

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 292 OF 1991

~~**O.A.NO.**~~

DATE OF DECISION 14.9.1998

B.K. Sharma, Petitioner

Mr. K.K. Shah, Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondent s

Mr. N.S. Shevde, Advocate for the Respondent [s]

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The Hon'ble Mr. V.Ramakrishnan, vice Chairman.

The Hon'ble Mr. Laxman Jha, judicial Member.

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? ✓
- 2, To be referred to the Reporter or not ? ✓
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? ✓

B.K. Sharma
Station Supdnt.,
Navlakhi,
C/o. Mr.K.K. Shah,
Advocate,
3, Achalayatan Society Div.II
B/h. ~~Nam~~nagar Fire Station
Navrangpura, Ahmedabad.

.... Applicant.

(Advocate: Mr. K.K. Shah)

versus

1. Union of India,
notice to be served through
The General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway,
Rajkot Division,
Rajkot.
3. Divisional personnel officer,
Western Railway,
Rajkot Division,
Rajkot.

.... Respondents.

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A.No. 292/91

Date: 14.9.1998.

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

We have heard Mr. K.K. Shah for the applicant
and Mr. N.S. Shevde for the Railway Administration.

2. This is the second round of litigation. The
applicant was visited with disciplinary proceedings
earlier and the Disciplinary Authority inflicted the
penalty of removal from service by its order dated
18.12.1981. He filed an appeal against that order
and the appellate authority set aside the order of
punishment and held that the charges were not fully

established and he was reinstated. However, the authority on its own had proceeded to treat the period of absence from 18.12.91 to 27.5.82 when the applicant was actually reinstated from service as leave due and admissable. This was challenged by the applicant in T.A.No.241/86 and the Tribunal disposed of the same on 28.7.1987 making some observations. We may in this context extract paras 5 & 6 of the Tribunal's order.

"5. In this case we find that the petitioner has not been fully exonerated. It is not clear how the respondent has treated the period of absence and on what basis. The Rule requires a clear and specific order to be passed by the competent authority as to how the period of absence has to be treated if it is to be treated as other than on duty on account of the petitioner having contributed to delay in termination of the proceedings as appears to be in this case, although not as clearly stated as is required. The proportion of the pay and allowances to be paid is to be determined. It is open to the respondents to adopt the formula of the pay and allowances available as on leave but, it is not competent for him to force leave on the applicant or to decide that such a period shall be treated as on leave. This can be done only in terms of the proviso to Sub Rule (5) which applies to cases falling under Sub Rule (4) which in terms applies to cases other than those governed by Sub Rule (2) in which the cases of delay due to reasons directly attributable to the Railway servants are provided. It therefore, appears that the competent authority erred in converting the period of absence into leave while purporting to act under sub clause 2. If it had desired to take

re-course to the proviso of Sub Rule (5) it has to be noticed that option for conversion of period of absence to leave of any kind under it is open not to the respondent but, to the Railway servant. If the Railway servant desires that the period of absence be converted into leave of any kind, the authority may direct that this be done. It is not obligatory upon the authority to accept the option of the Railway servant but, it is equally not competent for them to impose a conversion of the period of absence into leave upon the Railway servant if the respondent has desired to act under Sub Rule (4). In order to take action regarding conversion of period of absence to leave under Sub Rule (5) again a communication of decision proposed an opportunity for representation are pre-requisites before any final order in this regard could be passed.

6. We, therefore, find that when the impugned order of converting the period of absence to leave due to the petitioner by way of regularisation has been passed without following the requirements of Rule 2044 and therefore it is quashed and set aside. We direct that competent authority ordering reinstatements shall make a proper specific order following the requirements of Rule 2044 within a period of two months from the date of this order. Subject to this observation we find that the petition has merits and partly allow it.

No order as to costs."

3. We may mention at this stage that Rule 2044 of the Indian Railway Establishment Code, Vol.II is now Rule 1343 of the new Code and it is para-materia with F.R 54.

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4. From the above order, it is clear that the Tribunal took the view that leave cannot be forced upon the

applicant unless asked for under sub Rule (5) of this Rule. DRM Rajkot after getting this order proceeded to issue an order dated 13.4.88 where the applicant was asked to show-cause as the railways held the delay in completion of the proceedings was directly attributable to the Railway servant. The question of delay on the part of the applicant would be relevant under sub Rule (2) and not sub Rule (5). However, after getting the reply the competent authority issued an order dated 4.5.88 where the applicant was not given full pay and allowances but the amount of payment to him was restricted to subsistence allowance. This order again does not specify whether the relevant period is treated as duty or not and for what purpose but we are told that it has infact been treated as dies-non.

5. Mr. K.K. Shah for the applicant submits that the proceedings were initiated much earlier and there has been prolonged litigation. He also says that despite the averments in the replystatement of the Railways that the period of leave which has been deducted from his leave account has since been recredited, no such credit has taken place. He also says that the applicant has since retired and treating the period as dies-nonhas resulted in postponing the date of increment and recurring loss in pension. He now says that the applicant would like to convert this period of absence as leave due as provided in the proviso of Sub Rule (5) of this Rule. He draws attention to the fact that the period of absence earlier was being treated as on leave even though formal request

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was not made by the applicant which however got quashed in view of the direction in T.A. 241/86. Mr. Shah further states that the period of absence has been debited to the leave account and only the balance was allowed to be encashed by the applicant at the time of his retirement.

6. Mr. Shevde says that the order of the Tribunal in T.A.241/86 has been implemented and the leave which was earlier debited has been re-credited and as is brought out in the reply statement an amount of Rs.2900/- has been paid to the applicant for the period of absence as wages. However, these statements are contested by Mr. K.K. Shah stating that neither the leave has been credited nor any amount has been received by the applicant as wages during the relevant period.

7. We note that this is a long pending case and the proceedings relate to a period before 1981. We record the submission of Mr. Shah and the applicant would like to submit a formal application for the period of absence as leave due including half pay leave within 15 days from the date of receipt of a copy of this order. In the facts of the case, ^{we direct that} if he does so the Railway Admn. shall sanction the leave as asked for so long as it is admissable and extend to the applicant all the benefits which flow by such treatment of the period as leave. We further note that increment does not get postponed on account of earned leave or half pay leave. The Railway shall keep in view this position and they shall recalculate all the benefits including retiral benefit

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due to the applicant including pension, gratuity etc. on the basis that the period is treated as leave and extend to him the financial effect that will flow from such treatment within three months from the date of receipt of a copy of this order. In view of the controversy regarding payment of Rs. 2900/- to the applicant for the period from 18.12.81 to 27.5.82 we further direct that in order to give an opportunity to the applicant to check his entitlement, a detailed due and drawn statement shall be furnished to the applicant.

8. With the above directions, the O.A. is finally disposed of. No costs.



(Laxman Jha)
Member (J)



(V. Ramakrishnan)
Vice Chairman

vtc.