

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.519/2001

Dated Monday this the 6th day of March, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.Sasidharan
S/o Late Govindan Nair
Station Master/Grade II
Shornur.
Railway Quarters No.77-C
Lower Railway Colony
Shornur.

Applicant

(By advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by
The General Manager
Southern Railway, Headquarters Office
Park Town P.O.
Chennai.
2. The Divisional Operations Manager
Southern Railway
Palghat Division
Palghat.
3. The Additional Divisional Railway Manager
Southern Railway
Palghat Division
Palghat.
4. The Station Manager
Southern Railway
Shornur Junction Railway Station
Shornur.

Respondents.

(By advocate Mrs.Rajeswari Krishnan)

The application having been heard on 6th March, 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Annexure A-1 Penalty Advice dated 8.3.2000 issued by the second respondent withholding the applicant's annual increment for a period of 24 months and Annexure A-2 Appellate Order dated 7.6.2000 issued by the 3rd respondent rejecting the applicant's appeal are under challenge in this application.

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2. The facts necessary for disposal of this application are stated as follows:

The applicant, after his duty on 21.9.99, left for his native place taking a day's casual leave. He reported back for duty on 12.10.99 with medical certificate of fitness. He was taken on duty but was served with A-7 memorandum of charge for a minor penalty, alleging that from 23.9.99 to 11.10.99 he remained unauthorizedly absent. According to the applicant, on reaching his native place, he became unwell and was immediately taken to Holy Family Hospital for treatment and was advised complete bed rest for 15 days. On the next day itself, he had applied for leave on medical grounds, enclosing the original medical certificate. Even after submitting the medical certificate, his leave application was not considered and allowed by the competent authority. His absence was on account of his illness and not on account of any lack of devotion to duty, according to the applicant, and despite his denying the charge and explaining the circumstances under which he remained absent, the impugned penalty order was issued without application of mind, alleged the applicant. It has been further alleged in the application that the appellate authority had not considered the appeal properly and therefore A-2 order was devoid of application of mind. Since his leave application was not considered, he has not been given the leave salary for the period. Therefore the applicant has filed this OA for the following reliefs:

(a) Call for the records leading to the issue of Annexures A-1 & A-2 and quash the same and direct the respondents to grant all the consequential benefits, including arrears thereof.

(b) Declare that the non-feasance on the part of the 2nd respondent to take a final decision on Annexures A-4 and A-6 is arbitrary, discriminatory and contrary to law and direct the said respondent to take a final decision thereon, duly regularizing the period of sickness from 23.9.99 to 11.10.99 as leave due and direct further to pay the leave salary and other allowances accordingly.

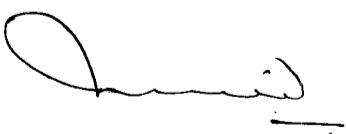
3. Respondents in their reply statement contend that the applicant's request for regularization of his leave was considered and the competent authority rejected it by order dated 20.12.99 and therefore, as the absence of the applicant was unauthorized, the action taken was perfectly in order.

4. We have heard the learned counsel on either side and perused the material placed on record. A careful scrutiny of the material placed on record leads us to an irresistible conclusion that neither the second respondent who issued the A-1 order nor the third respondent who disposed of the applicant's appeal had applied their minds to the real factual position. The fact that the applicant had on 24.9.99 applied for leave enclosing the original medical certificates and that it was received in the office of the Station Manager - the 4th respondent - on 25.9.99 is not disputed and is borne out from A-4 & A-5. It is therefore, evident that the applicant did not wilfully absent himself unauthorisedly but did everything within his reach to inform the authority of his inability to report for duty. That the applicant was under treatment is not disputed by the respondents. The reason for holding the applicant guilty of unauthorized absence is that the applicant did not apply for leave before hand for his sickness. The above reasoning, in the most modest term, is absurd. The respondents forget that illness does not give prior notice to the patient to enable him to apply for leave beforehand. As per rules. A government servant during his sickness is required to submit his leave application with

medical certificate within 48 hours. This the applicant had done. Therefore, there is absolutely no justification either to proceed against the applicant for a minor penalty or to impose on him any penalty at all. The impugned A-1 order is therefore not sustainable. The Appellate Authority did not care to see whether the applicant deserved the penalty or whether the penalty was excessive considering the gravity of the charge. We are of the considered view that the Appellate Authority did not perform its statutory duty in the right perspective. Hence A-2 is liable to be set aside. Although the respondents contend that the leave application of the applicant was rejected as per order dated 20.12.99, the copy of the order has not been produced. The applicant has stated that no such order has been received by him. Since the respondents have not been able to show that a decision had been taken on the applicant's leave application, we are of the considered view that the second respondent should be directed to consider the leave application of the applicant and pass appropriate orders thereon in accordance with law.

5. In the conspectus of the facts and circumstances, we allow this application and set aside A-1 & A-2 with all consequential benefits and direct the second respondent to consider the applicant's leave application and issue appropriate orders on that and communicate the same to him within a period of two months from the date of receipt of the copy of this order.

Dated 6th March, 2003.


T.N.T.NAYAR
ADMINISTRATIVE MEMBER

aa.


A.V.HARIDASAN
VICE CHAIRMAN