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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 25.01.2001

O.A. No. 33/1997

D.K. Sharma S/O Shri R.D. Sharma aged about 55 years, R/O 4019 Nehru Park Railway Colony, Jodhpur at present employed on the post of CFO/Sr. Section Engineer Electrical (waiting for orders) with Jodhpur Division, Northern Railway.

... Applicant

Vs

1. The Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Electrical Services Engineer, Northern Railway Baroda House, New Delhi.
3. Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.
4. Chief Mechanical Engineer (W) Northern Railway, Jodhpur.

... Respondents

Mr. J.K. Kaushik, Counsel for the Applicant.

Mr. S.S. Vyas, Counsel for the Respondents.

CORAM :

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

In this Application under Section 19 of the Administrative Tribunals Act, 1985, applicant D.K. Sharma, has prayed for a direction to the respondents to assign duty to the applicant forthwith in Jaipur Workshop and pay him the due salary for the sickness period as also for the period he has not been taken on duty alongwith interest at market rate, with all consequential benefits.

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2. Applicant's case is that he was initially appointed on the post of Apprentice Mechanic Mechanical, Charbagh Lucknow on 28.1.1958. The applicant is presently employed on the post of CEFO/SS, Jodhpur. The applicant was transferred to the office of Senior DEE/EMU, Ghaziabad vide order dated 23.2.95 (Annexure A/3), and was relieved on the same date for joining the new post at Ghaziabad. The applicant, however, did not comply with the transfer orders. Initially, he fell sick and thereafter made representations for his retention at Jodhpur. Finally, the Northern Railway Headquarters vide their letter dated 30.9.96 (Annexure A/6) posted the applicant in the same capacity under WAE, Jodhpur Workshop temporarily for a period of three months by transferring one post of CEFO/Sr. Section Engineer from Headquarters office to Jodhpur Workshop. The applicant, however, was not taken on duty and he further requested for his posting at Jodhpur in terms of Northern Railway, Headquarters letter dated 30.9.96. The applicant was finally taken on duty in terms of Divisional Rail Manager, Jodhpur letter dated 25.4.97. Thus, the applicant has remained away from duty for the period from 23.2.95 to 24.4.97 regularisation of which has been sought through the present application.

3. In the counter, it has been stated by the respondents that the applicant never complied with the transfer orders dated 23.2.95, and as he stood relieved from Jodhpur Workshop, his application for grant of leave on medical grounds was sent to his new place of posting. It has further been averred by the respondents that he could not be taken on duty in terms of Northern Railway Headquarters letter dated 30.9.96 as the applicant did not produce any relieving letter from Ghaziabad authorities. The applicant was taken on duty on 25.4.97 after the matter was sorted out. It has also been stated by the respondents that the period of absence from 23.2.95 to 24.4.97

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of the applicant has already been regularised by Northern Railway Headquarters letter dated 20.2.98 (Annexure A/9). It has, therefore, been averred by the respondents that no further action is required to be taken and, therefore, the application is liable to be dismissed.

4. We have heard the learned Counsel for the parties, and perused the records of the case carefully.

5. It is not clear from the case file as to for which period the applicant remained absent because of illness. There is no medical certificate available on the file. As seen from the Northern Railway Headquarters letter dated 20.2.98 (Annexure A/8) and rejoinder filed by the applicant, perhaps the applicant was remained absent because of his sickness from 28.2.95 to 14.7.95 and this period has been sanctioned as leave on half average pay. If the applicant had submitted proper medical certificate/fitness certificate from the competent authority for this period i.e. 28.2.95 to 14.7.95, then the leave has to be sanctioned as applied for. There is nothing on record to show that the applicant had applied for leave on medical grounds or commuted leave. It is pointed out that the leave sanctioning authority cannot change the title of leave applied for. The leave can either be granted or refused. From 15.7.95 to 30.9.96, the applicant had no reason to be absent from duty. He should have joined his new place of posting at Ghaziabad. However, he chose to be absent from duty of his own volition. For the period from 30.6.96 to 24.4.97, we are of the view that the applicant was unnecessarily not taken on duty by the respondents. The applicant was under orders of transfer and though his service records might have been sent to Ghaziabad, the new place of posting, the applicant had not joined the new respondents' place of posting. It is also seen from letter dated 30.9.96,

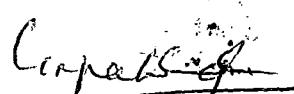
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(Annexure A/6), wherein the applicant has been shown as "under orders of transfer from Elect. Training School, Ju to EMU/Carshed/Ghaziabad vide this office Notice of even number dated 17.2.'95." It is clear from the above that the applicant was only under orders of transfer and had not joined his new place of posting. To say that the applicant had not brought any reliving order from Ghaziabad Unit, is also not tenable, since the applicant had never joined at Ghaziabad Unit. In the circumstances, we are of the view that the applicant was kept away from workshop for the period from 30.9.'96 to 24.4.'97 for no cogent reasons. In our view, this period from 30.9.'96 to 24.4.'97 can be treated as "awaiting posting orders." Accordingly, we pass the order as under :

"The Original Application is partly allowed. The applicant would be granted leave as due and applied for, for the period from 23.2.'95 to 27.2.'95 and from 28.2.'95 to 14.7.'95 as per rules. The period from 15.7.'95 to 30.9.'96 would be treated as leave without pay. The period from 1.10.'96 to 24.4.'97 should be treated as on duty. Respondents are give three months' time to comply with these orders."

6. Parties are left to bear their own costs.


(GOPAL SINGH)

Adm. Member


(B.S. RAIKOTI)

Vice Chairman

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2-20-71

Part II and III destroyed
in accordance on 2-20-71
under the supervision of
section officer () as per
order dated 1-20-71

Section officer ()