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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH: JODHPUR

O.A. No. 105/1995

Date of Order: 5.3.1998

Duli Chand s/o Shri Chandarbhan r/o Gandhi Nagar Near Indian Oil Depot, Hanumangarh Jn. District: Sri Ganganagar, Ex-Fitter Northern Railway Carriage & Wagon Depot, Suratgarh, District: Sri Ganganagar.

... Applicant

VERSUS

1. Union of India, through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner.
3. Divisional Mechanical Engineer (II), Northern Railway, Bikaner.
4. Divisional Personnel Officer, Northern Railway, Bikaner.

... Respondents

Mr. Bharat Singh, Counsel for the applicant.

Mr. R.K. Soni, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member

Hon'ble Mr. Gopal Singh, Administrative Member

ORDER

Per Hon'ble Mr. Gopal Singh

The applicant, Duli Chand, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents to modify the order dated 22.2.1994 (Anx:A/1) in respect of the period from 8.8.1978 to 21.2.1981 treating the same as spent on duty.

2. The case of the applicant is that while he was working as Fitter in the Carriage and Wagon Depot at Suratgarh he was arrested in a criminal case on 8.8.1978 and after he was released on bail he reported for duty on

C. P. Singh

1.9.1978 and his case was submitted to the higher authorities by the Chief Train Examiner, Suratgarh on 1.9.1978 for taking him on duty. The approval for taking the applicant on duty was issued only on 21.11.1980 and the applicant resumed duty on 22.2.1981. The contention of the applicant is that the Railway administration did not permit him to join the duties when he presented himself for duty on 1.9.1978 and as such he cannot be treated as absent from duty from 8.8.1978 to 21.2.1981. The learned counsel for the respondents have stated that the applicant was asked to submit the copy of the judgement passed by the Additional District & Sessions Judge, Hanumangarh by which he was acquitted of the charges, but inspite of letter dated 18.11.1979 and 26.2.1980 the applicant did not submit the copy of the judgement and remained away from duty. Finally the applicant submitted the copy of the judgement only on 15.10.1980 and thereafter the respondents issued orders for taking the applicant back on duty vide their letter dated 21.11.1980. In response to this order the applicant joined his duties only on 22.2.1981.

3. We have heard the learned counsel for the parties and perused the records.

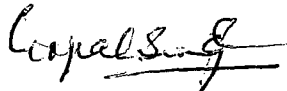
4. The applicant was arrested on criminal charge on 8.8.1978 and was released on 31.8.1978. The option available to the respondents was at that time to suspend the applicant immediately after he was arrested. However, this option was not availed of by the respondents and now it cannot be said that he absented himself from duty. The period of detention of the applicant from 8.8.1978 to 31.8.1978, in our opinion, should be regularised as leave of the kind due and applied for. Since the applicant reported for duty on 1.9.1978, it was the responsibility of the respondents to issue necessary orders immediately for taking him on duty. However, the respondents took more than two years to issue the orders for taking him on duty. We find that the applicant has not absented himself wilfully during the period from 1.9.1978 to 21.11.1980. As such, we are of the view that the applicant should be treated as on duty for this period. The learned counsel for the applicant has not been able to provide sufficient justification for the applicant remaining absent from 22.11.1980 to

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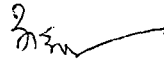
21.2.1981 and as such we do not find any justification in the claim of the applicant for regularising this period as spent on duty. This period can at best be regularised by grant of leave due and applied for by the applicant.

5. The O.A. is accordingly allowed and disposed of.

6. The parties are left to bear their own costs



(Gopal Singh)
Administrative Member



(A.K. Misra)
Judicial Member

Aviator/