

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 18th day of January 2012

Original Application No. 1305 of 2006

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. Shashi Prakash, Member (A)

Murlidhar Yadav, S/o Shri Suraj Singh, R/o Village Budheri, Post Bhisoli (Jakhaura) District Lalitpur.

... Applicant

By Adv : Sri R.K. Nigam

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.

... Respondents

By Adv: Sri Anil Dwivedi

O R D E R

Hon'ble Mr. Justice S.C. Sharma, Member (J)

The instant OA has been filed by the applicant for the following reliefs:-

- a. *to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 26.10.2006.*
- b. *to issue another writ, order or direction in the nature of mandamus thereby commanding the respondents to pay the entire wages for the waiting period on the basis of last pay drawn and also given consequential benefits viz. regular increment, pension, gratuity and bonus etc. for which a time bound direction is fervently period.*
- c. *to award cost of the petition, in favour of the humble petitioner."*

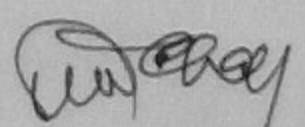
2. The facts of the case may be summarized as follows:-

3. It has been alleged by the applicant that he started his career as Pointsman in the erstwhile Central Railway w.e.f. 03.04.1963. Thereafter, the applicant was promoted on the post of Switchman and lastly he was

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designated as Cabin Master w.e.f. 01.01.1996. The applicant was declared medically unfit for Class A-1, A-2, B-1, B-2 and C-1 by the Medical Board. Thereafter the applicant was posted in supernumerary post as Tel Mashal with full protection of pay from 13.07.2000 to 31.05.2005. Thereafter, the respondents after his retirement failed to reflect the continuity of physical working period of the applicant w.e.f. 21.07.1999 to 12.07.2000 which was deemed to be 100% waiting period. The applicant was physically reported for duty in the office of DRM (P), Jhansi on 21.07.1999 but the salary has not been paid for this period to the applicant. Moreover, his continuity of service has not been shown and this act of the respondents was illegal and liable to be quashed.

4. The respondents have contested the case and filed counter affidavit and denied the allegations made in the OA. It has been admitted that the applicant has been declared medically unfit by the Chief Medical Superintendent by medical certificate No. A-470808 dated 19.07.1999 for category A-1, A-2, B-1 and B-2 and for C-1 category he was declared fit. It has been further alleged that it has been wrong to allege that the applicant was posted on supernumerary post as Tel Mashal to the running/operating staff with full protection of pay from 13.07.2000 to 31.05.2005. The applicant was posted on supernumerary post by Station Superintendent Jhansi vide letter dated 05.04.2000. There is nothing on the record of the respondents that the applicant was posted on the post of Tel Mashal. It is also wrong to allege that the applicant reported for duty in the office of DRM (P), Jhansi. He remained absent from duty from 21.07.1999 to 12.07.2000 and ultimately the applicant joined the duty on supernumerary post on 13.07.2000. The applicant himself is responsible for heavy financial loss. The applicant himself absented from duty from 21.07.1999 to 12.07.2000. The applicant should be put to strict proof that he remained

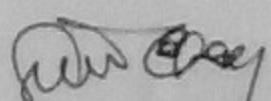


present for duty from 21.07.1999 to 12.07.2000. A proposal was sent for payment of salary for the period from 19.07.1999 to 05.04.2000 but the proposal was not accepted by the Accounts Department and it was returned back with many objections. There is no evidence on record that the applicant has been on duty from 21.07.1999 to 12.07.2000. The OA lacks merit and is liable to be dismissed.

5. In response to the counter affidavit the applicant also filed rejoinder affidavit in which he reiterated the facts which has been alleged in the OA. It has been alleged by the applicant that the burden continued to be on the respondents to prove that the applicant remained absent from duty.

6. We have heard Sri S.K. Pandey brief holder of Sri R.K. Nigam, advocate for the applicant and Sri Anil Dwivedi, advocate for the respondents and perused the entire facts of the case.

7. Having into account the admitted facts of the parties we are of the opinion that very narrow controversy is involved in the present case. It is an admitted fact that the applicant was medically decategorised vide medical certificate dated 19.07.1999 for category A-1, A-2, B-1 and B-2, but he was found fit in C-1 category. The respondents have not specifically denied that the applicant is not entitled for the salary for the period between 21.07.1999 to 12.07.2000. Only it has been alleged by the respondents that the applicant remained absent during this period and hence the salary was not paid to him. Whereas, the applicant has alleged that he worked as Tel Mashal during this period and his attendance was recorded. From the side of both the parties no documents have been filed to show that the applicant remained absent during this period. Otherwise, it has not been alleged by the respondents that no salary will be payable



to the employees who have been medically decategorised during the availability of post or supernumerary post. The position also clarified in this connection in IREM Vol. I (Revised Edition 1989) under Rule 1304, which reads as under:-

"1304. Railway servants incapacitated for service in posts held by them

(a) *permanent Railway servants – A permanent railway servant in group (ii) of para 1302 above must also cease to perform the duties of the post, he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the leave Rules by which he is governed, from that date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit, his leave shall be made upto six months by the grant of extraordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted his service should, be extended by grant of extraordinary leave, subject to the condition that the total amount of extraordinary leave to be granted to the railway servant does not exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against the temporary post in a permanent cadre a supernumerary post may also be created and his lien counted against that post. It should, however, be noted that.*

....."

