

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.118 of 1988.

Date of decision: February 9, 1989.

Sri R.Trinath Rao,
son of late R.Sarathi, Switchman,
S.E.Railway, Golanthara R.S.,
District-Ganjam.

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Applicant.

Versus

1. Union of India, represented by
Chief Personnel Officer, South Eastern
Railway, Garden Reach, Calcutta.
2. Divisional Railway Manager,
South Eastern Railway, Khurda Road,
Dist.Puri.
3. Divisional Personnel Officer,
South Eastern Railway, Khurda Road,
Dist-Puri.
4. Labour Enforcement Officer(Central),
637, Saheed Nagar, Bhubaneswar,
Dist.Puri.

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Respondents.

For the applicant ... M/s.P.V.Ramdas,
B.K.Panda, Advocates.

For the respondents ... Mr.Ashok Mohanty,
Standing Counsel (Railways)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ?
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K. P. ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant challenges the order passed by the competent authority refusing him to give leave benefit etc. for the period during which the applicant had not joined his new place of posting at Kenduapada R.S. in furtherance of the transfer order passed by the competent authority.

2. Shortly stated, the case of the applicant is that he is a Switchman under South Eastern Railway now posted at Golanthara Railway Station. On 14.11.1983 the applicant was transferred from Surla Road Railway Station to Kenduapada Railway Station (within Bhadrak Subdivision) and till 2.10.1985 the applicant had not joined his new place of posting owing to his acute illness. According to the applicant, though he filed medical certificate etc. and leave application, the competent authority illegally rejected the same and has deprived the applicant of his financial emoluments as he has treated the entire period to be unauthorised absence from duty. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that the competent authority rightly rejected the claim of the applicant because the medical certificate about which reference has been made in the application was a spurious document and was not according to Rule 1472 of the Indian Railway Establishment Manual. Hence, the competent authority

rightly rejected the claim of the applicant which should not be unsettled. Further stand taken by the respondents is that the claim is barred by limitation.

4. We have heard Mr.P.V.Ramdas, learned counsel for the applicant and Mr.Ashok Mohanty, learned Standing Counsel for the Railway Administration at some length. Mr.Ramdas submitted that though there is a rule that incumbents serving under the Railway should be treated by the Railway Doctor yet due to the peculiarity in the nature of illness the applicant could not immediately avail the services of a Railway Doctor and therefore, he filed a Medical certificate from the Medical Practitioner who had really treated the applicant and on that account the competent authority should not have been so rigid to deprive the applicant of the leave etc. due to him during the period in question. This submission of Mr.Ramdas was vehemently opposed by Mr.Ashok Mohanty submitting that no government servant could ever demand grant of leave as a matter of right. Grant of leave is always the discretion of the higher authority. In the present case, the higher authority having deeply probed into the matter and having come to the conclusion that the absence of the applicant was unauthorised, such discretion exercised by the competent authority should not be interfered with, in the judicial review. It was further submitted by Mr.Mohanty that some amount of discretion should always be left with the administrative authority. In addition to the above, Mr.Mohanty submitted that the claim of the applicant is grossly barred by limitation and therefore, the applica-

tion should be in limine rejected. So far as the first contention of Mr. Mohanty is concerned, we have absolutely no dispute with him that some amount of discretion must be left with the administrative authority and such discretion should not be interfered and also it could be interfered with when there is arbitrary nature of order. In the present case, even though we do not differ from the competent authority disbelieving the facts stated in the medical certificate and even though we have no ~~dispute~~ ^{dispute} with Mr. Mohanty that one cannot demand leave as a matter of right, yet compassionate view should be taken in the peculiar facts and circumstances of each case and in the present case, we feel inclined to take a compassionate view because the concerned authority has ultimately allowed the applicant to join at Kenduapada Railway Station and no disciplinary proceeding was ever started against the applicant for not having carried out the orders. For this, we feel that the Railway authorities have taken a very sympathetic view with the applicant and sympathetic view was extended even to the extent of transferring the applicant to Golanthara Railway Station on his own request. The cumulative effect of these facts persuades us to take a more sympathetic and lenient view over the applicant and therefore, we direct that the competent authority would compute leave of all nature due to the applicant during this period and grant leave to the applicant to the extent due to him and the period for which no leave is due to the applicant, ^{if} _{by} should be treated as

extraordinary leave disentitling him from any pay.

The competent authority should issue orders granting leave to the applicant and consequential emoluments to which the applicant is entitled, should be calculated and paid to him within three months from the date of receipt of a copy of this judgment.

Before we close this aspect, we must mention that our observation that no proceeding was ever drawn up against the applicant should not go against the competent authority and we hope, no further action would be taken against the applicant.

5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

Baruwa 9.2.89.
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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

Baruwa 9.2.89.
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Vice-Chairman

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
February 9, 1989/S. Sarangi.

