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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.901 OF 2006

Cuttack this the 25th day of November, 2008

Bharat Suna

-VERSUS-

Union of India and others

.....
...Applicant

.....
Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not?
- 2) Whether it be sent to the P.B. of CAT or not?


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 901 OF 2006

Cuttack this the 25th day of November, 2008

CORAM:

HON'BLE SHRI A.K.GAUR, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

Bharat Suna, aged about 45 years, Son of late Alekha Suna, Vill: Stationpara, (Railway Colony), Qr.No.6-23/2, PO-Khetarajpur, Dist-Sambalpur, At present working as Token Porter, Sargipalli, At/PO-Sargilappi, Dist-Sambalpur

...Applicant

By the Advocates: M/s.S.B.Jena, S.Behera, S.S.Mohapatra, A.Mishra

-VERSUS-

1. Union of India represented through the General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar-23, District-Khurda
2. Divisional Railway Manager, East Coast Railway, Sambalpur Division, At/PO/PS/Dist-Sambalpur
3. Senior Divisional Personnel Officer, East Coast Railway, Sambalpur Division, Sambalpur, At/PO/Dist-Sambalpur
4. Divisional Operating Manager, East Coast Railway, Sambalpur Division, Sambalpur

...Respondents

By the Advocates:

Mr.T.Rath

ORDER

SHRI A.K.GAUR, JUDICIAL MEMBER:

1. Through this Original Application, the applicant has prayed for quashing the order dated 19/20.6.2006 (Annexure-A/3) and also for regularizing the period of his absence from 4.8.2003 to 25.10.2005.

2. The brief facts of the case are that the applicant, while posted in the Office of P.R.O., Sambalpur, on 2.8.2003 was asked to go and report under Sr. Divisional Manager, Sargipali without any written order of transfer. The applicant, due to his illness, remained on leave from 8.8.2003 to 30.9.2003 and thereafter when he reported for duties, the Respondents did not permit him to join the duties on the plea that he had been transferred already. His efforts having not yielded any fruitful result, the applicant was constrained to approach this Tribunal in O.A.No.673/05. This Tribunal, while disposing of the said O.A. on 19.8.2005, directed the Respondents to look into the

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grievance of the applicant as enumerated in his representation and grant him necessary relief, as due and admissible under the rules, within a period of 30 days from the date of receipt of the order. This Tribunal also directed that till the grievances of the applicant received due consideration, the Respondents might assign job to the applicant at Sambalpur or a place nearby Sambalpur. Vide order dated 26.9.2005 (Annexure-A/1), the competent authority passed order on the representation of the applicant asking him to go and join at Sargipalli treating the period of absence 'No Work No Pay'. While working at Sargipalli, the applicant submitted a representation to the Assistant Operating Manager, Sambalpur on 16.2.2006 stating therein for sanction of sick period as commuted leave and LAP/(WP) for the period in question and the said representation was forwarded by the Station Manager, Sargipalli to A.O.M for consideration. The representation of the applicant was rejected vide letter dated 19/20.6.2006(Annexure-A/3). The reason of such rejection as indicated in the order of the competent authority was that since the applicant was provided with railway quarters and had reported sick on Private Medical Certificate (PMC) instead of Railway Medical Certificate (RMC) and also had not furnished any further periodical progress report of sickness, the entire period had been treated as unauthorized absence from duty and by applying the principle of no work no pay, no salary had been drawn. While rejecting the representation, the competent authority also, inter alia indicated that total number of 270 days (LAP - 149 days, LHAP-121 days) were lying on the credit of the applicant for which it was quite insufficient to cover the period of absence of 814 days.

2. By filing a counter reply the Respondents have submitted that in pursuance of the direction of this Hon'ble Tribunal in O.A.No.673/2005, the applicant's representation having been considered and rejected vide order dated 26.9.2005, he had again filed O.A.No.795/05 challenging the order dated 26.9.2005 and sought for several other reliefs. The Respondents, on receipt of the notice in O.A.No.795/05, appeared through their counsel and filed counter. As this Tribunal felt reluctant ⁱⁿ ~~for~~ passing favourable order, the

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applicant had sought permission for withdrawal of the said Original Application and accordingly, vide order dated 7.3.2007, this Tribunal dismissed the O.A.

