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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


Original Application No. 954 of 2013
Cuttack, this the 18th day of May, 2016

Amina Chandra Samal Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? χ
2. Whether it be referred to PB for circulation? χ


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

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O. A. No. 260/00954 OF 2013
Cuttack, this the 18th day of May, 2016

CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

.....

Amina Chandra Samal,
aged about 56 years,
Son of Golokh Chandra Samal,
at present working as a Khalasi Helper
under I.O.W./Works, E.Co. Railway, Bhadrak,
permanent resident of Vill/P.O.-Tarito,
Via-Kishorenagar, Dist- Cuttack, Odisha.

.....Applicant

By the Advocate(s)- M/s. N.R.Routray, Smt. J.Pradhan, T.K.Choudhury,
S.K.Mohanty.

-Versus-

Union of India, represented through

1. General Manager,
East Coast Railway,
E.Co.R Sadan, Chandrasekharapur,
Bhubaneswar, Dist-Khurda.
2. Divisional Personnel Officer-I,
East Coast Railway,
Khurda Road Division,
At/P.O.-Jatni, Dist Khurda.
3. Senior D.E.N/ Co-ordn.,
East Coast Railway,
Khurda Road Division,
At/P.O.-Jatni, Dist-Khurda.
4. Senior Divisional Financial Manager,
E.Co.Rly, Khurda Road Division,
At/P.O.-Jatni, Dist-Khurda.

.....Respondents

By the Advocate(s)- M.K. Das.

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ORDER

A.K.PATNAIK, MEMBER (J):

Sri N.R.Routray, Ld. Counsel for the applicant, placing reliance on the averments and annexures appended thereto would submit that on 29.04.1999 the Railway Board issued guidelines vide RBE No. 89/1999 regarding absorption of disable^d/medically de-categorized staff in alternative employment and amended Chapter-13 of the IREC, Vol.I. The operative portion of Para-1304 is quoted below:

“Railway administrations should take care to ensure that the alternative employment offered is only in posts which the staff can adequately fill and as far as possible should broadly be in allied categories where their background and experience in earlier posts could be utilized.”

2. On 20.11.2000, the applicant and one Kirtan Rout were provided with alternative posting as a Sr. Chowkidar after being medically de-categorized. On 05.04.2001, the then Sr. DPO/E.Co.Rly./Khurda Road issued further alternate appointment order in favour of the applicant, Kirtan Rout and another as CJM in medical department at Cuttack. On 18.05.2001, the applicant submitted an application for change of his posting. On 09.05.2002, the Respondents revised the office order earlier issued to the applicant and posted him as Khalasi. The similarly placed person, viz. Kirtan Rout, challenged the decision of the Respondents in giving him alternate appointment as Conservancy Jamadar by filing O.A. No. 16/2004 before this Tribunal. The said O.A. was disposed of by this Tribunal directing the Respondents to treat the intervening period of Sri Kirtan Rout as duty

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and pay him full arrear salary and, accordingly, the Respondents had paid arrear salary to Sri Kirtan Rout for the intervening period. On 04.08.2008, the Sr. DPO, Khurda issued an order refixing the pay of the applicant from 1.3.2000 to 23.4.2005. On 12.8.2008, the Sr. DPO, Khurda, forwarded the statement showing the difference of pay and allowances for the period from 01.03.2000 to 23.04.2005 for vetting and return. On 11.02.2013, the applicant submitted representation for release of his pay with interest. As no reply was received on his representation, he approached this Tribunal in O.A. No. 578/2013. The said O.A. was disposed of calling upon the Respondents to consider and dispose of the pending representation of the applicant. Respondents, in compliance of the order of the Tribunal although considered the representation but the same was rejected and communicated to the applicant on 24.10.2013. It has been argued by the Ld. Counsel for the applicant that the applicant while working as Sr. Gatekeeper was declared medically unfit and was appointed as Chowkidar as per the instruction of the Railway Board vide RBE No. 89/99 and as such further posting of the applicant as Conservancy Jamadar in the medical department was clear violation of Para 1304 of the IREM Vol. I, for which the applicant submitted application for change of his posting. Subsequently, the Respondents reconsidered the case of the applicant as per the Railway Board instruction and given him alternate posting. It has been contended by the Ld. Counsel for the applicant that the case of the applicant stands in similar footing like that of Kirtan Rout and as per the law laid down by the Hon'ble Apex Court in the cases of **B.N.Nagarajan & others vrs.**

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State of Mysore, AIR 1966 SC 1942; Amritlal Giri vrs. Collector of Central Excise, AIR 1975 SC 538 and K.I.Shephard vrs. Union of India, AIR 1988 SC 686, the applicant is entitled to the arrear salary but the same has not been paid to him. In the circumstances, by filing this O.A., the applicant has prayed for the following relief:

"I). To declare the speaking order dated 24.10.2013 under Annexure-A/14 treating the period from 05.04.2001 to 08.05.2002 as own leave on request as non-est in the eye of law.

II). And to direct the respondents to pay the arrear salary amounting Rs. 99,116/- as per the statement under Annexure -A/7 by extending benefit of order dated 30.08.2005 passed in OA No. 16/2004;

III) And to direct the respondents to pay 12% interest on the arrear salary i.e. from the date of entitlement to till the date of actual payment;

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall every pray."