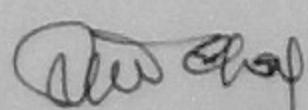
8. Hence in view of this rule 1304 if a person is medically decategorised for a specific post then either such employee shall be treated on leave as admissible to him under the rule from the date when he was incapacitated subject to the proviso and if no leave is due to the credit of the employee then such employee has to be granted extraordinary leave maximum upto 06 months and if during this period employment cannot be found then period shall be extended. It is also provided that if Railway servant is absorbed against a temporary post in a permanent cadre a supernumerary post may also be created and his lien counted against that post. Under these circumstances in the case of the applicant after declaring the applicant medically decategorised then the respondents were under obligation to provide supernumerary post to the applicant and if it was not available then leave ought to have been granted to the applicant and if no leave is available to the applicant then

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extraordinary leave should be granted. It has not been alleged by the respondents that supernumerary post was offered to the applicant after issue of medical certificate of decategorization. The stand of the respondents is that after 21.07.1999 the applicant remained absented himself and hence he himself is responsible for loss.

9. It is the duty of the respondents to show that that immediately when the applicant was medically decategorised a supernumerary post was offered to him and the applicant was available to accept that post, the applicant could not resume the duty. It is the own act of the respondents that the supernumerary post was available in the month of April 2000, what was the status of the applicant's supernumerary post has not been alleged. The respondents cannot be permitted to blow hot and cold in same breath. On the one hand it has been alleged by the respondents that the applicant failed to resume the duty, but at the same time they themselves alleged in the impugned order dated 26.10.2006 that the orders of supernumerary posting was passed on 05.04.2000. Then how the respondents were expecting that on which post the applicant failed to join. It was the duty of the respondents to provide him the duty and if the applicant remained absent w.e.f. 21.07.1999 and continued to remain absent upto 12.07.2000 then they should have initiated the disciplinary proceedings against the applicant. Neither any offer of appointment was given to the applicant on supernumerary post nor any document has been shown that the applicant remained absent during this period.

10. It has been alleged by the respondents that the burden lies to the applicant to prove that he remained present during this period. What evidence can be provided by the applicant himself because everything has to be done by the respondents. Even attendance register is to be



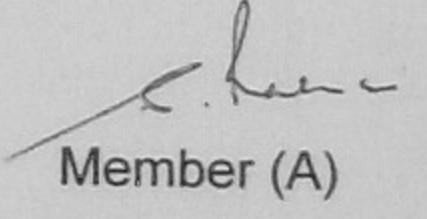
maintained by the respondents. Moreover, it is the fact that when prior to 05.04.2000 no supernumerary post was available then how the respondents are justified in stating that the applicant himself absented from duty. The respondents must show that even prior to 05.04.2000 the post was provided to him or they acted as provided under rule 1304 of IREM Vol I. This part has to be complied by the respondents and not by the applicant. If this period is to be treated as absent then instead of treating as absent from duty it may be treated as leave period as provided under rule 1304 of IREM Vol. I. Leave upto 06 months could have been granted to the applicant. Moreover, if within this period of 06 months supernumerary post was not provided, the leave period can be extended beyond 06 months. It has been alleged by the respondents that no leave was granted to him or any extraordinary leave was granted to him. It does not lie in the mouth of the respondents to shift the burden on the applicant that he remained present. If the respondents might have offered the post to the applicant during this period and the applicant inspite of offering the post failed to report for duty then the respondents could have been justified, otherwise not. We disagree with the contention of the respondents. As the applicant was medically decategorised hence the respondents should have acted as provided in para 1304 of IREM Vol. I instead of treating this period from 21.07.199 to 12.07.2000 as dies-non. When there is a specific provision available then what has prevented the respondents for not exercising the provision of Rule 1304 of IREM Vol. I in the case of the applicant. The applicant's case was fit in which the benefit should have been given to him under rule 1304 of IREM Vol. I by giving him leave or extraordinary leave, but in no circumstances this period can be treated as dies-non for all purposes.

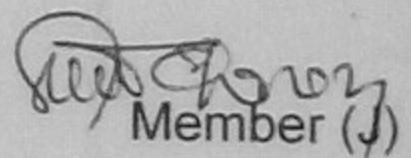
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11. For the reasons mentioned above we are of the opinion that the respondents themselves are responsible for not giving him supernumerary post immediately when the applicant was medically declassified. The respondents should have acted as provided under Rule 1304 of IREM Vol. I when he was medically declassified. Hence the respondents themselves are responsible for not providing him the post and under these circumstances if the post was not available then extraordinary leave may be granted. The OA deserves to be allowed.

12. The OA is allowed. The impugned order dated 26.10.2006 (Annexure A-1 to the OA) is quashed and the respondents are directed to treat the applicant on duty even during the period from 21.07.1999 to 12.07.2000 and it may be treated as continuous service. The salary of this period shall be granted to the applicant. Moreover, fresh PPO will be issued in the name of the applicant treating this period as continuity in service and his pension should be reassessed accordingly. The respondents are directed to comply with the order within a period of three months from the date a copy of this order is produced before respondent No. 2. The applicant shall produce copy of this order to respondent No. 2 at the earliest. No cost.

/pc/


Member (A)


Member (J)