

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW**

This the 08th day of April, 2016

Hon'ble Ms. Jayati Chandra, Member - A

Original Application No. 415 of 2010

V.K. Upadhyay aged about 57 years, son of Late Sri B.K. Upadhyay, R/o Railway Bunglow No. T-65 B, Near Manokamna Mandir, Railway North Colony, Moradabad (presently posted as Chief Controller, office of Divisional Railway Manager, Northern Railway, Lucknow.

..... Applicant

By Advocate: Sri S.M.S. Saxena

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow Division, Lucknow.
3. Senior Divisional Operating Manager, Northern Railway, Lucknow Division, Lucknow.
4. Divisional Railway Manager, Northern Railway, Moradabad Division, Moradabad.

..... Respondent

By Advocate: Sri S. Verma

Alongwith

Original Application No. 107 of 2009

V.K. Upadhyay aged about 57 years, son of Late Sri B.K. Upadhyay, R/o Railway Bunglow No. T-65 B, Near Manokamna Mandir, Railway North Colony, Moradabad (presently posted as Chief Controller, office of Divisional Railway Manager, Northern Railway, Lucknow.

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VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
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4. Divisional Railway Manager, Northern Railway,
Lucknow Division, Lucknow.

..... Respondent

By Advocate: Sri S. Verma

ORDER (ORAL)

By means of **Original Application No. 415 of 2010** filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:

- i. Issuing/ passing of an order or direction to the respondents to regularize the period of sick leave from 21.12.2005 to 03.01.2007 and also pay the leave salary for the aforesaid period and pay the salary for the period from 04.01.2007 to 20.11.2009, together with interest at the current market rate, within a specified period of two months.
- ii. Issuing/ passing of any other or direction to the respondents as this Hon'ble Tribunal considers appropriate in the circumstances of the case.
- iii. Allowing the original application with cost.

And

By means of **Original Application No. 107 of 2009** filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed for the following reliefs:

1. Issuing/ passing of an order or direction setting aside the impugned order dated 20.02.2009, issued by the respondent No. 3 (contained in Annexure A-1 to the O.A) and direct the respondents to allow the applicant to continue in the same accommodation (Railway Bungalow No. T-65 B, Near Manokamna Mandir, Railway North Colony, Moradabad) till such time he is not allowed joining and allotted accommodation at Lucknow.
 2. Issuing/ passing of any other or direction to the respondents as this Hon'ble Tribunal considers appropriate in the circumstances of the case.
 3. Allowing the original application with cost.
2. Both the cases were heard together and are being dealt with by means of common order.
3. The facts of the case are that the applicant had posted at Moradabad since 2002 as Chief Controller and had been allotted Qtr. No. T-65 B while posted at Moradabad.

Although the post of Chief Controller belongs to a divisional cadre, he was transferred from Moradabad Division to Ferozpur Division alongwith his post by order dated 20.12.2005. However, he could not join there as he was ill and by order dated 14.12.2006, the transfer order was modified and the applicant was transferred to Lucknow Division alongwith post. The applicant had filed O.A No. 2706/2006 before the Principal Bench of this Tribunal challenging his transfer and by interim order dated 29.12.2006 status quo with regard to the posting of the applicant was maintained. The applicant was ill and under continuous treatment from 22.12.2005 till 03.01.2007. In view of the interim order dated 29.12.2006, he sought to resume his duties at Moradabad w.e.f. 04.01.2009 having become fit to resume his duties. He was not allowed to resume duty at Moradabad and was asked to vacate the Government accommodation. He obtained an order to maintain status quo with regard to the quarter vide interim order dated 15.01.2007 passed in O.A No. 2706/2006. Finally, by order dated 08.11.2007, the applicant was posted back to Moradabad and the intervening period was directed to be treated as leave of the kind due to him. This order was set aside and he was directed to join at Lucknow Division by order dated 30.07.2008 passed in W.P. No. 2080/2008 filed by the respondents.

