

3

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Reserved on 06.02.2015.
Pronounced on 13th March 2015.**

Original Application No.447/2008

Hon'ble Ms. Jayati Chandra, Member (A)

Hem Raj Sharma, aged about 52 years, Son of Late Ram Padarath, Porter under Station Superintendent, Northern Railway, Charbagh, Lucknow, U.P.

-Applicant.
By Advocate: Sri Praveen Kumar.

Versus.

1. Union of India, through the General Manager, North Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, North Railway, Divisional Officer, Hazratganj, Lucknow.
3. Senior Divisional Personnel Officer, North Railway, Divisional Officer, Hazratganj, Lucknow.

-Respondents.

By Advocate: Sri S. Verma.

O R D E R

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, seeking the following relief(s):-

(a). quash the letter dated 1/5.9.2006 issued under the signatures of the Station Manager, Northern Railway, Charbagh, Lucknow, contained as Annexure No.1 to this original application.

(b). direct the opposite parties to make the payment of arrears of salary to the applicant w.e.f. 30.08.1999 to 26.11.2001 and 28.4.2002 to 29.8.2006 alongwith 18% interest forthwith.

(c). pass any other suitable order or direction which this Hon'ble Tribunal may deem, fit, just and proper under the circumstances of the case in favour of the applicant.

J. Chandra

(d). allow the present original application of the applicant with costs."

2. The facts of the case which are averred by the applicant are that the applicant was working as Porter under the Station Manager, Northern Railway, Charbagh, Lucknow. He was transferred from Lucknow to Allahabad in the year 1999. He filed O.A.No.541/1999 against the transfer order, which was stayed by means of an interim order dated 30.12.1999 passed in the OA. Thereafter, he was been performing his duties from 31.12.1999 regularly. His wife fell seriously ill on 16.01.2000 so he was unable to attend his duties. He has informed this fact to the Station Manager, Charbagh, Lucknow. He made another application to Station Manager, Charbagh, Lucknow for leave on account of sickness of his wife which continued upto 21.12.2000. He reported for duty on 22.12.2000 with proper application and medical certificate of his wife, which was duly received by the Station Manager, Charbagh, Lucknow, who passed the order for Special Medical Examination of the applicant. However, no Special Memo was issued to the applicant. Although, the applicant had been regularly attending the office for special medical memo to get himself medically examined, but the said medical memo was not issued to him. Meanwhile, he applied and received privilege pas on 04.01.2001 and 24.04.2001. Finally, the Station Manager, Charbagh, Lucknow issued a letter dated 01.08.2001 (Annexure A-3) by which he was referred to Divisional Operating Manager, Northern Railway, Lucknow on the subject of duty to the applicant.

3. On 02.08.2001, the applicant attended the office of Divisional Operating Manager, Lucknow but no order was passed. The applicant finally requested to the Station Manager, Charbagh, Lucknow on 04.09.2000, 29.09.2000, 30.10.2001 and 09.11.2001 for making payment of salary to

T.Chandru

the applicant but no order was passed. The applicant was performing his duties under the Station Manager, Charagh, Lucknow regularly and on 20.11.2001 the Station Manager, Charbagh, Lucknow directed the applicant to attend the office of Senior Divisional Operating Manager, Charbagh, Lucknow and accordingly the applicant attended the office of Senior Divisional Operating Manager, Lucknow as per the instructions issued by the Station Manager, Charbagh, Lucknow and was allowed to resume his duties under the Station Manager, Charbagh, Lucknow on 27.11.2001. The applicant submitted his attendance memo w.e.f. 20.11.2001 to 27.11.2001 to the Station Manager, Charbagh, Lucknow. The salary for the period w.e.f. 27.11.2001 to 15.12.2001 has been paid to the applicant on 06.01.2002 and the salary for the period 16.12.2001 to 15.01.2002 was also paid to the applicant on 06.02.2002 (Annexure-4). The applicant was again directed for special medical from 20.12.2001 and the medical memo was sent to the Senior Divisional Operating Manager of his counter-signature. On 01.04.2002, the applicant was spared to the office of the Senior Divisional Medical Officer, Lucknow for Special Medical Test. The Medical Officer returned the medical memo with queries. The Station Manager, Charbagh, Lucknow on 27.04.2002 returned the same with a noting on the back of the special medical memo that "Special Medical Memo was counter-signed by the competent authority late hence the employee sent for the medical test late." The Senior Divisional Medical Officer, Lucknow again made a query about the salary of the applicant for the period of 16.01.2002 to 27.04.2002. The Special Medical Memo was again returned to the Station Manager, Charbagh, Lucknow on 06.05.2002 and since then no action has been taken by the respondents to make the payment of salary. The applicant therefore filed O.A.No.443/2002 for payment of salary, which was disposed of by this Tribunal vide its order dated 24.05.2005. The

