

I/11

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No 218/2004

Date of decision: 23.8.2005

**Hon'ble Mr. J K Kaushik, Judicial Member.
Hon'ble Mr. G R Patwardhan, Administrative Member.**

Girish Prakash Sharma, s/o Om Prakash, r/o 122-D Medical Colony, Railway Colony, Hanumangarh Junction, aged about 50 years at present posted as Senior Ticket Collector under Station Superintendent Hanumangarh Junction, North Western Railway.

: Applicant.
for Mr. Krishan Bansal
Rep. By Mr. J Singh: counsel for the applicant.

VERSUS

1. Union of India, through the General Manager, North Western Railway, Headquarter, Jaipur.
2. The Divisional Railway Manager, Bikaner Division, North Western Railway, Bikaner.
3. The Divisional Personnel Officer, North Western Railway, Bikaner.
4. The Station Superintendent, Hanumangarh Junction, N.W. Railway, Hanumangarh Junction.

: Respondents.

Rep. By Mr. Manoj Bhandari : Counsel for the respondents.

ORDER.

Per Mr. J K Kaushik, Judicial Member.

Shri Girish Prakash Sharma, has assailed the order dated 25.11.2003 (Annex. A/1) and has sought for quashing the same in addition to a direction to the respondents to release the salary to the applicant pending for the period from 16.02.97 to 16.09.97 along with interest @ 18% per annum.

2. With the consent of the learned counsel for both the parties, the case was taken up for final disposal at the stage of admission. The same has been heard in piece meal on a number

-R-

1/2

of occasions. We have carefully perused the pleadings and records of this case.

3. As far as the factual aspect of the matter is concerned, the same have not been enumerated in proper sequence. We can aptly say that there has been no coherence in the pleadings. The same is the fate of relief clause. However, we have tried to gather possible factual information necessary for resolving the controversy involved in this case. The facts reveal that the applicant while working on the post of Pointsman A, sustained injury on 31.10.95 and remained under medical treatment. He was declared fit for sedentary job. He was granted leave for six months with effect from 06.07.96 to 05.01.97, as per the rules in force. An offer was made on 29.08.96 asking for his consent for absorption on the alternative post of clerk. He opted for the same with the condition the he should be posted at Hanumangarh Jn. This was followed by another communication, whereby he submitted his another option for absorption as Ticket Collector or booking clerk in Commercial Branch. He was accordingly absorbed as Ticket Collector vide office order dated 15.09.97 and was given posting after successful completion of the training. The same was acceptable to him. He complained that his salary for the period from 16.02.97 to 16.09.97 has not been paid to him and he was not given any alternative suitable job despite his request during the said period. He submitted a representation for the release of his salary for the said period but the same has not been paid to him. The Original Application has been filed on a number of grounds mentioned in para 5 and its sub paras.



4. The respondents have filed a detailed reply to the O.A. It has been averred that the applicant was offered alternative absorption on the post of Clerk. He accepted the offer on the condition that he may be posted at Hanumangarh. While his case was pending consideration, he got represented through a recognised union for absorption in the post of Ticket Collector. Hence a fresh unconditional request was called for from him and thereafter he was immediately absorbed as Ticket Collector after adjudging his suitability. He was sanctioned leave for six months from 06.07.96 to 05.01.97 for alternative absorption as per the rules in force. It is averred in the reply that since he had no leave to his credit as on 06.02.97, the question of payment of any salary after the said date till his absorption did not arise. There are certain repetition and the facts mentioned in OA have been refuted. The applicant has not chosen to file any rejoinder to the reply.

5. While both the learned counsel for the parties have reiterated the facts and grounds raised in their respective pleadings, the learned counsel for the applicant has strived hard to submit that the absorption of the applicant was delayed by the respondents and the applicant has not been paid any wages for the period from 16.02.97 to 16.09.97 and there was no fault on his part. On the other hand the learned counsel for the respondents submitted that the applicant should thank to himself for giving conditional acceptance and subsequently asking for absorption in another post. As per the rules in force, leave salary can be paid only when one has got leave to his credit, which incidentally the



applicant did not have. In this view of the matter no leave salary can be paid to him.

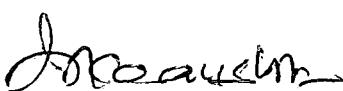
6. We have considered the rival submissions put forth on behalf of both the parties. We are little surprised by perusing Annex. A/1, wherein the case was put up to the authorities seems to be quite different; it was for treating the period from 06.07.96 to 05.01.97 as injury on duty, whereas the prayer in the instant case is for releasing the salary for the period from 16.02.97 to 16.09.97. The learned counsel for the applicant has not pressed the relief relating to quashing of Annex. A/1 and has only confined his arguments to the release of salary for the period from 16.02.97 to 16.09.97. He has not been able to show any rule which prescribes that one can be granted leave for more than six months for searching the alternative appointment in such cases. It is also not the case of the applicant that there was any leave to his credit. It is also not denied that the applicant wanted a particular posting at a particular place and his acceptance was conditional. We also find that there is certain gap between his acceptance of the offer of the post of clerk and request for appointment as Ticket Collector. The link between these periods is missing. It seems that the applicant was not inclined to join on the post of Clerk. Otherwise, he could have reacted and insisted the respondent department to post him as clerk. Admittedly no rule provides for grant of leave during absorption on an alternative post for a period of more than six months, particularly when one has no leave to his credit. In this view of the matter, we are not impressed with the submission of the learned counsel for the applicant that the applicant could be



entitled to salary for the period mentioned in the relief clause, rather we are of the firm opinion that the applicant has not been able to make out a *prima facie* case warranting indulgence from this bench of the Tribunal.

7. In the premises, this OA sans merit and the same fails and stands dismissed but without any order as to costs.

(G.R.Patwardhan)
Administrative Member.


(J K Kaushik)
Judicial Member.

Jsv

school
mr
ben (2)

TP

10/11/11

proposal PdD

Copy to master
Sent to yourself
for ref by 20/11/11
Wade
17/11/11
Off

Part II and III destruction
in my presence on 17/11/11
under the supervision of
section officer (1) as per
order dated 18/11/11

Section officer (Record)

17/11/11