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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 71 OF 1999
Cuttack, this the 3rd day of April, 2001

Somnath Muduli

....Applicant

Vrs.

Union of India and 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 Tribunal or not? *No*.

U.M.
(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Muduli
(SOMNATH MUDULI)
VICE-CHAIRMAN
S. April 2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO.71 OF 1999
Cuttack, 3rd day of April, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)
....

Somanath Muduli, Traffic Points Man,
son of late Rajiv Muduli, Paradip Railway Station,
Paradip, a permanent resident of Village-Dhaudia,
P.O-Bira Harekrishnapur, District-Puri

....Applicant

Advocates for applicant - M/s Biswajit Mohanty
S.Patra.

Vrs.

1. Union of India, represented through
Secretary to Government of India,
Ministry of Railways, New Delhi.
2. General Manager, South Eastern Railway,
Garden Reach, Calcutta, West Bengal.
3. Divisional Railway Manager, Khurda Road Division,
South Eastern Railway, Khurda Road, Jatni, Puri
4. Officer-in-charge, Railway Protection Force,
Puri Railway Station, Puri.
5. Station Master, Malatipatpur Railway Station,
At/PO-Malatipatpur, Dist.Puri.

.....Respondents

Advocates for respondents-M/s R.Sikdar, A.Sikdar
S.Dutta

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

The applicant in this petition has prayed
for a direction to the respondents to immediately release his
salary for the months of January, February and March 1996 and

leave salary for the period from 6.6.1996 to 24.3.1997 with 18% interest.

2. According to the applicant, he joined the Railways in the year 1968 and while he was working in Malatipatpur Railway Station, he was spared/relieved by the Station Master to attend an enquiry before the Officer-In-Charge, R.P.F., Puri Railway Station (respondent no.4). The applicant has stated that accordingly he reported before respondent no.4 on 11.1.1996. He has further stated that despite completion of the enquiry respondent no.4 did not immediately release him and because of this he did not get the salary for the month of January 1996. He was not released and was kept hanging under respondent no.4 at Puri Railway Station and was also not paid the salary for February 1996. Ultimately, as per the verbal instruction of respondent no.4, the Station Master, Malatipatpur Railway Station allowed the applicant to join his duty on 4.3.1996. But he was not paid the salary for the month of March 1996. His grievance is regarding payment of his salary for the months of January, February and March 1996. On 6.6.1996 he was transferred to Barang Railway Station by Station Master, Malatipatpur Railway Station. As the applicant was ailing he submitted leave application along with medical certificate dated 7.6.1996 which is at Annexure-3. While on leave on 5.8.1996 he was transferred to Motari Railway Station. Again on 14.8.1996 he was transferred to Paradip Railway Station. As the applicant was still ailing he could not join at Paradip Railway Station. Ultimately he was declared fit in the fitness certificate dated 21.3.1997 at Annexure-4 and he joined his

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duty at Paradip on 24.3.1997. Leave salary for the period from 6.6.1996 to 24.3.1997 was not paid to him. He filed representation in October 1997 for release of his pay and leave salary, as asked for in this OA, but without any result and that is why he has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant was spared from Malatipatpur Railway Station on 8.1.1996 to attend the office of Officer-In-Charge, R.P.F., Puri Railway Station. But instead of attending the same, he remained absent without any intimation. Only on 3.3.1996 he attended the office of Officer-In-Charge, R.P.F., Puri Railway Station and returned to Malatipatpur on 4.3.1996. Because of this, the period from 9.1.1996 to 2.3.1996 was treated as absence. It is further stated that in order dated 29.5.1996 at Annexure-R/9 the applicant was transferred from Malatipatpur to Barang. He was spared from Malatipatpur on 9.6.1996 and the applicant has acknowledged the sparing memo by signing on it. A copy of this sparing memo is at Annexure-R/3. But again he remained on unauthorised absence without giving any intimation upto 8.8.1996 and did not join at Barang. The respondents have denied the averment of the applicant that he submitted leave application on 7.6.1996. As he did not join at Barang, another transfer order was issued in order dated 5.8.1996 (Annexure-R/13) transferring him from Barang to Motari. The applicant joined at Motari Railway Station on 9.8.1996. But again he remained absent from 10.8.1996 without any intimation regarding his absence. Ultimately, he turned up before the Assistant Operations Manager, Khurda Road, on 24.3.1997

