

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 116
~~F.A. No.~~

1999

DATE OF DECISION 11.8.2000.

Om Prakash Petitioner

Mr. J.K. Kaushik, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondents

Mr. S.S. Vyas, Advocate for the Respondent (s)



CORAM :

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

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Signature)
(GOPAL SINGH)
Adm. Member

(Signature)
(A.K. MISRA)
Judl. Member

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNALS, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 11.08.2000

O.A. No.116/1999

Om Prakash S/O Shri Ramji, aged about 56 years, R/O
Block No.L-44 quarter No. 'B' Railway Colony, Merta Road,
Northern Railway at present employed on the post of Driver
Goods uner Loco Foreman, Merta Road, Northern Rly.

... Applicant

Vs

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Jodhpur Division, Jodhpur.
The Divisional Mechanical Engineer (P) Northern
Railway, Jodhpur Division, Jodhpur.

... Respondents

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

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

CORAM :

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

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 Om Prakash, has
prayed for setting aside the impugned order dated 07.4.1998
and for a direction to the respondents to treat the period from
25.10.1995 to 22.6.1996 as duty with full pay and allowances.

Gopal Singh

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2. Applicant's case is that he was initially appointed as cleaner on 27.7.1967 and in due course earned his further promotions and is presently working on the post of Goods Driver at Merta Road under Jodhpur Division of Northern Railway. That on 22.9.'95, while the applicant was working Goods Train (DOS Special) from Nava City to Phulera, he could not stop the train at Govindi Marwar because of poor brake power. There was another passenger train standing at outer of the station and fearing accident the driver of that train took his train back in order to avoid head on collision. The applicant was placed under suspension vide order dated 22.9.'95. This suspension order was revoked on 8.10.'95. On 25.10.'95, the applicant was directed to meet the Divisional Mechanical Engineer (P), Jodhpur, who directed the applicant to undergo medical examination, but the applicant was unwilling to undergo medical examination as it was not due. As per the interim direction of this Tribunal dated 18.6.'96 in O.A. No.177/96 (Annexure R-15), the applicant was directed to undergo medical examination which was due as per rules. The applicant joined his duty after the medical examination. Thus, the applicant remained absent from duty from 25.10.95 to 22.6.'96.

3. In the counter, it has been stated by the respondents that though the suspension order was revoked on 08.10.'95, instructions were issued to the Loco Foreman, Merta Road to direct the applicant and the Diesel Assistant to Jodhpur for special medical examination vide message dated 11.10.1995 (Annexure R/2). But the applicant refused to take paper for special medical examination. The Diesel Assistant was also initially reluctant to undergo special medical examination, but ultimately he had undergone that examination. When the

Upal Singh

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applicant refused to take the papers, he was sent to Jodhpur alongwith an escort to present himself before the Divisional Mechanical Engineer (P). But after seeing the DME (P), the applicant disappeared without taking the papers for special medical examination. Many attempts were made to deliver the papers personally to the applicant, but to no avail. Then a chargesheet was sought to be served upon the applicant, but the same was also refused. The applicant also refused to take the letters issued by the DME (P) office. Thus, the applicant indulged in gross mis-conduct. Instead of undergoing special medical examination, the applicant filed an O.A. No.177/96 before this Tribunal praying for pay and allowances for the period he remained absent from duty treating that period as spent on duty.

4. The details of the case as narrated by the respondents (as above) have not been contested by the applicant. Learned Counsel for the applicant submitted that as per rules the applicant was not required to undergo special medical examination and the applicant has been unnecessarily harassed. In this connection, it would be relevant to go through the rule requiring special medical examination. In this regard Rule 427(f) (v) of Northern Railway Accident Manual is extracted below :

*427 (v) AS soon as there is an accident under any of the following categories :

- (a) Collisions
- (b) Averted collisions
- (c) Derailments
- (d) Passing signal at danger
- (e) Level Crossing Accidents and a driver is involved in the accident, the driver and other members of the engine crew should be invariably given special medical test by the DMO/ADMO concerned to check up their vision and a detailed physical and medical check up of each member of the engine crew.

Capal Singh

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The result of such medical examination alongwith complete bio-data of the engine crew should be sent to Sr. DSO/DSO immediately after the accident and ~~at~~ advance of the enquiry proceedings.

A copy of the medical test report of each member of the crew should also be sent later alongwith the enquiry proceedings."

5. The rule provides that the driver and other members of engine crew should invariably be given special medical examination by DMO/ADMO as soon as the accident takes place. In the instant case, accident occurred on 22.9.'95, and the instructions were sent to Loco Foreman, Merta Road for directing the applicant and Diesel Assistant to undergo special medical examination on 11.10.'95 i.e., after 19 days of the accident. During the period from 22.9.'95 to 8-10-95 the applicant remained suspended and he was taken on duty on revocation of the suspension order. It is the contention of the applicant that he had discharged his duties from 09.10.'95 to 24.10.'95 and there was no accident during this period and as such it was wrong on the part of the respondents to direct him to undergo special medical examination on 25.10.95. It is seen from records that the applicant avoided receiving papers for special medical examination during the period from 12.10.95 to 25.10.95 and on 25.10.95, he disappeared from office and submitted a notice for demand for justice on 26.10.95. It is a fact that there has been delay in issuing instructions for special medical examination, though the rule provides for special medical examination immediately after the accident, yet for this reason the applicant cannot be permitted to defy the orders of superior authorities in this regard. Moreover, the applicant has undergone special medical examination before he was taken on duty albeit on the directions of this Tribunal.

Capal Singh

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6. It is also seen from the records that applicant has absented himself from duty just to avoid special medical examination, without any reason. Further, without explaining the reasons for not undergoing the special medical examination to his superiors the applicant sent a notice for demand of justice through his Advocate to the respondents on 26.10.95 immediately after disappearing from Jodhpur without receiving the papers for special medical examination. It is also seen that the applicant had written letters to the General Manager Northern Railway, New Delhi without approaching the local authorities for redressal of his grievance. Such actions on the part of the applicant are unbecoming of a responsible Government servant.

7. The O.A. No.177/96 was decided on 08.4.1997 with the following observations :

"The grievance of the applicant is that he has not been taken on duty. It is stated by the learned Counsel for the applicant that he has already been taken on duty as a Goods Driver, but the salary for the intervening period during which he was not taken on duty, has still not been paid to him. Since the applicant has already been taken on duty after clearing the special medical examination, we dispose of this OA at the stage of admission with a direction to the respondents to pass an appropriate order in regard to the payment of salary/treatment of the period in question, during which the applicant was not taken on duty within a period of three months from the date of this order, if any such order has not already been passed by them. No order as to costs."

8. The applicant had finally undergone the special medical examination on the direction of this Tribunal and thereafter taken on duty. We are, therefore, of the view that the applicant wilfully absented himself from duty so as to avoid special medical examination, for which respondents cannot be held responsible. Thus, the action of

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respondents in treating the period of this absence as leave without pay does not call for any interference by this Tribunal.

9. The Original Application is accordingly dismissed with no order as to costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

A.K. Misra
11/8/2000
(A.K. MISRA)
Judl. Member

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