

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 9th day of April, 1999
Original Application No. 1404 of 1993

District : Varanasi

CORAM:-

Hon'ble Mr. Justice Neelam Sanjiva Reddy, V.C.
Hon'ble Mr. G. Ramakrishnan, A.M.

Ram Briksha S/o Sri Bishwanath
R/o Head Bearer U/Stn. Superintendent
E. Rly, Moghal Sarai, Distt-Varanasi.

(Sri S.K. Mishra, Advocate)

..... Applicant

Versus

1. Union of India
Through General Manager,
E. Railway, Calcutta.
2. The Divisional Railway Manager,
E. Railway, Moghal Sarai,
Distt-Varanasi.

(Sri A.K. Gaur, Advocate)

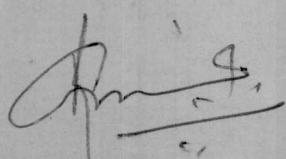
..... Respondents

O R D E R

By Hon'ble Mr. G. Ramakrishnan, A.M.

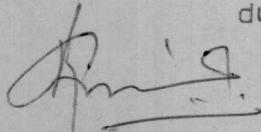
This is an application under Section 19 of the Administrative Tribunals Act, 1985, against not allowing the applicant for duty inspite of his fitness declared by the Asst. Divisional Medical Officer, E. Rly, Mughalsarai vide medical certificate dated 23-3-1993.

2. The applicant stated in the OA that while he was working as Head Bearer, because of domestic reason and sad death of his younger sister, he became mad



from 23-2-1988. He stated that he was under treatment by a private doctor upto 27-2-1988, upto 17-11-1992 he was taken away to Ranchi Mansik Arogya Shala, Kanke, Ranchi for treatment and from 19-11-1992 to 2-2-1993 he was under treatment of a private doctor. He claimed that his wife had sent information regarding his illness on 23-2-1988, 8-3-1988 to 4-4-1988 and made application dated 23-11-1992, 8-12-1992 and 20-1-1993 to issue medical memo for treatment of her husband in the Railway Hospital. He stated that on the basis of such memo issued on 4-2-1993 he was admitted in Rly Hospital, Mughalsarai and remained under treatment there upto 22-3-1993 when he was made fit. The applicant stated that on 23-3-1993 he made an application to make payment of due wages for the period 23-2-1988 to 22-3-1993 regularising his absence on the basis of RMC and RMC (Annexure-A-10). He also claimed that inspite of his fitness he was not allowed duty and that again on 28-6-1993 he made an application for payment of due wages and allow him to duty but no heed was given. Further, he claimed that he took personal interview with Station Superintendent, Mughalsarai but he was not allowed to join duty. He claimed that he served the Railway Administration from 1955 and he had earned enough leave and he never availed his entire leave and without any justification his wages have not been paid from 23-2-1988. Further he stated that on attaining the date of superannuation, he was retired from 28-2-1994, but he had not been paid his settlement dues, the applicant sought the following reliefs:-

(i) Direct the respondents to allow him duty alongwith due wages from 23-2-1988.



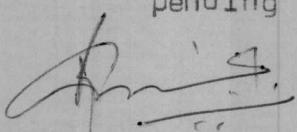
(ii) Any other relief or reliefs to which he is entitled may be awarded to him with cost of this application.

(iii) Direct the respondents to make payment of his settlement dues with interest at the rate of 18% per annum.

3. Respondents filed counter affidavit and supplementary counter affidavit in which they resisted the claim of the applicant. According to the respondents in the official records, the applicant was unauthorisedly absent from duty from 22-2-1988 and that prior to 23-11-1992 they had no information regarding the sickness of the applicant and because the applicant was unauthorisedly absenting himself from duty the sick memo was issued after proper enquiry. They asserted that the applicant continued to absent himself and finally retired from service on 28-2-1994. They stated that even though the applicant's conduct in remaining absent without information to the Railway Administration was unbecoming of a Railway Servant, his case was very leniently considered only because at a later stage, he fell sick and his period of unauthorised absence and sickness was regularised as under:-

- (a) From 22-2-88 to 3-2-93 : LWP.
- (b) From 4-2-93 to 26-3-93 : LAP.
- (c) From 27-3-93 to 29-3-93 : LHAP.
- (d) From 30-3-93 to 28-2-94 as LWP as no leave due at his credit.

