


IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No.329 of 2008
Cuttack, this the ~~04th~~ day of ~~May~~, 2009
August

Bipin Bihari Patnaik Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.329 of 2008

Cuttack, this the ~~04th~~ day of August, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

.....
Bipin Bihari Pattnaik, aged about 51 years, S/o.Late Jadumani
Pattnaik, presently working as Station Superintendent, Humma
Railway Station, Dist. Ganjam.

.....Applicant

Advocate for Applicant: M/s.B.S.Tripathy, A.Mishra
-Versus-

1. Union of India represented by General Manager East Coast Railway, At-Chandrasekharapur, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager (P), East Coast Railway, Khurda Road, Dist.Khurda.
3. Senior Divisional Operating Manager, East Coast Railway, Khurda Road, Dist.Khurda.

....Respondents

Advocate for Respondents: Mr.S.K.Ojha

O R D E R

Per- MR.C.R.MOHAPATRA, MEMBER (A):-

The dispute in this Original Application relates to rejection of the prayer of the Applicant who is working as Station Superintendent, Humma Railway Station for sanction of commuted leave for the period from 26.10.2006 to 8.11.2006. According to the Applicant leave was in his credit and though he submitted the proper medical certificate both unfit and fitness for the above period, intentionally and deliberately, the Respondents did not sanction the leave. In support of his plea of non-sanction of leave as intentional, Applicant has cited several incident starting from disciplinary proceedings till punishment. As the said plea is according to us

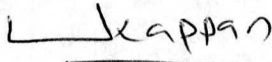
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irrelevant for taking a decision in the matter, we do not intend to record all those submissions.

2. The main stand of not sanctioning the leave of the Applicant in the counter filed by the Respondents is that the certificate of fitness granted by the Sr.DMO, Berhampur only bears the remark that the applicant was sick and under treatment from 26.10.2006 to 08.11.2006. It does not bear any recommendation for sanction of leave to the applicant. As such no scope was there for the competent authority to adjudge the genuineness to consider the application for grant of leave on medical certificate. In view of the above, as no employee can claim leave as a matter of right, no leave was granted to the applicant for the aforesaid period.

3. Heard the rival submission of the parties and perused the materials placed on record. It is no doubt true that no employee can claim leave as a matter of right, at the same time, it is well settled law that if leave is in credit and an employee proceeds on leave due to the reason beyond his control, the authority should not deny to sanction the leave on any hyper technical ground as in the present case. If the genuineness of the certificate was in doubt, the sanctioning authority ought to have resorted to further course of action to verify the documents but denying sanction of leave on mere suspicion without giving any opportunity to the applicant cannot be countenanced in the eyes of law. It is trite law that however strong the suspicion may be, the same cannot be proved in domestic enquiry (**H.C.Goel v Union of India and others**, AIR 1964 SC 364). It is not the case of the Respondents that there was no leave to the credit of the Applicant. It is also not the case of the Applicant that the applicant was not sick. In

view of the above, we find that non-sanction of the leave in favour of the applicant for the aforesaid period does not pass the test of the basic principle of natural justice. The ground based on which leave has not been sanctioned does not appeal to the judicial conscience. Hence, the Respondents are hereby directed to consider sanction of leave in favour of the Applicant for the period from 26.10.2006 to 08.11.2006 and grant him his service and financial benefits for the above period, if not already paid. This should be done by the Respondents within a period of 30(thirty) days hence. With the above observation and direction this OA stands disposed of by leaving the parties to bear their own costs.


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)