3. Mr. M.K.Das, Ld. Panel Counsel for the Railways, by placing reliance on the stand taken in the counter and the annexures appended thereto would submit that while the applicant was working as Gatekeeper, he was declared ~~declared~~ fit for Bee-Two and below medical category vide order dated 22.04.2000. He was screened by the duly constituted committee who recommended for posting of the applicant in alternative post of Sr. Chowkidar. He was, accordingly, posted in Electrical Department at Chatrapur vide order dated 20.11.2000 but due

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to non-availability of the vacancy in the Electrical Department, the said posting order of the applicant was revised giving his posting as CJM in Medical Department on 05.04.2001. The applicant refused to join his alternative posting in Medical department and preferred an appeal for consideration of his alternative absorption as Khalasi in Engineering or Mechanical Department vide his application dated 18.05.2001. The same was considered and with the approval of the competent authority revised order was issued on 02.05.2002. The applicant joined as Khalasi on 09.05.2002. Hence, since the non-joining of the applicant was not attributable to the Respondents, the period from 05.04.2001 to 08.05.2002 was directed to be treated as leave as due to him. It has been submitted that as per the Estt. Sl. No. 227/2000, the applicant is eligible for pay and allowance for the waiting period i.e. from the date of medical de-categorization to the date of order of alternative appointment as CJM in Medical Department (period from 22.04.2000 to 05.04.2001). As regards the case of Kirtan Rout is concerned, Mr. Das submitted that that case is not similar to the grievance of the present applicant because in that case Sri Rout did not apply for the extra ordinary leave whereas the present applicant had applied for the extra ordinary leave. As such, in terms of Establishment Sl. No. 227/2000, the applicant is eligible for the pay and allowance for the waiting period, i.e. from the date of medical de-categorization to the order of alternative appointment as CJM in Medical Department (from 22.04.2000 to 05.04.2001) consequent upon the medical de-categorization. His salary was drawn upto 23.10.2000. As such, he was entitled for pay and allowances from 24.10.2000 to

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05.04.2001. Accordingly, the arrear salary for the period from 24.10.2000 to 05.04.2001, i.e. from the date of medical de-categorization to the alternative posting as CJM in Medical department, has been paid to the applicant. On consideration of his application, applicant joined as Khalasi in Engineering Department on 09.05.2002. The applicant submitted his application for leave for the period from 05.04.2001 to 08.05.2002 for 399 days (extra ordinary leave), which was sanctioned by the competent authority on 01.12.2013. The copy of the sanctioning of his leave is of dated 02.12.2013, which is available on record and is reproduced herein below:

“Sub: Sanction of leave as extra ordinary leave from 06.04.2001 to 08.05.2002 in favour of Sri Amina Chandra Samal, Khalasi Helper under SSE(Works)/BHC in reference with OA No. 578/2013 in Hon’ble CAT/CTC filed by Sri Amina Chandra Samal V/s UOI & Others.

Sri Amina Chandra Samal, Khalasi Helper has applied for sanction of leave for the period from 05.04.2001 to 08.05.2002 i.e. the date of first order of offer of alternative, appointment to the date of joining under SSE(Works)BHC.

Sr. DPO/KUR has instructed that period shall be treated as own leave as mentioned vide Sr. DPO?KUR’s letter No. P/CC/3863/OA No. 578/2013/Engg/ACS dated 25.10.2013. (Copy enclosed.)

Accordingly, the party has applied for extra ordinary leave for the period from 05.04.2001 to 08.05.2002 as under for regularization of the sick period.

05.04.2001 to 08.05.2002=399 days (As extra ordinary leave)

As per certification of SSE(works)/BHC the party has 91 days LHAP & 150 days LAP at his credit.

ADEN/JJKR has forwarded the case.

Vide Sl. No. NG/14(h) of SOP/12 on Estab Matter Officer in JAG is competent to sanction extra ordinary leave up to five (05) years at a time. In the instant case the period from 05.04.2001 to 28.09.2001 cover 399 days.

DEN(North)/KUR is requested to recommend the above case if agreed to.

Sr. DEN(Co-ord)/KUR is requested to sanction the above case if agreed to.

OS (Estab.)

DEN (North)/KUR Recommended for sanction of EOL pl.

Sr. DEN (Co-ord)/KUR Sanctioned if due."


Accordingly, Mr. Das, Ld. Panel Counsel for the Railways, has prayed for dismissal of the O.A.


4. Though, Ld. Counsel for the applicant has disputed the submission of the application of leave by the applicant yet on the face of the materials available on record, quoted above, we do not find any reason to accept the contention of the applicant. Once, the applicant has applied for the leave he is stopped to turn around and make representation or file O.A. before this Tribunal praying for the salary for the period he himself applied for the leave. It appears that the applicant has filed this O.A. on 29.11.2013 and the sanction of his leave is dated 02.12.2013 but the applicant, in this O.A., has suppressed the submission of his application during the aforesaid period, which fact cannot be brushed out. On examination, we also find that in the case of Sri Kirtan Rout, he had not applied for leave for the period he sought the salary.

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Hence, the case of Sri Kirtan Rout is distinguishable and, therefore, has no application in the instant case.

5. For the reasons stated above, we see no reason to interfere in the matter. O.A. is, accordingly, dismissed. There shall be no order as to costs.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)

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