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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO: 325 OF 1992

Date of decision: August 5, 1993

Shri Purna Chandra Sahoo ... Applicant

Versus


Union of India & Others ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? *yes*
2. Whether it be circulated to all the Benches of
the Central Administrative Tribunals or not? *yes*


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

05 Aug 93


(K. P. ACHARYA)
VICE CHAIRMAN

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(10)

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For the Applicant : Mr. S. K. Dash, Advocate

For the Respondents : Mr. R. C. Rath, Additional
Standing Counsel (Railways).

CORAM:

THE HONOURABLE MR. K. P. ACHARYA, VICE CHAIRMAN
AND
THE HON'BLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

J U D G M E N T

K. P. ACHARY, V. C.

The Petitioner has since retired with effect from 31st October, 1992, while he was working as Enquiry Reservation Clerk. Petitioner's officiating allowance not having been sanctioned in his favour, and the leave due to him not having been sanctioned, and the competent authority having ordered to treat the absence as leave without pay, this application has been filed with a prayer to direct the Opposite parties to pay the petitioner his officiating allowance and to treat his absence from duty as regular leave due to him and the emolument to which the petitioner is entitled during the leave period be paid to him.

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2. We have heard Mr. S.K.Dash learned counsel appearing for the petitioner and Mr.R.C.Rath, learned Additional Standing Counsel (Railways). Mr.Rath learned Standing Counsel on the basis of the averments finding place in the counter submitted that the officiating allowance has been sanctioned and it would be shortly paid.

3. As regards leave due to the petitioner and treating the period of absence as leave without pay, Mr.Rath submitted that in no circumstances, this prayer of the petitioner should be allowed because the petitioner did not comply with the rules before he availed leave, and further more it is submitted by Mr. Rath, learned Standing Counsel, that this part of the prayer of the petitioner is grossly barred by limitation and this prayer should not be allowed. According to Mr. Rath/^{period of} absence from duty, which was treated as leave without pay, pertains to the period from 17.6.1988 and this case was filed in the year 1992. Of course, there has been a delay. To substantiate this contention, Mr.Dash learned counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court reported in AIR 1987 SC 1353 (State of Karnataka Vs. Kuppaswamy Gownder). Their Lordships at paragraph 3 of the judgment have been pleased to observe as follows:

"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? the doctrine must be applied in a rational common sense pragmatic manner."

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In another judgment reported in AIR 1974 SC 130
(Dilbagh Rai Jerry Vs. Union of India and others)
Their Lordships, at paragraph 25 were pleased to
observe as follows:

"KRISHNA IYER, J.-25. The judgment just delivered has my full concurrence but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity, and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railways callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit court here and has been negatived in the judgment just pronounced. Instances of this type are legion as is evidenced by the fact that the Law Commission of India in a recent report on amendments to the Civil Procedure Code has suggested the deletion of S. 80, finding that wholesome provision hardly ever utilised by Government and has gone further to provide a special procedure for government litigation to highlight the need for an activist policy of just settlement of claims where the State is a party. It is not right for a welfare State like ours to be Janus-faced, and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like. That the tendency is chronic flows from certain observations I had made in a Kerala High Court decision P.P. Abubacker V. Union of India, AIR 1972 Ker 103, 107: para 5 which I may usefully excerpt here:

"The State under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook;

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for, the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or over-reach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the larger amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957. This second appeal strikes me as an instance of disregard of that policy."

4. While considering the question of limitation, we cannot shut our eyes to the fact that the petitioner is an employee of a medium grade in the Railways. Being busy in his official duties, he might not have found time to take legal advice. In such circumstances, we do hereby condone the delay.

5. Since Mr. Rath learned Standing counsel told us, on the basis of the averments finding place in the counter, that officiating allowance has been sanctioned, contained in Annexure R/1, we would direct that payment be made to the petitioner within three weeks from the date of receipt of a copy of the judgment, if not already paid.

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6. The amount, if not already paid, be sent in shape of a Bank draft to the ^{present} ~~leave~~ address which the petitioner will communicate with the concerned authority by Registered Post. We think the ^{present} ~~leave~~ address of the petitioner will also be available in the office of the Senior Divisional Personnel Officer, Khurda Road. Address of the petitioner should be collected and the amount, if not paid, be sent in shape of a Bank Draft by registered post to the petitioner.

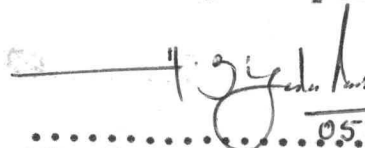
7. As regards the period of ~~leave~~ treating the absence of the petitioner as leave without pay ^{take} we feel inclined to a sympathetic view because the petitioner has since retired and the period involved is not a large one and that the petitioner was declared to be fit by the Railway Medical Officer, contained in Annexure 7. We would direct that in case leave is due to the petitioner for the period in question, then ~~leave~~ should be granted to him and full emoluments for the said period should be given to the petitioner, if not already paid. This amount should also be sent in the same bank draft in which the officiating allowance is being sent and the amount ~~should~~ also be paid to the petitioner within three weeks from the date of receipt of a copy of the judgment.


Qn

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


.....05 Aug 93
MEMBER (ADMINISTRATIVE)


.....5/8/93
VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack/K.Mohanty/
August 5, 1993.