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CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH: CUTTACK.

Original Application No.41 of 1995.

Cuttack this the 11th day of December, 1996.

CORAM :

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE).

Murali Naik, Gangman,
At- Bantol, P.O.Talcher
Railway Station, Dist-Angul. Applicant.

By the Advocate : : Mr. S.K.Rath.

Versus.

1. General Manager,
S.E.Railway,
Garden Reach,
Calcutta, West Bengal.

2. Divisional Manager,
S.E.Railway,
At/P.O.Khurda Road,
District-Khurda, Orissa.

3. E.N. S.E.Railway,
At/P.O./Dist-Dhenkanal, Orissa.

4. Public Works Inspector, (PWI),
S.E.Railway, At/P.O./Dist-
Dhenkanal, Orissa.

... Respondents.

By the Advocate : : Mr. L.Mohapatra,
Standing Counsel (Railways).

O R D E R.

N. SAHU, MEMBER (ADMINISTRATIVE): The relief claimed in this O.A. is to allow the applicant to resume his services as a Gangman and to allow him to draw his salary for the periods from 1.9.94 till the date of resumption of duty as Gangman.

2. The facts leading to the present O.A. can be briefly recounted because, except one aspect, all the facts are undisputed. The applicant is a permanent Gangman in Gang No.III under P.W.I., Dhenkanal. He stated that he was at his village when he suffered from acute gastritis. He became unconscious and his family members took him to the Medical Officer of Talcher Thermal Hospital. The Medical Officer Dr.P.K. Nayak treated him from 16.8.94 to 28.8.94. He issued a medical certificate on 29.8.94 declaring him to be fit. The applicant admitted that he could not intimate the authorities for his absence for the period from 16.8.94 to 28.8.94 because of his illness. Following the procedure laid down for the railway servants, he attended before the Divisional Medical Officer, South Eastern Railway Talcher on 30.8.94 and produced the medical certificate granted to him by Dr.P.K.Nayak, The Divisional Medical Officer, S.E.Railway, Talcher endorsed the certificate granted by Dr. Nayak and declared the applicant to be fit. It is the contention of the applicant that on 30.8.94 he appeared before the Mate who is the official immediately superior to him with the fitness certificate. It is also his contention that finding no response from the Mate, he appeared before the P.W.I. on 1.9.94 and 2.9.94, but no action was taken and allegedly there was no response. The admitted facts are that on 6.9.94 the applicant submitted a representation by registered post with a copy

of the fitness certificate and copies of the representations to the P.W.I., S.E.Railway, Dhenkanal which were received by him on 12.9.94. The respondents filed the acknowledgement of having received this as Annexure-R/6 to their counter. Simultaneously by Annexure-2 he represented before the Senior Divisional Engineer, S.E.Railway, Khurda Road narrating the facts of his illness and fitness medical certificate granted to him and the refusal of the P.W.I. to accept it. Copy of the representation was endorsed to "E.N., S.E.Rly, Dhenkanal" which means Assistant Engineer, S.E.Railway, Dhenkanal and also endorsing another copy of the representation to P.W.I., S.E.Railway, Dhenkanal, but there was no response to these representations. By Annexure-3 the applicant had sent a notice under Sec.80 C.P.C. to the General Manager, S.E.Railway, Garden Reach, Calcutta who is impleaded as respondent No.1 in this petition, and a copy of this notice was sent to the Senior Divisional Engineer, S.E.Railway, Khurda Road. No action was taken on this notice also. The respondents have not even bothered to reply to the applicant. Finding no other alternative, he filed the present Original Application on 11.1.1995. On 20.1.95 the O.A. was admitted and this Court directed the respondents to dispose of the first representation dated 12.9.94. It is in response to the direction of this Court that by virtue of Annexure-R/6 dated 28.4.95 his representation was disposed of and he was "advised to resume duty after receipt of this letter

within seven days and get the fitness certificate from the Railway doctor." In response to this letter the applicant stated that he had already submitted the medical certificate and other particulars and he was not in a position to furnish any other medical certificate afresh. He informed that he approached this Court for appropriate relief and was awaiting the orders from this Court. After this on 15.7.96 this Court directed that the earlier medical certificate was valid and it should be accepted by the authorities and the applicant be allowed to join duty within 10 days from that date. Because of this direction, the applicant was allowed to join duty on 2.9.96.

3. The brief question here is whether the applicant should be considered to be on duty from 1.9.94 till 2.9.96 and whether he should be paid salary for the said period.

4. Learned counsel for the respondents Sri L. Mohapatra has drawn my attention to para-4 of the counter affidavit to highlight that the applicant had been a habitual/regular absentee from the year 1986. There is no need to comment on this nor should this be allowed to weigh in my mind while deciding this case. If the applicant was habitually absent, appropriate disciplinary action should have been initiated against him and he should have been punished for his conduct.