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with private medical certificate covering his alleged illness and also his fitness for the period from 10.8.1996 to 23.3.1997. After getting the counter signature of Senior Medical Officer, Puri, on the private medical certificate and with the approval of the Additional Divisional Railway Manager, the applicant was directed to join at Paradip. In the meantime in order dated 14.8.1996 the applicant was transferred to Paradip where he joined on 24.3.1997. The respondents have stated that because of applicant's continued absence as mentioned above, a major penalty chargesheet was issued against him which has not yet been finalised. They have stated that / regarding decision treating the period of his absence from 6.6.1996 to 23.3.1997 will be taken after finalisation of the disciplinary proceeding against him. The respondents have further stated that on receipt of representation from the applicant, the Chief Divisional Traffic Inspector, Khurda Road, was asked to enquire into the matter of his absence and his report is at Annexure-R/1. On the basis of this report, his period of absence from 9.1.1996 to 2.3.1996 was treated as absence. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. In his rejoinder the applicant has stated about his illness. He has also stated that the major penalty chargesheet ended with awarding of punishment of withholding of increment for a period of three years with cumulative effect. This punishment was intimated to the applicant on 14.11.2000. On the same day the Divisional Operations Manager has passed an order treating the period from 6.6.1996 to 23.3.1997 in the following manner. The

period from 6.6.1996 to 8.8.1996 has been treated as absence, 9.8.1996 has been treated as duty, and the period from 10.8.1996 to 23.3.1997 has been treated as leave by granting leave on average pay for 26 days and 200 days on commuted leave. The applicant has stated that during this period he should have been given duty pay and leave should not have been granted to him. On the abve averments, he has reiterated his prayers made in the O.A.

5. We have heard Shri S.Patra, the learned counsel for the petitioner and Mrs.R.Sikdar, the learned Railway Advocate for the respondents. The learned counsel for the petitioner has filed copies of Rules 521 to 529. This have also been perused. The respondents have filed written note of argument and this has also been taken note of. In the background of the above poleadings of the parties, the prayers of the applicant have to be considered.

6. The first part of the prayers of the applicant is relating to release of the salary for the months of January, February and March 1996. From the letter of the Officer-In-Charge, R.P.F., Puri Railway Station, addressed to Senior Divisional Operations Manager, Khurda Road, at Annexure-R/6 it appears that an FIR was filed alleging that the applicant, who is Cabin Man at Malatipatpur Railway Station and is a local resident, has created resentment against the local employees by threatening the P.W.I. to bomb his trolley-men. It has also been alleged that he is regularly selling earth by cutting the same from the side of railway track for his personal gain and this has enhanced the risk factor in the railway track and rolling stock. In connection with the enquiry on

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the above FIR, the applicant was to report before the Officer-In-Charge, R.P.F., Puri Railway Station and he was spared on 8.1.1996 to the office of Officer-In-Charge, R.P.F., Puri Railway Station. It further appears from Annexure-R/7 series that the applicant wrote a letter on 16.1.1996 to Divisional Operation Manager, Khurda Road, stating that he had prepared a portion of open unutilised railway land for the purpose of cultivation of vegetables for his domestic use. The earth cutting has been done in another place of the site. He has also stated that because of these reasons he is unable to attend his official duty. The respondents have pointed out that after being relieved on 8.1.1996 he did not report to the Officer-In-Charge, R.P.F., Puri Railway Station and remained absent without any intimation and returned to Malatipatpur to join on 4.3.1996. The applicant's stand that he reported before the Officer-In-Charge, R.P.F., Puri Railway Station, who did not release him for reporting back at Malatipatpur Railway Station before 3.3.1996. This matter was enquired into by Chief Divisional Traffic Inspector and his enquiry report is at Annexure-R/1. In this enquiry report also it has been held that he did not attend the office of Officer-In-Charge from 9.1.1996 to 2.3.1996. He finally reported there on 3.3.1996 and was spared by Officer-In-Charge, R.P.F., Puri on 4.3.1996. In view of this, it must be held that the applicant remained absence from his duty and also did not report before the Officer-In-Charge, R.P.F., Puri, from 9.1.1996 to 2.3.1996 and this period has, therefore, been rightly treated as absence. In view of this, the applicant is not entitled to get the salary for the month of February 1996. It is the admitted position that the applicant was

spared on 8.1.1996 from Malatipatpur Railway Station and therefore, obviously he is entitled to the salary for the period from 1.1.1996 to 8.1.1996. This amount must be paid to the applicant within thirty days from the date of receipt of copy of this order, if the same has not already been paid.

