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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 108 of 1993

Allahabad this the 10th day of January 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)

BAdri aged about more than 58 years S/o Late Sidhu R/o Village-Bargo, PO Bargo, Tehsil Sadar, Distt. Gorakhpur.

APPLICANT

By Advocates Shri D.P. Chaturvedi.
Shri P. Ojha.

Versus

Union of India through General Manager, N.E. Railway, Gorakhpur.

RESPONDENT

By Advocate Shri A.K. Shukla.

O R D E R(Oral)

By Hon'ble Dr. R.K. Saxena, Member (Jud.)

The applicant has approached the Tribunal to challenge the order dated 19/20.10.1992 (annexure-A) whereby the leave of hospitalisation of the applicant was not sanctioned in full and the amount of Rs. 15,734-58/- which was paid towards salary for the period from 14.5.84 to 19.10.86 was deducted from the amount due towards payment of gratuity on the retirement of the applicant.

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2. Briefly, the facts of the case are that the applicant while working in the Workshpp on 14.5.1984, was injured severely on account of fall of a heavy Iron Girder breaking his bones. He was then hospitalised and remained there from 14.5.1984 to 19.10.1986. He was permanently disabled and was made permanently lame. The salary for this period of hospitalisation was, no doubt, paid in full but, on his retirement, the leave for hospitalisation was deemed sanctioned only for 120 days. The result was that the excessive payment of Rs. 15,735.58/- was deducted from the amount of gratuity.

3. The respondents have filed counter-reply in which it is admitted that the applicant was injured severely but, he was not permanently disabled. It is alleged that disability is only of 20%. It also appears that the applicant was paid an amount of Rs. 7,000/- towards compensation for the injury. No doubt, the compensation is also claimed by the applicant but during arguments the plea about the payment of ~~pension~~ compensation was not pressed, and legally too it could not be allowed to be agitated by the applicant. Thus, the dispute is if the applicant should have been sanctioned the leave of entire period from 14.5.1984 to 19.10.1986, when he was hospitalised, and if the deduction from the gratuity could be made.

4. I have heard the learned counsel

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for the parties and have perused the record.

5. There is no dispute about the applicant having been injured during the course of discharging duties in the Workshop. Also, there is no dispute that the applicant remained hospitalised from 14.5.1984 to 19.10.1986. There is also no dispute that the salary for this period was paid to the applicant but it was subsequently deducted at the time of the payment of gratuity when the applicant retired on 31.1.19992. Learned counsel for the applicant contends that the applicant should have been granted or be deemed to have granted the hospital-leave for the entire period of his hospitalisation. He is also taking shelter behind the payment of entire salary for the period of hospitalisation. Learned counsel for the respondents, on the other hand, contends that the hospital leave under Rule 554 of Indian Railway Establishment Code Vol.I. could be granted upto 120 days and accordingly the impugned order Annexure-1 was passed on 19/20.1.1992. A perusal of Rule 554 if Indian Railway Establishment Code Vol. I makes it quite clear that the General Manager had power to grant leave for unlimited period. Learned counsel for the respondents are also relying on a letter dated 28.11.1991 of the Railway Board in which there was reference of relaxation of provision of Rule 554 of Indian Railway Establisment Manual Vol.I. It may be mentioned that no doubt, that letter dated 28.11.1991

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has been referred to in the counter-reply but, it has not been brought on record. Anyway, the interpretation of Rule 554 of the Code is not in any manner restricted from the said letter of the Railway Board. Rule 554 itself empowers the General Manager to grant leave of hospital for unlimited period. In this case, no such circumstance has been shown or urged whereby it may be concluded that the applicant was not hospitalised for the said period or was not entiteld for sanction of the leave. What appears that the General Manager did not carefully examined Rule 554 while granting hospital leave to the applicant. In my opinion, it is a case where no adverse circumstance has been indicated against the applicant and, therefore, the entire period of hospitalisation should have been treated as leave with pay.

6. Another question which arises in this case is that once salary has been paid to the applicant, it cannot be deducted even if, payment is made in excess or incorrectly from the amount of gratuity unless, a notice was given to him. From this angle also, the impugned order of deduction of amount of salary from gratuity is not sustainable in law.

7. In view of these facts and circumstances of the case, I find the impugned order of not granting hospital leave for entire period illegal and also find that deduction of amount

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of Rs. 15,734.58 from the amount of gratuity was also illegal. Therefore, both the orders are quashed. The respondents are directed to consider the case of the applicant for grant of hospital leave for the entire period afresh and also to make payment of gratuity in full within a period of 3 months from the date of receipt of copy of this Judgment. Learned counsel for the applicant has also claimed interest for non-payment of entire amount of gratuity. Incase, the payment of the amount of gratuity which was deducted is not made within a period of 3 months as is mentioned above, the applicant shall be entitled to get interest at the rate of 12% per annum. The O.A. is decided accordingly. No order as to costs.

Member (J)

/M.M./