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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR**

Original Application No. 242 of 2010

Dated this the 17th day of April, 2012

CORAM

Hon'ble Mr. B K Sinha, Administrative Member

Nachiketa S/o Shri Bhanwar Lal, 58 years,
R/o Gehloton ka bas, Magra Pungla,
Jodhpur presently working as ESM, Khalashi
HQ Rai ka bag, N.W.Railway.

....Applicant

(By Advocate Mr. K.L.Prajapath)

Vs.

Union of India, through the General Manager,
North Western Railway, Jaipur.

The Divisional Railway Manager,
North Western Railway, Jodhpur.

The Chief Signal & Telecom Engineer,
North Western Railway, Headquarter Office,
Jaipur.

The Senior Section Engineer Signals (East)
North Western Railway, Jodhpur.

The Junior Engineer, Signal (East)
North-Western Railway, Jodhpur.

...Respondents

(By Advocate Mr. Manoj Bhandari through Adv. Govind Suthar)

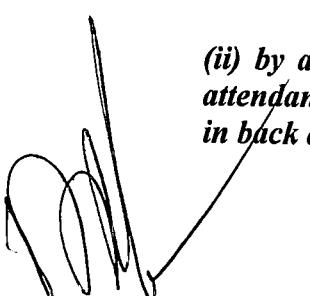
ORDER

The instant OA has been filed seeking direction to the respondents to grant C.L with due rest as also either pay to applicant for lapse of the CL or adjust the CL in next CL of the future .

2. The OA seeks the following reliefs:

"(i). By an appropriate Writ, order of direction, the respondents may be directed to grant the CL with due rest, in future.

(ii) by an appropriate writ, order or direction, declare the illegal those attendance sheets (Pay Bills), which are maintained between 2004 to 2009 in back dates by Respondent No.4.



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(iii) By an appropriate writ, order of direction, the respondents may be directed to either pay to applicant for lapse of the CL of him or adjust the CL in next CL of the future.

(iv) Exemplary cost for causing undue harassment to the applicant, passed the order of cost in favour of applicant against the respondents and also kindly passed the order for penalized them.

(v) Any other relief which is found just and proper in the fact and circumstances of the case be passed in favour of the applicant in the interest of justice."

Facts of the case:

3. The applicant was initially appointed as Helper and presently working as ESM, Khalasi, HQ, Raikabagh, Jodhpur. He made a complaint to the R3 Chief Signal & Telecommunication Engineer, NW Railway, Jaipur that the Senior Section Engineer is being unnecessarily harassed him, requesting for investigation into the matter or to refer the matter to CBI for investigation ([A1]. He submitted a leave application for 22.7.2004 to 24.7.2004 [A2]. Thereafter again he submitted another leave application for 19.12.2007 to 31.12.2007, which was granted to him via order dated 18.12.2007 [A4]. Again he applied for 10 days CL from 24.8.2009. But the Senior Section Engineer has not taken action with malafide intention to safeguard his staff and harassing the applicant.[A5]. The applicant sent a notice to R3 stating that he is being harassed by R4 [A6]. Aggrieved by non-grant of CL he has filed this application. He has stated that the act of the respondents is illegal, arbitrary, discriminatory and in clear violation of principles of natural justice as the CL is fundamental right of any employee.

Stand of the respondents:

4. The respondents have filed their CA and have contested the OA wherein it has been submitted that the OA is time barred as the applicant is seeking relief of granting Casual leave for 2004-2009, as Section 21 of the Administrative Tribunals Act, 1985 attracts in this case. The applicant is putting false and frivolous allegation against the officers without any basis without impleading them in person. The applicant has not applied for leave through proper channel and straight away written to the higher officials,

and that no such application received by the competent authority within appropriate time. He has not been harassed by any of the officials and unnecessarily filing litigations. If the Casual Leave is not granted during a year, that will be lapsed and applicant cannot be permitted to take advantage of his own lapse and such casual leave cannot be adjusted in future years. He has not shown any infringement of his legal rights in the matter of grant of CL to him.