Further they stated that since the OA was pending in this Tribunal for adjudication there was

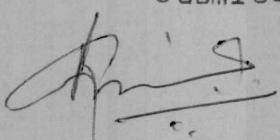


no fault on the part for delay in payment of settlement dues and the interest of 18% claimed by the applicant was wholly excessive imaginary and not tenable in law.

4. The applicant filed rejoinder affidavit and supplementary rejoinder affidavit and reiterated the claims in the OA. He also brought on record the retirement notice dated 22-4-1993 received by him on 13-5-1993 and the representation made by him dated 5-7-1994 and 1-4-1995 addressed to respondent no.2 and a representation addressed to the Chief Personnel Officer E. Rly, Calcutta wherein he had prayed for his settlement dues amongst other prayers.

5. We have heard the learned Counsel for the parties. Learned Counsel for the applicant during hearing drew our attention to the Medical Certificate at Annexure-A-1 to A-3 and the Annexure-A-6 to A-7 and A-9 and the endorsements made on Annexure-A-10 and pleaded for payment of salary for the period upto 28-2-1994 and also payment of settlement dues. Learned counsel for the respondents stated at the outset that this OA is barred by limitation as the absence was from 1988 and further stated that this was a case of unauthorised absence of an employee which normally would have attracted severe action but taking into account the fact of sickness certificate in February/March, 1993, the period of absence had been regularised as shown in the counter affidavit. He stated that the settlement dues could not be finalised because of the pendency of the O.A.

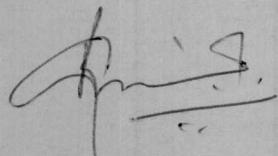
6. We have given careful consideration to the submissions made by the learned counsel for the parties



and the rival pleadings and have also perused the whole record.

7. The applicant approached this Tribunal through this OA with the prayer to direct the respondents to allow him for duty alongwith due wages from 23-2-1988. He states that his wife had sent intimation to the office on 23-2-1988, 8-3-1988 and 4-4-1988 and after that on 23-11-1992. The receipt of the intimation on 23-11-1992 had been accepted by the respondents as is evident from Annexure-A-6 and A-7. Submission of the PMC is also proved from the endorsements made on the representation copy at Annexure-A-10. Respondents in their reply have also accepted that on 23-11-1992 they received the intimation about the illness of the applicant. Respondents have not specifically given any reason as to why they had not accepted the PMCs produced by the applicant in support of his sickness. Further the wife of the applicant approached the Rly Administration for medical memo for her husband on 23-11-1992 whereas actually it was given on 4-2-1993. According to the applicant, he was under Railway Medical treatment upto 23-3-1993 when he was declared fit and he reported for duty. The averment of the respondent in para 10 of the counter affidavit is as following.

8. "That the contents of paragraph no.4(xiv) to 4(xx) of the petition are misconceived, incorrect, hence are emphatically denied. It is submitted here that the petitioner continued to be absent himself and away from the duty from 22-2-1988 and finally retired from service on 28-2-1994. Though the petitioner's conduct in remaining absent without information to the

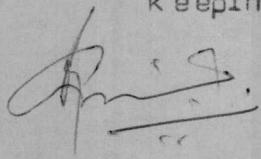


Railway Administration was unbecoming of a Railway Servant, his case was considered very leniently only because at a later stage, he fell sick. Accordingly, the period of his unauthorised absence and sickness was regularised as under :-

- (i) The period from 22-2-88 to 3-2-93 :LWP.
- (ii) From 4-2-93 to 26-3-93 :LAP
- (iii) From 27-3-93 to 29-3-93 :LHAP
- (iv) 30-3-93 to 28-2-94 as LWP as no leave due to his credit.

Thus, from the facts and circumstances stated above, it is quite clear that there is no merit in the case and as the petitioner has already been retired from service under the age limit on 28-2-1994(AN), the question of giving him duty again does not arise."