7. It further appears from Annexure-R/9 that on 29.5.1996 the applicant was transferred from Malatipatpur to Barang. The respondents have stated that he was spared on transfer from Malatipatpur on 6.6.1996. From this it is clear that the applicant has worked at Malatipatpur from 4.3.1996 to 31.3.1996 and he is, therefore, entitled to the pay for this period which should be paid to him within the same period of thirty days as indicated earlier. The applicant has not made any averment with regard to salary for the months of April and May 1996 which presumably he has received.

8. The next part of his prayer is granting of leave salary from 6.6.1996 to 24.3.1997. We note that after his relief from Malatipatpur for joining at Barang on transfer the applicant did not join at Barang. He was further transferred to Motari and thereafter to Paradip where he joined on 24.3.1997. For his continued absence departmental proceeding was drawn up against him on 5.8.1997 at Annexure-R/5. From the charge it is seen that his alleged period of absence was from 6.6.1996 to 8.8.1996 and again from 10.8.1996 to 24.3.1997. In between he had reported for duty on 9.8.1996. The applicant has mentioned in his rejoinder that the major penalty proceeding initiated against him ended with the punishment of withholding of increments for a period of three years with

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cumulative effect and in the same order the period of absence from 6.6.1996 to 23.3.1997 has been treated in the manner noted by us earlier. The applicant has stated that he had produced a medical certificate in support of his illness from 7.6.1996 till he became fit on 23.3.1997 and therefore, this period should be treated as leave on medical ground. The respondents have stated that the medical certificate has been produced from a private doctor. The respondents have mentioned in the counter that this medical certificate given by the private doctor cannot be relied upon because this shows that the petitioner was ill from 7.6.1996 till 23.3.1997 whereas on 9.8.1996 he has joined his duty at Motari Railway Station. The respondents have stated in paragraph 7 of the counter that after production of the medical certificate and fitness certificate, he was certified fit by the Railway Doctor at Puri and thereafter he joined at Paradip. The learned counsel for the petitioner has relied on Rule 521 of the Leave Rules which, however, does not go to support his case. Sub-rule (2) of Rule 521 lays down that when a Railway servant residing outside the jurisdiction of a Railway Medical Officer requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. It is further provided that the certificate should state the nature of the illness and the period for which the Railway servant is likely to be unable to perform his duties. In this rule it is further laid down that the competent authority may, at its discretion accept the certificate or, in cases where it has reasons to suspect the bonafides, refer the case to the Divisional Medical Officer for advice or investigation. The medical certificate from registered

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private practitioners produced by Railway servant in support of his application for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications. It has been argued by the learned counsel for the petitioner that in view of the above, without verification of his illness, the medical certificate should not have been rejected. We are unable to accept this contention because the rule specifically lays down that within fortyeight hours of falling sick such certificate should be produced so that the illness can be immediately verified by the Railway doctor. In this case, the applicant has produced this certificate on 24.3.1997 and not within fortyeight hours from 7.6.1997 and therefore, he is not entitled to the benefit of Rule 521. In viewofthis, we find no infirmity in the way the respondents have treated the period of absence from 7.6.1996 to 23.3.1997 except on one ground. The applicant was transferred to Barang from Malatipatpur. For this he would normally be entitled to joining time. But as he did not join at Baranga, he would not be entitled to joining time. But he did join at Motari Railway Station for a day and again remained absent. The period of absence was treated as leave on medical ground. For joining at Paradip the applicant will be entitled to joining time from Motari to Paradip and whatever joining time he is entitled to have should be treated as duty and not as leave. Unfortunately, none of the parties has produced before us the rule relating to entitlement of railway servants for joining time while going on transfer. Our above observation is based on the general rule that a

Government employee on transfer from one station to another is entitled to some days of joining time. In view of this, we dispose of this part of the prayer of the applicant with a direction to the applicant that he should file a representation to his immediate controlling officer asking for being allowed joining time as per his entitlement for joining at Paradip and this joining time should be allowed to him and that portion of the leave allowed to him till 23.3.1997 should be converted to joining time as per his entitlement.

9. The applicant has asked for 18% interest on his entitlement. We find that in this case the applicant is entirely at fault for delayed payment of the amounts which have ultimately been paid to him by the departmental authorities. In his letter dated 19.1.1996 at Annexure-R/7 he has not only admitted that he is utilising the railway land for growing vegetables but also mentioned that because of this he is unable to attend to his official duties. In consideration of the entire fact and circumstances of the case, it is clear that the applicant is not entitled to any interest. The prayer for payment of interest is accordingly rejected.

10. In the result, therefore, the Original Application is disposed of in terms of the observation and direction above. No costs.

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(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
3.4.2001
VICE-CHAIRMAN