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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,  
JODHPUR

Date of order : 26.9.2000

O.A. No. 35/99

V.N. Atrolia S/o Shri L.N. Mathur, aged about 56 years, R/o  
Qtr. No. E-16, Railway Colony Samdari, at present waiting for  
orders at DRM Office Jodhpur, N.Rly (on posted strength as  
Asstt. Engineer, Samdari, Northern Railway).

..... Applicant.

Vs.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur Division, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur Division, Jodhpur.

..... Respondents.

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CORAM :

HON'BLE MR. A. K. MISRA, JUDICIAL MEMBER

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

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

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O R D E R

BY THE COURT :

The applicant had moved this application with the prayer that the respondents be directed to make payment of his due salary from 1.7.98 onwards forth-with alongwith interest at the market rate.

2. Notice of the O.A. was given to the respondents who filed their reply in which it is stated that the applicant has been paid his salary since 8th of Dec. '98

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onwards as per the direction of Hon'ble High Court. The applicant is also being paid his salary regularly even to-day. It is also alleged by the respondents that applicant remained under the treatment of a Railway Doctor w.e.f. 4.3.98 and was declared fit to resume duty by the Railway Doctor w.e.f. 15.6.98 but the applicant even thereafter remained under the treatment of a private Doctor and reported on duty only on 8.12.98. The period of absence from duty on account of private sick, has not yet been regularised by the concerned authority, therefore, the applicant is not entitled to any pay. The O.A. is premature and deserves to be dismissed.

3. I have heard the learned counsel for the parties and have gone through the case file.



4. From the pleadings of the parties, it appears that applicant was transferred from Samdari to Delhi, vide order dated 19.2.98 and was relieved vide order dated 4.3.98. The applicant challenged the transfer order and in the meantime remained under Railway Medical Certificate from 4.3.98 to 15.6.98 and thereafter, he remained under private medical certificate up to 2.12.98. The application challenging the applicant's transfer to Delhi was decided by the Tribunal on 23.11.98. The Tribunal quashed the transfer of the applicant. Armed with the order quashing with the transfer the applicant reported on duty on 2.12.98 at his old place of posting but was not taken on duty and was directed to report to respondent No.2, where he reported on duty on 8.12.98. It is the allegation of the applicant that he was directed to await his posting order at Jodhpur, therefore, he came to Jodhpur. Whereas, it is alleged by the respondents that applicant was directed to await posting order ~~for~~ ~~at~~ at Delhi but he at his own came to Jodhpur,

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and, therefore, he was not paid his salary. It is further revealed from the pleadings that the respondents preferred a writ petition against the order of the Tribunal dated 23.11.98 quashing the transfer order passed by the respondents. In this writ petition, the operation of the order of the Tribunal was stayed by the Hon'ble High Court on 22.4.99 subject to the payment of salary regularly to the applicant w.e.f. 8.12.98. It is in compliance of this order that the salary of the applicant was released by the respondents w.e.f. 8.12.98. The applicant has also admitted in his O.A. that he has received his salary up to 30.6.98. Thus, for the period starting from 1.7.98 to 7.12.98, the applicant has not been paid salary on account of private sick and absence from the duty.

5. From these facts, I feel that the matter of regularisation of alleged absence from 1.7.98 till 7.12.98 is pending with the department.

6. It is strange that inspite of lapse of more than a year after the order of the Tribunal was stayed by Hon'ble the High Court, the authorities have not been able to decide one way or the other as to how the period of alleged absence/ PMC of the applicant is to be dealt-with. The applicant is claiming salary for this period. Payment of salary is possible only when the disputed period of PMC/absence is decided as per rules. Applicant is receiving salary regularly since 8.12.98 onwards. Learned counsel for the respondents submits that the post is an Headquarter control post, and, therefore, the decision shall have to be taken by the concerned authorities in the Headquarter. Therefore, time be granted for the same. It is noted that the present O.A. is pending since begining of 1999 and the contention

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of the applicant was well within the knowledge of the respondents. However, the O.A. could be disposed of by issuing directions in this regard to the respondents.

7. Therefore, the O.A. is partly accepted. The respondents are directed to decide the matter relating to absence/PMC of the applicant from 1.7.98 till 3.12.98 and 7.12.98 as the case may be, as per rules, within a period of two months from today. The applicant shall, however be free to approach the Tribunal in case he is not satisfied by the decision of the respondents in this regard.

8. Parties are left to bear their own costs.

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26/9/2000  
( A.K.MISRA )  
Judl. Member

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Part II and III destroyed  
in my presence on 10/21/07  
under the supervision of  
Section Officer (initials) as per  
order dated 10/17/07  
Section Officer (initials)