J. Chaudhary

applicant also filed C.C.P.No.31/2006 for non-compliance of the order passed in O.A.No.443/2002 but the same was dismissed by an order dated 08.09.2008.

4. The applicant has applied for joining duty on 25.08.2006. Finally, the respondents have decided the representation of the applicant vide order dated 1/5.9.2006. Finally, the applicant was medically examined and was declared fit on 30.12.2005 but the respondents authorities have canceled the said medical examination and again subjected the applicant to Special Medical by means of letter dated 25.08.2006 and again the applicant was declared medically fit on 20.60.2006. The medical fitness certificates dated 30.12.2005 and 30.06.2006 are annexed as (Annexure-12 and 13 to the OA) respectively. The applicant was never subjected to the disciplinary proceedings nor was served with any charge-sheet for the period of his absence from duty and without issuing of charge-sheet etc. the respondents have illegally not paid arrears of salary to the applicant. The applicant was finally allowed to resume his duties w.e.f. 30.08.2006. Hence this OA.

5. The respondents have filed their Counter Affidavit denying the averments of the applicant stating there in that the applicant has concealed various facts chief of which is that he was placed under suspension from 30.08.1999 to 14.12.1999 and suspension allowance was paid to him. The applicant was transferred Allahabad Division alongwith post. He challenged his transfer order by means of O.A.No.541/1999 and his transfer was stayed by an interim order dated 22.12.1999. The applicant was allowed duty but instead to joining duty he remained absent. He requested for leave to Station Manager, Charbagh, Lucknow alongwith medical certificate of private doctor of his wife on 22.12.2000. The submission of private medical certificate of his wife would

J. Chaudhary

not be justified for his unauthorized absence from duty. He never submitted any application seeking leave of any kind on the ground of illness of his wife. So the Station Manager, Charbagh issued orders for his medical examination but the applicant did not report for the same and left the office without permission. The all subsequent allegations of regarding the issuing of medical memo on account of bureaucrats' requirement are not tenable. The letter was issued by Divisional Operating Manger (Annexure-3) by which the factual position with regard to the applicant attendance in the office was stated but it is wrong to say that same was not a recommendation for the salary to the applicant or to seek permission for payment of the same. The applicant never attended office of Divisional Operating Manager on 02.08.2001 and also the applications dated 04.09.2000, 29.09.2000 and 30.10.2001 were never received. It is true that the applicant's salary from 27.11.2001 to 15.01.2002 was paid to the applicant in compliance of the order dated 11.10.2002 passed in O.A.No.443/2002. Likewise, applicant's salary from 16.12.2001 to 27.04.2002 was also paid in compliance of the interim order dated 06.06.2003 passed by this Tribunal in the same OA. In short the respondents contention with regard to the duty attended to as per the following chart:-

S.No.	From	To	Remarks
1	30.08.1999	14.12.1999	Placed under suspension. Suspension allowance paid.
2	15.12.1999		Transferred to Allahabad Division with post. Transfer challenged in O.A.No.541/1999. Absent from duty.
3	22.12.1999		Transferred to Allahabad stayed in O.A.no.541/99. Remained absent from duty.
4	30.12.1999		Order for allowing duty was passed by the Sr. D.P.O., Northern Railway, Lucknow. But the applicant remained absent from duty without authority.
5	13.01.2000	15.01.2000	Phone call received from C.B.I.

