Railway is attached and within a radius of 1 Km. of Railway Station and the doctor's ^{beat} ~~beat~~, he ^{need} ~~did~~ not submit medical certificate from a railway doctor and he may submit such certificate from a registered medical practitioner. The railway authorities, however have the liberty of referring the matter to the Divisional Medical Officer for advice or or investigation incase, the bonafides of the certificates given by private Medical Practitioner are doubted. Such certificates may be rejected by the competent authority only after a railway medical officer conducted the necessary verification and on the basis of the advice rendered by him after such verifications. It is not the case of the respondents that the Homeopathic medical practitioner who gave the medical certificate was not a registered medical practitioner or that a Homeopath's certificate is not acceptable.

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The only point made by the respondents is that the applicant was residing within the jurisdiction of a railway doctor, N.E. Railway, Rambagh. The applicant on the other hand has stated that as he was an employee of the Northern Railway, he could not have been under the jurisdiction of the railway doctor of N.E. Railway. The relevant rules are silent on this point. It is not clear whether an employee of one Railway can obtain treatment from the hospital ^{or} from the health unit of another Railway. That being so, the benefit in this regard must go to the applicant and we cannot but hold that in his case, the jurisdiction will be with regard to the doctor attached to the Northern Railway. The applicant has asserted that his residence was four and half Kilometres from the Railway Hospital. In support of this contention, he has annexed a certificate issued by the Municipality to the effect that Rambagh where ~~the~~ the applicant resided is nearly four and half Kilometres away from the N.E. Railway Hospital. There is no rebuttal of this fact by the respondents.

9. In view of the foregoing, we cannot but hold that the applicant was entitled to furnish medical certificate from Private Registered Medical Practitioner, whether an allopath or Homeopath, in support of his sickness. The respondents, nodoubt, had a right to doubt the authenticity

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of such certificate and^k obtain advice of the District Medical Officer and if they had rejected the medical certificate furnished by the applicant, on the basis of any investigation and advice by the Railway Medical Officer, there would have been nothing wrong in their action in treating the period of absence as leave without pay. Since, admittedly, no such investigation was done, the action of the respondents in rejecting such Medical Certificates would appear to be an arbitrary exercise of their powers.

10. The applicant was served with a charge-memo for major penalty. A part of the allegation was that he had submitted a medical certificates from Private Medical Practitioner, although, he was residing within the jurisdiction of the Railway Doctor. Admittedly, no enquiry was held into this charge to establish the same. The respondents have stated that no inquiry was considered necessary as only a minor penalty was imposed. It has not been made clear as to what was the minor penalty ~~was~~ imposed nor a copy of the order of penalty has been annexed by the respondents. Presumably, this minor penalty is recovery of the salary and allowances paid to the applicant for the period of absence. If that be so, this would be contradictory to the statement made by the respondents that the recovery of pay and allowances was not by way of penalty. It would not be a penalty incase the absence of the applicant has been

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validly treated as leave without pay and yet he was paid full pay and allowances during this period. As we have ^{shown} ~~done~~ in the foregoing paragraphs, the decision to treat the entire period of absence as leave without pay by rejecting the certificates given by the Private Medical Practitioner was an arbitrary exercise of the powers. Therefore, the recovery made from the salary of the applicant cannot be other than by way of penalty and since such a penalty was adversely affecting his retiral benefits, the same ^{could} ~~court~~ not have been imposed without holding a proper inquiry into the charges.

11. In view of the foregoing, we are of the view that the decision of the respondents to treat the entire period of absence of the applicant from 12.5.1986 to 18.11.1986 as leave without pay rejecting the medical certificates furnished by the applicant in support of his sickness deserves to be quashed and the same is quashed accordingly. Although, normally, we would have given a liberty to the respondents to conduct ~~any~~ inquiry regarding the acceptability or otherwise of such certificates associating the applicant and to take appropriate action based on such inquiry, in view of the fact that the original applicant has since expired, we are not inclined to give this liberty to the respondents. The entire period of absence shall be regularised by grant of leave as due and leave salary shall be paid to the legal heirs of the original applicant. The retiral benefits

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payable to the original applicant shall also be recalculated and incase, there is an increase in the quantum of such benefits, the same shall also be payable to his legal heirs along with arrears. We, however, do not order payment of any interest, in the facts and circumstances of the case. Let this direction be carried out within a period of 3 months from the date of communication of this order.

12. The application is partly allowed ~~on~~ with the above directions. There will be no order as to costs.

J. H. Thomas
Member(J)

W. E.
Member(A)

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