

19

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH:CUTTACK**

**ORIGINAL APPLICATION NO.431 OF 2004**  
**Cuttack this the 10<sup>th</sup> day of April,2006**

**Purna Chandra Mallick...Applicant(s)**  
**-VERSUS-**  
**Union of India & Ors. ... Respondent(s)**

**FOR INSTRUCTIONS**

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

**(B.PANIGRAHI)**  
**CHAIRMAN**

13

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

**ORIGINAL APPLICATION NO.431 OF 2004**

**Cuttack this the 10<sup>th</sup> day of April, 2006**

**CORAM:**

**HON'BLE MR.JUSTICE B.PANIGRAHI, THE CHAIRMAN**

...  
Purna Chandra Mallick, Fitter, Grade-I, Retired, S/o. Bani Mallick,  
At-Railway Quarter, D-302, Sector-D, Bandhamunda, District-  
Sundargarh

... Applicant

**By the Advocates :**

**Mr. Sanjib Mohanty**

**-VERSUS-**

1. Union of India represented through the Secretary, Rail Bhawan, Railway Board, New Delhi
2. General Manager, South Eastern Railway, Garden Reach, Calcutta
3. Divisional Railway Manager, South Eastern Railway, Chakradharpur Division, Singhbhami, Jharkhand
4. Sr.Divisional Personnel Officer, South Eastern Railway, Chakradharpur Division, Jharkhand
5. Carriage Foreman, Southern Eastern Railway, Bandhamunda, Sundergarh

... Respondents

**By the Advocates :**

**Mr.R.C.Rath, S.C.**

13

WY

ORDER

(ORAL)

MR.JUSTICE B.PANIGRAHI, THE CHAIRMAN: The applicant retired from service as a Fitter, Gr.I from South Eastern Railway, on completion of his service. He has claimed to have rendered 33 years of service, but the Respondent-authorities granted him pension by computing only 28 years as qualifying service, treating the rest of the service period as non-qualifying service.

2. The case has suffered a checkered career. The applicant remained unauthorized absence from duty from 21.11.1980 to 19.6.1986 and was, therefore, placed under suspension. It appears that the applicant had approached the Hon'ble High Court by filing a Writ Petition being O.J.C. No.1901/85, which was eventually transferred to this Tribunal after its constitution and was re-numbered as T.A.78/87. The Respondent-authorities were directed to pay the subsistence allowance for the period of suspension and to permit the applicant to join service. Accordingly, he was reinstated in service with effect from 20.6.1986. Thereafter the applicant had claimed full salary for the period of suspension. The Tribunal, however, was not in favour of directing the Respondents to pay the full salary. Therefore, the period in question was treated as suspension for not performing his duties. After reinstatement,

S

he was permitted to work till his retirement. At the time of retirement, the period of unauthorized absence from 21.11.1980 to 19.6.1986 was not taken into account for the purpose of computation of pension. Therefore, he filed this case for a direction to Respondent-authorities to treat the aforesaid period of unauthorized absence as qualifying service for the purpose of pension.

3. It appears that the applicant had not vacated quarters even after his retirement for a period of 54 months and 15 days. He ought to have vacated the quarters immediately following four months of his retirement. The Railway Service Rules also prescribe the permissible limit of stay in the official quarters for a period of four months after retirement. At any rate, the applicant did not vacate the quarters till 54 months and 15 days after his retirement. Therefore, the Respondents have withheld the gratuity which is payable to him.

4. Mr. Mohanty, learned counsel appearing for the applicant, submitted that it is true that the applicant remained unauthorized absence for a period of about six years and thereafter he was permitted to join service and therefore, he having been permitted to join the duties, it is impliedly understood that the authorities concerned have condoned the period of unauthorized absence and

allowed him to join the duties. It has been further contended that even assuming that he remained unauthorized absence for those periods, at the time of permitting the applicant to join his duties after the Tribunal's direction, they should have specifically mentioned the period of suspension as 'dies non'. In other words, they did not mention the period of suspension as 'dies- non', rather, they treated that period as non -duty.

5. Mr.Rath, the learned counsel appearing for the Respondents has, at the outset, brought to my notice that the authorities concerned were bound to permit the applicant to join his duties in obedience to the direction of the Tribunal, but that by itself does not mean that they have condoned the applicant's absence from 21.11.1980 to 19.6.1986. While permitting the applicant to join the duties after the disposal of the T.A., they have also specifically stated that this period is to be treated as 'not on duty'. It has been further submitted that the applicant has not paid rent, even normal rent, while he was in service from 1989 onwards and he voluntarily vacated the quarters sometimes in 2001. Therefore, for the entire period of his stay in the official quarters, the Respondent-authorities have calculated the permissible rent and damage rent including the electricity dues to the tune of Rs.96,323/-.

B

17

6. As regards the payment of normal rent including the electricity dues for the period of unauthorized occupation of official accommodation, Shri Mohanty does not dispute this. But it is his submission that after the retirement of the applicant till he vacated the quarters, no damage rent should be leviable against him. It is true that the Railway Rules envisage that penal/damage rent is to be recovered from the unauthorized occupants. Mr. Mohanty has further submitted that the applicant being a low paid Group-C employee under the Respondents, if such damage rent is calculated it would cause severe hardships and he will be penalized to the fullest extent. It is true that the Railway Rules prescribe the limit of stay for four months period after retirement and thereafter, different rates of rent have to be levied. The applicant being a Group C servant, if the Respondent-authorities strictly interpret the provisions of the Rules, then it will work out severe hardship to the applicant.

7. While striking the balance with the applicant's case and the Respondents's right to realize the penal rent, I hereby direct the Respondent-authorities to calculate the penal rent double the normal rent for the period of unauthorized occupation of the official accommodation, in addition to electrical and other incidental dues payable by the applicant. Since certain amount of

2

gratuity payable to the applicant has been withheld, the Respondents are at liberty to calculate the damage rent as indicated above and pay the balance amount, if any, to the applicant. Of course, taking the hardship into consideration this order is being passed which would not be taken as a precedent in other cases.

8. In so far as the period of unauthorized absence is concerned, the Respondent-authorities have never treated the period of suspension as 'dies non' while permitting the applicant to join duties after the Tribunal's order. Therefore, the question arises as to how such period is to be treated. Whether this period would be treated for the purpose of qualifying service or not is to be now considered. Those periods have not been regularized by the Respondents either by treating the same as E.O.L. or otherwise. The applicant too has not applied for any kind of leave for the period of unauthorized absence. In the aforesaid circumstances, the applicant is directed to file an application for grant of any kind of leave due to him for the aforesaid period as admissible under the Rules. If no other leave is due to him, it goes without saying that the Respondent-authorities have also been authorized under the leave rules to treat those periods as EOL. Be that as it may, it is open to the authorities to take a decision upon such an application being submitted by the applicant, in terms of the leave rules,

7  
19

within a period of four months from the date of receipt of such application.

9. So far as the prayer of the applicant for grant of railway pass is concerned, the same is hereby rejected.

10. With the aforesaid observation and direction, this O.A. is disposed of. No costs.

  
(B.PANIGRAHI)  
CHAIRMAN