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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.356 OF 2010

Cuttack this the 10th day of January, 2012

CORAM:

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...
Koruprolu Satyanarayan, aged about 49 years, S/o. Mr.Appala Naidu, at present working in the office of Senior Divisional Security Commissioner, Railway Protection Force, Visakhapatnam, Waltair

...Applicant

By the Advocates:M/s.S.B.Jena & S.S.Behera

-VERSUS-

1. Union of India represented through its General Manager, East Coast Railway, Rail Vihar, At/PO-Chandrasekharapur, Bhubaneswar, Dist-Khurda
2. Divisional Railway Manager, East Coast Railway, At/PO-Waltair, Dist-Vishakhapatnam, AP
3. Senior Divisional Security Commissioner, Railway Protection Force, Vishakhapatnam, Waltair, Andhra Pradesh

...Respondents

By the Advocates:Mr.T.Rath

...
ORDER

A.K.PATNAIK, JUDICIAL MEMBER:

Shorn of unnecessary details, it would suffice to mention that the applicant while working as Constable in the office of Company Commander/TE-Coy under Respondent No.3 was medically decategorized due to amputation. Consequent upon such medical decategorization, awaiting selection and absorption in another suitable post in terms of the Railway Board's guidelines, the applicant was immediately allowed to work against the supernumerary post with protection of pay and regular salary in the office of Company Commander/TE-Coy. While the matter stood thus, Screening Committee recommended the applicant for alternative appointment and absorption as Cook, RPF vide Annexure-R/3 dated 11.11.2008 and accordingly, instructions were issued to spare the applicant for joining the new assignment.

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2. It is the case of the applicant that due to illness, he remained on leave and at the same time, challenging the legality of the action of the Respondents in posting him as Cook, which is a Group D post, he moved this Tribunal in O.A.No.67/2009. During pendency of the said O.A., since the applicant was not disbursed with salary, he filed a Misc.Application No.176/2009 (arising out of O.A.No.67/2009). This Tribunal, vide order dated 9.4.2009 directed the Respondents to release the salary of the applicant for the month of February and March, 2009. In the meantime, O.A.No.67/2009 was disposed of by this Tribunal vide order dated 26.6.2009, the relevant portion of which reads as under:

“...Admittedly, the Respondent-Railway is now willing to accommodate the applicant in group ‘C’ category either in the same Department or other department. We hope that payment of the salary, which he was getting before medical decategorization, shall be continued. With regard to the other conditions, we direct that the Respondents, especially Respondents No. 3 – 6 shall take immediate steps to accommodate the applicant in a Group C post either by creating a post in the same Department for the applicant or to accommodate him in other Department if vacancy exists there, within 03(three) months of the receipt of the copy of this order”.

3. It is needless to mention here that the order passed by this Tribunal in O.A.No.67/2009 having not been implemented, the applicant moved this Tribunal in M.A.No.115/2010 (arising out of O.A.No.67/2009). This Tribunal, vide order dated 11.03.2010 directed the Respondents to absorb the applicant as either Junior Telephone Operator or Senior Record Sorter within a reasonable period and also directed that till such consideration is given, there should be no depletion in regard to continuance of the applicant in the supernumerary post.

4. It is the case of the applicant that after receipt of the above order dated 11.3.2010, the Respondents deducted a sum of Rs.3000/- from the monthly salary of the applicant without any basis and without complying with the principles of natural

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justice. Hence, the applicant in this Original Application has prayed for direction to Respondents not to deduct any amount from the monthly salary and further to direct the Respondents to refund the amount which has been deducted from his salary.

5. In the counter, the Respondents have opposed the prayer of the applicant. The main thrust of the counter, according to Respondents is that after the O.A.No.67/2009 was disposed of on 26.6.2009, the applicant was advised to report for duty against the supernumerary post and accordingly, he submitted application dated 21.2.2009/6.7.2009 along with medical unfit and fit certificates dated 27.1.2009 and 23.7.2009. They have submitted that after joining of the applicant, it was found that he had availed 178 days medical leave during the period from 27.1.2009 to 23.7.2009, as a result of which the competent authority, keeping in mind the orders of this Tribunal as well as Railway Board's guidelines regularized the aforesaid period by granting leave, as due and admissible, i.e., 96 days LAP, 18 days LHAP, and 64 days LWP. According to Respondents, since during pendency of O.A.No.67/2009, the applicant had already been paid salary for the entire PMC sick period and there was insufficient leave at the credit of the applicant, it was decided to recover the excess amount of Rs.37,994/- on easy installment, i.e., @ Rs.3000/- per month and accordingly, an order dated 15/16.6.2010 was issued by the concerned authority. Aggrieved by the above order of recovery, the applicant has approached this Tribunal by filing the instant OA. According to Respondents, before approaching this Tribunal, the applicant has not exhausted the departmental remedies and therefore it has been stated that this OA deserves to be dismissed being devoid of merit.

6. Heard Shri S.B.Jena, learned counsel for the applicant and Shri T.Rath, learned counsel appearing on behalf of the Respondents-Railways and perused the materials on record. This Tribunal, vide order dated 16.7.2009, while directing notice

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to the Respondents, as an interim measure directed the Respondents not to effect recovery of the amount from the salary of the applicant and this interim order is in force as on date.

9. I have considered the rival submissions advanced at the Bar. Admittedly, the applicant, before being medically decategorized, was holding the post of Constable in R.P.F which was a Group C post. Respondents have also submitted in their counter that due to want of vacancy, he was kept in supernumerary post drawing his regular salary. If that be so, the Respondents have not made it clear as to what prompted them to post the applicant as Cook which is a Group D post notwithstanding the fact that he was holding a Group C post. In this connection, it is to be noted that Annexure-A/2 dated 25.9.2000 issued in terms of Railway Board's instructions clearly lays down that in all medically decategorisation cases payment of salary should continue without interruption and even by creation of a supernumerary post. It has been further indicated therein that administrative procedure for creation of supernumerary post etc. may be decided later irrespective of discharging the duties allotted to him. Viewed from this angle, the Respondents ought not to have issued an order posting the applicant as Cook which is a Group D post as his posting as such cannot be construed to mean to have been suitably absorbed. Be that as may, admittedly, the applicant was on medical leave for the period in question and it was due to insufficient leave at his credit, pay drawn and disbursed in that behalf by the order of this Tribunal is sought to be recovered. Neither the applicant nor the Respondents have brought to the notice of the Tribunal any rule or instruction to overcome this contingency. In the peculiar facts and circumstances of the matter, it would be proper to remit the matter back to the Respondents with direction to examine as to whether there exists any such provision in the leave rules for adjustment of the period of without pay against the

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leave to be accrued in future and in the event of such a provision is in existence, to consider the same for being adjusted against the period falls short of and pass appropriate orders within a period of thirty days from the date or receipt of this order. Until the order as directed above is passed, no recovery shall be effected. Liberty is also granted to the applicant to make an application, if any, to the Respondents bringing to their notice any provision in the leave rule, as aforementioned.

Ordered accordingly.

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


(A.K.PATNAIK)
JUDICIAL MEMBER

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