5. The averments made in para-5 of the counter affidavit do not appear to me to be in accordance with the actual

facts. Admittedly the applicant was treated in a hospital and there was a certificate from a private medical practitioner and that certificate was endorsed by the Railway Medical Practitioner and therefore, the averments made in para-5 are not correct. Learned counsel has drawn my attention to Annexure-R/5 the relevant portion of which is quoted hereunder.

" Where the sickness lasts for more than 3 days and the employee reports for duty with a fitness certificate from a private medical practitioner, he has to be put back to duty within 24 hours of his producing a fitness certificate, provided he is found fit by a competent Railway Medical Officer."

The applicant complied with all the above procedural requirements and therefore, he should have been asked to attend duty within 24 hours.

6. The only dispute on facts is that the counter affidavit clearly denies the personal appearance of the applicant along with medical certificate and other documents before the Mate or before the P.W.I., Dhenkanal. The Railway Administration only accepts as a fact the receipt on 12.9.96 the registered letter which intimated the medical certificate of fitness. The learned counsel for the applicant Sri S.K.Rath has drawn my attention to the rejoinder filed on 6.8.96 wherein the applicant has stated that he had personally been present before the Mate and the P.W.I. but they have callously refused to take cognizance of the certificate produced by him.

7. I will not enter into the area of disputed facts. Let us examine the admitted facts. When the medical certificate

of fitness was communicated to them on 12.9.94, they should have in accordance with the instructions of the D.R.M. dt.1.7.86 (Annexure-R/5) immediately asked the applicant to join within 24 hours and if the applicant behaved in a manner unbecoming of a railway employee by not presenting himself with the medical fitness certificate, they could have then and there proceeded against him. The fact remains that they have shown utter indifference to the medical certificate sent by the applicant. The first medical certificate given by the Medical Officer who treated him at Talcher and the second certificate of the Railway Medical Officer have not been impugned. The genuineness of the illness was not doubted. On the above premises, there was no reason why he should adopt an attitude of contumacy and behave in a high-handed manner by sending the fitness certificate without personally presenting himself at the office for duty on 30.8.94, 1.9.94 and 2.9.94. But the conduct of the applicant for this period is under investigation. There is a disciplinary proceeding pending to the effect that the applicant remained unauthorisedly absent from 16.8.94 to 12.9.94. Even according to the authorities, the applicant cannot be faulted after 12.9.94. The direction in Annexure-R/6 dated 28.4.95 by the Assistant Engineer directing the applicant to get a fresh medical certificate is an unnecessary and vexatious condition imposed by the Assistant Engineer, respondent No.3 as a pre-condition to admit him for joining.

It is not the applicant's case that he was ill after 28.8.94. For what purpose is this condition imposed? Should the applicant ^{feign} ~~fall~~ illness and secure a medical certificate of fitness just to satisfy the records? There is no justification for imposing this condition. I, therefore, hold that there is no remissness or impropriety in any manner caused by the applicant from 12.9.94 to 2.9.96. This period shall be declared as a period spent by the applicant on duty and the entire salary and allowances due to him shall be computed and paid to him within two months from the date of receipt of a copy of this order.

8. I am not inclined to give any finding with regard to the period from 30.8.94 to 11.9.94 for the simple reason that there is a dispute about the facts. Any pronouncement will influence the disciplinary proceedings and render them superfluous. It is for this purpose that I direct the respondents to conclude the disciplinary proceedings within three months from the date of receipt of this order, if not already done and the applicant is free to contest the findings arising therefrom, if he is aggrieved.

9. Before I part with the record, I would like to mention here that the Railway Administration had not utilised the services of a fit and able employee for a period of nearly two years. The authorities from P.W.I. onwards/upwards have not dealt with the matter in respect of the fitness certificate or representation or the legal notice submitted by the applicant in the right perspective and the applicant was not allowed to work/join his duty for no fault of his. In view of my findings, funds from the public exchequer have to be paid to the applicant for two years without the Railway Administration benefiting from his services.

Respondent No.1 may consider this as a fit case to ensure that supervisory officers are made responsive in a constructive way to help and guide the low paid, semiliterate workers like the applicant. If only A.E.N. or the P.W.I. immediately responded to the applicant to join on 13.9.94 or a day after that date ^{as this by a letter} by personally contacting him, all this loss to the Railway Administration could have been avoided.

10. The Original Application is disposed of accordingly. A copy of the order be sent to the General Manager, S.E. Railway, Garden Reach, Calcutta, respondent No.1.

N. Sahu
(N. SAHU) 11/12/96
MEMBER (ADMINISTRATIVE).

Jena, P.S.