J. Chandre

			calling upon the spare the applicant to report to the C.B.I. office for inquiry in the fake appointment matters including that of the applicant himself. The letter was sent to the applicant to report to the C.B.I. while he was absenting from duty. The applicant did not attend C.B.I. office despite being asked to do so.
6	16.01.2000	22.12.2000	The applicant continued to be absent from duty. On 22.12.2000 he attended office alongwith PMC of his wife. As the applicant was absent for a long time, a medical memo was prepared as per rules, but he left office without receiving medical memo. Remained absent from duty. Not entitled for pay.
7	31.07.2001		The applicant reported for allowing duty whiteout any application. Thus, the applicant absented from duty without authority from 22.12.2000 to 30.07.2001. Not entitled for pay.
8	01.08.2001		Applicant directed to report to the Sr. DOM, LKO for allowing him duty, as the SM/LKO was no empowered to allow him duty due to his prolonged absence. Did not report to the Sr. DOM.
9	30.10.2001		The applicant again reported to the SM/LKO without any explanation for his absence from 01.08.01 to 30.10.01.
10	19/20.11.01		The applicant was redirected to report to the Sr. DOM/LKO. The applicant did not report till 27.11.2001.
11	27.11.2001		The applicant reported to the Sr. DOM/LKO. The Sr. DOM issued order to the SM/LKO with regard to the applicant.
12	21.12.2001		The order of Sr.DOM was given to the applicant. Special Med. Memo on Form-62 was issued by the SM/LKO and sent for countersigning by the Sr.DOM/LKO
13	31.03.2002		The Special Med. Memo was signed by the Sr.DOM/LKO but on 01.04.2002 it was returned by the Sr.DMO/LKO asking applicant's where about between 21.12.01 to 01.04.02.
14	27.04.2002		Special Medical Memo was sent back to the Sr. DMO with

J. Choudhury

			comments that due to delayed countersigning by the Sr. DOM/LKO it could not be sent to him earlier. The applicant did not report for medical.
15	28.04.2002	24.05.2005	The applicant absented from duty without authority.
16	11.10.2002		In compliance of Hon'ble Tribunal's interim order passed in O.A.No.443/2002, the applicant's absence from 27.11.2001 to 15.01.2002 was treated as duty and a change memo to that effect was issued on 31.01.2003.
17	06.06.2003		In compliance of Hon'ble Tribunal's interim order passed in O.A.No.443/2002, the applicant's absence from 16.12.01 to 27.04.02 was treated as duty. The payment was accordingly arranged and paid.

Therefore, no salary is due for the period indicated in the relief on account of non-attending of his duties.

6. The applicant has filed Rejoinder Affidavit to the Counter Affidavit filed by the respondents more or less reiterating his contentions as raised in the OA.

7. I have heard the learned counsel for both the parties and perused the material available on record.

8. From the rival submissions the clear fact that emerged that the applicant was placed under suspension w.e.f. 30.08.1999 to 14.12.1999. By his own admission, he was not able to attend his duties from 16.01.2000 to 21.12.2000 on account of illness of his wife. Rest of the period appears to be the periods whereby the two parties are leveling allegations and counter-allegations against each other. The applicant has averred that he has attended various offices but he has unable to produce any evidence of the same during the course of the pleadings. It is indicated that the applicant reported for

J. Chaudhury

duty on 31.07.2011 but did not continue at work. Thereafter, again from 28.04.2002 to 24.05.2005 he was absent from duty. Such periods of absences could normally come under the purview of disciplinary action which does not appear to have been taken. While salary is paid for the work done by one Government employee (subject to availing of all leave etc.) stoppage of salary without conducting the disciplinary proceedings under the relevant service rules is not tenable. Hence case is remanded to the respondents to hold disciplinary enquiry under the relevant rules. The applicant is directed to co-operate with the enquiry so initiated by the respondents within one month of receipt of copy of this order. The above exercise shall be completed within a period/s as laid down in the service rules. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Amit/-