3. We have heard Shri S.B.Jena, learned counsel for the applicant and Shri T.Rath, learned counsel appearing on behalf of the Respondent-Railways.

4. Learned counsel for the Respondents raised a preliminary objection that this O.A. is barred by the principles of res judi cata and also Order 2 Rule 2 CPC.

5. Before dealing with the preliminary objection raised by the learned counsel for the Respondents, we may, at the outset, note that apart from legal plea, on merits the applicant has not been ^{able} to make out any case warranting interference by this Tribunal inasmuch as the applicant, having been declared surplus, was transferred from Construction Branch to Open Line and posted as Token Porter and had accepted the bottom seniority, vide order dated 1.1.2002(Annexure-R/1). The applicant was also transferred and posted temporarily under Public Relation Officer, Sambalpur to manage day to day work of PRO cell against a regular vacancy of Group D, which, however, having been filled up, the applicant was re-transferred to the original post of Token Porter under the Station Superintendent, Sargipali as per Office Order dated 22.1.2003 (Annexure-R/3). But the applicant did not come to Sargipalli and submitted a leave application for sanction of 2 days CL, 2 days CR. from 8.7.2003 to 11.7.2003 and those leaves were not sanctioned by the PRO. The applicant neither reported to Ch.DTI(Staff)/Sambalpur nor to Station Superintendent, Sargipali from 8.7.2003 to 7.8.2003 and thereafter obtained a Private Medical Sick Certificate (unfit) dated 4.8.2003. The applicant was marked sick from 8.8.2003 to 3.9.2003 at Sargipalli. He neither submitted any progress report in connection with his sickness nor did he furnish any Railway Medical Certificate as per rules in vogue although the applicant was provided with railway quarters and it was incumbent on his part to undergo medical treatment by a railway doctor as he was residing within ½ kms. radius of Divisional Railway Hospital, Sambalpur. As the applicant failed to submit any railway medical

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certificate he was marked absent from 1.10.2003 till the disposal of the representation by the competent authority. The entire period, in our considered view, has rightly been treated as unauthorized absence from duty and no salary has been drawn on the principle of 'no work no pay'. It is also seen from the record[✓] that there were specific written complaints against the applicant from the local police authorities and it was strongly recommended by the concerned police authorities that the applicant should be kept away from the areas in and around Sambalpur and that is the main reason why his prayer for transfer back from Sargipalli could not be considered by the competent authority. The learned counsel for the applicant vehemently argued that the applicant has been regularly reporting to PRO for permitting him to join duties. In this regard, the competent authority has clearly observed in its order dated 16.9.2005 that since the applicant has submitted a private medical certificate with effect from 8.7.2003, unless and until he is found to be fit by a proper medical authority, i.e., RMC, the question of entrusting any work to the applicant does not arise.

6. We have also carefully seen the order passed by the Assistant Operations Manager, Sambalpur, and we do not find any illegality or infirmity in the same. It has been vehemently argued by the learned counsel for the applicant that the competent authority has not considered the application/ representation dated 16.2.2006 of the applicant and has arbitrarily observed in letter dated 19/20.6.2006 that since the competent authority had already decided the issue and communicated the same, he being the lower authority is 'not above to take any further decision'. We do not find that there is anything wrong in the said observation. When the matter has already been considered and a speaking and reasoned order ~~has~~ already ~~been~~ [✓] passed by a higher authority in pursuance of the order and/or direction of this Tribunal, there is hardly any justification for a lower authority to sit over the same as a Court of Appeal. We have given our anxious thought[✓] to the pleas taken by the learned counsel for the parties and in our

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considered view, the applicant has not been able to make out a case warranting interference by this Tribunal.

7. In the result, the O.A. being devoid of merit, is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(A.K. GAUR)
JUDICIAL MEMBER

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