Facts-in-issue:

5. Having gone through the pleadings of the rival parties, the documents adduced by them and the arguments submitted in the court, the following facts in issue emerged:

- i. *Whether casual leave can be claimed as a matter of right by the applicant?*
- ii. *Whether casual leave is allowed to accumulate over years?*
- iii. *Whether any form of malafide is to be noted on the part of the respondents?*
- iv. *What relief, if any, is permissible to the applicant?*

Whether casual leave can be claimed as a matter of right by the applicant in an accumulated form?

6. In so far as the first of the issue is concerned, I have to refer to the Rule 7 of the Central Services (Leave) Rules, 1972, which is applicable to the Railway servants, with under Provisions of Rule-2(a), being reproduced for easy reference:

“7. Right to Leave-

(1) Leave cannot be claimed as of right.

(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.”

7. The fundamental agreed position regarding leave is that it is not to be claimed as matter of right. When the exigencies of public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empower to grant it. These provisions have been made in the Rules so that the leave granting authorities has the scope of balancing the individual requirements of leave with the requirement to provide output. There is a limit beyond which the depletion of staff is not to be permitted. It is in

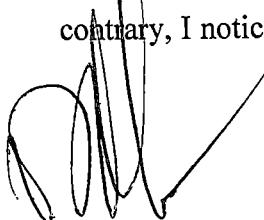
the interest of efficiency in public services that the staff take leave without jeopardising the larger public interest. In the instant case, the OA states where the respondent no.4 has declined because he applies for 10 days of CL from 24.08.2009 with due rest and the respondent no.4 omitted to sanction the same. It is to be recalled that prior to this the applicant had already availed of leave of CL from 19.12.2007 to 31.12.2007 with due rest. The case of the respondents is that the applicant never applied through proper channel and had a straightway approached the superior authorities seeking reliefs. The counter affidavit denies receipt of any application on part of respondent no.4. It is to be recalled that the conception of leave of the applicant is totally against the provision of the CCS (Leave) Rules, 1972 [supra]. In this regard, it is apt to reproduce the pleadings in the OA: "*That the act and action of the respondents is absolutely illegal, arbitrary and unjustified because the CL is fundamental right of the any employees and the act of non grant of CL is absolutely illegal, arbitrary and unjust with the applicant.*" [Para 5.3 of the OA]. Hence, I find no merit in this contention.

Whether casual leave is allowed to accumulate over years?

8. The applicant has alleged malafide on the ground that he is not being given the privilege of accommodated CL [5.1 to 5.3 of the OA]. I further finds the language used by the applicant claiming maintenance of his records pertaining to staff attendance overly aggressive, impolite and without substance. This is substantiated from his communication at A-1, A-3, A-5, A-5 etc. It appears from his communication at A-2 that litigation is the main pre-occupation of the applicant and were the authorities are not in a position to sanctioned him leave unauthorised manner he recourses to levelling wild allegations against them.

Whether any form of malafide is to be noted on the part of the respondents?

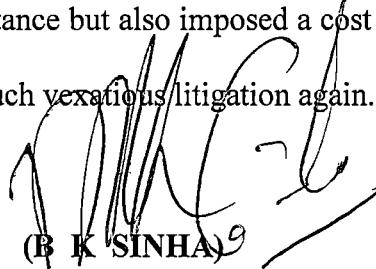
9. Based on the discussions in respect of the previous issue, I find that there is not a chit of evidence produced to establish malafide on part of the respondents. On the contrary, I noticed that despite the aggressive behaviour of the applicant, the respondents



have granted him CL with rest from 19.12.2007 to 31.12.2007 [A-4]. It is always to be remembered that malafide is easier alleged than proved.

What relief, if any, is permissible to the applicant?

10. In consideration of the above facts, the applicant has failed to establish his case on any of the counts. In fact the claim of the applicant starts with wrong assumptions and ends with equally incorrect conclusions. Precious time of this Tribunal has been consumed in deciding a claim, which is frivolous by nature and mischievous by intent. Therefore, I not only dismissed the OA as devoid of substance but also imposed a cost of Rs.500 upon the applicant so that he may not indulge in such vexatious litigation again.


ADMINISTRATIVE MEMBER

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