9. As against the above, the averment made in the OA by the applicant against the above paras 4(xiv) to 4(xx) are very specific. Para (xiv) had already been given in the above para. In para 4(xx) the applicant refers to his application dated 23-3-1993 true copy of which had been annexed as Annexure-A-10. In para 4(xvi) the applicant asserted that inspite of his fitness, he was not allowed for duty. Para (xvii) refers to his representation dated 28-6-1993, true copy of which was annexed as Annexure-A-11. Para 4(xviii) refers to his personal interview with the Station Superintendent, Mughalsarai and the denial of duty to him. Para 4(xix) is an assertion made by the applicant that inspite of availability of leave at his credit, he not being paid the due wages from 23-2-1988. Para 4(xx) is regarding the keeping the applicant out of job inspite of his fitness.



Further, in the rejoinder the applicant reiterated of his not being allowed duty inspite of being made fit from 23-3-1993. He also stated that he was given retirement notice dated 22-4-1993 on 13-5-1993.

9. Apart from the above, we are of the view that if the applicant was not interested in working, he would not have approached the Tribunal with a prayer to allow him duty.

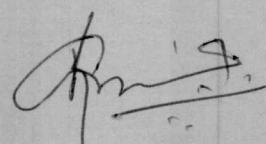
10. Further, there can be only the following alternative possibilities on 23-3-1993 when the applicant says that he was made fit by the Rly doctor and he reported for duty.

(i) He was not made fit by the Rly Doctor.

In such a case the applicant will continue to be on Rly Sick Certificate.

(ii) He was made fit by the Rly Doctor, but he did not report for duty. In such a case he should be treated as unauthorisedly absent. But endorsement on Annexure-A-10 does not support this, nor there is an averment to this effect by the respondents. Moreover, the regularisation of the period upto 29-3-1993 as LAP and LHAP leads to the conclusion that the respondents have not considered this period as unauthorised absence.

11. The respondents had access to the Railway Medical records and could have brought the correct position but they chose not to do so. In view of the foregoing discussions we are inclined to place more reliance on the applicant's averments and accordingly it is concluded that the applicant when became fit was denied the job

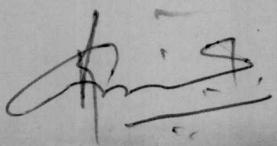


from 23-3-1993. Therefore, the applicant is entitled for this period ~~xxxix~~ from 23-3-1993 to 28-2-1994 to be treated as period spent on duty. Similarly in the absence of any averment to the contrary that the PMCs produced by the applicant are not genuine or Railway Medical Department's certification that the applicant was not mad prior to 4-2-1993, we come to the conclusion that the applicant was sick from 22-2-1988 to 22-3-1993, and, therefore, the applicant is entitled for the period to be treated as on sick and regularised accordingly as per rules.

12. The applicant has retired on 28-2-1994. We are unable to appreciate the averment of the respondents to the effect that due to the pendency of the OA, the settlement payments could not be made. We find that the respondents had regularised the period from ~~actual~~ 28-2-1988 which is the matter of adjudication in this OA till 21-11-1995 (when amendment was allowed and relief 8(iii) was added) but had not taken any action for the payment of settlement dues to the applicant. Here again the applicant has a case. We reject the plea of limitation made by the learned counsel for the respondents, because the cause of action arose in this case only when the applicant was made fit by Rly Doctor and he reported for duty on 23-3-1993.

13. In the result the OA succeeds and is disposed of with the following directions to the respondent no.2 :-

(i) The period of absence of the applicant from 22-2-1988 to 22-3-1993 shall be regularised as leave on medical grounds as per rules and the



and the payments due on that account shall be made to the applicant within a period of six weeks from the date of receipt of the copy of this order. The applicant may apply for commuted leave for this period if he so wishes, within two weeks which will be taken into consideration at the time of sanction to the extent available at the credit of the leave account of the applicant.

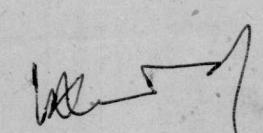
(ii) The period from 23-3-1993 to 28-2-1994 shall be regularised as period spent on duty and the arrears of salary and allowances due to the applicant shall be paid within a period of six weeks from the date of receipt of the copy of this order.

(iii) The settlement dues of the applicant such as pension, D.R.G etc shall be paid to the applicant within a period of 3 months from the date of receipt of the copy of this order. The applicant will also be eligible for interest at 12% per annum on the amount of D.R.G and arrears of Pension due for the period from 1-6-1994 to 31-10-1995 till the end of the month previous to the month in which the payment is made.

No order as to costs.

14.


Member (A)


Vice Chairman

Sube/