4. The applicant was finally allowed to join at Lucknow and he retired from service. He was issued with the order dated 22.02.2009 by which he was required to pay Rs. 6,97,754/- as arrears and rent for the period 22.12.2005 to 31.01.2009 and penal rent @ Rs. 18,656.53 per month w.e.f. 01.02.2009. However, the applicant after his retirement has been paid all his post retirement dues viz PF of Rs. 3,35,920/-, DCRG of Rs. 7,33,935/-, commutation of pension of Rs. 5,10,913/-, Leave encashment of Rs. 4,15,420/- and GIS of Rs. 33,310/- without deducting any of the amount that were mentioned in the impugned order.

5. The learned counsel for the respondents stated that in view of the order dated 01.07.2013, the O.A has been rendered redundant as the applicant has been allowed to retire and all emoluments due to him has been paid to him without any deduction. In O.A No. 415/2010, the respondents have stated that the applicant was relieved from Moradabad Division for joining at Firozpur Division on 20.12.2005 consequent upon the transfer order dated 15.12.2005 later modified to Lucknow by order dated 14.12.2006. The applicant did not join at Firozpur Division or at Lucknow, instead filed O.A No. 2706/2006. He obtained interim order dated 29.12.2006 wherein it was directed that "Status quo of the transfer order of the applicant may be maintained as on date." The O.A was finally decided vide order dated 08.11.2007 quashing his transfer orders and giving a direction that the intervening period be treated as leave of the kind due with all consequential benefits. This order was challenged alongwith order dated 25.02.2008 passed in Review Application No. 03 of 2008 in O.A No. 2706/2006 by W.P No. 2080/2008 which was disposed of vide order dated 30.07.2008. The operative portion of the order reads as follows:

"12. Under the circumstances, we allow the writ petition and set aside the order dated 8th November, 2007 passed by the Tribunal. As a consequence, the order dated 25th February, 2008 rejecting the review application is also set aside."

6. There is no judicial order as how the intervening period of 21.12.2005 to 20.11.2008 is treated. He joined at Lucknow w.e.f. 20.11.2008. He has been paid salary regularly w.e.f. 20.11.2008. In this particular case, the applicant had never worked between the period of 21.12.2005 onwards till the joined at Lucknow on 20.11.2008.

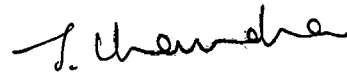
7. Heard counsel for the parties and perused the records on file.

8. As the applicant has been paid all his retiral dues as mentioned in Para 4 above, the recovery order dated 20.02.2009 becomes redundant and nothing survives in this case for adjudication. **Hence, O.A No. 107 of 2009 is dismissed as infructuous.**

9. The applicant in O.A No. 145/2010 has sought salary from 04.01.2007 to 20.11.2009. This seems to be a typing error as the respondents in their counter have stated that the applicant is receiving salary from 20.11.2008 which has not been denied by the applicant. Hence, the salary claim is treated for the period ending on 20.11.2008. The applicant was initially allowed the benefits of leave for the intervening period between 21.12.2005 to 08.11.2007 by virtue of order dated 08.11.2007 passed in O.A No. 2706/2006. This order was further upheld by the Review application No. 03/2008 filed in O.A No. 2706/2006. However, the Hon'ble High Court in its order dated 30.07.2008 passed in W.P. 2080 of 2008 had set aside the order dated 08.11.2007 passed by the Tribunal in O.A No. 2706/2006 and Review order dated 25.02.2008 passed in Review Application No. 03 of 2008 in O.A No. 2706/2006.

10. This being the case, there is neither any judicial order towards regularization of the period between 21.12.2005 to 03.01.2007 on sick leave or of payment of salary for the period 04.01.2007 to 20.11.2008. Now the applicant has also retired and all dues on account of leave commutation have been paid to him. Hence, there can be no case for grant of earned leave. In so far as sick leave/ leave without pay etc. is concerned the respondents are at liberty to take a view as per rules with regard to the medical leave application, if already applied for and in so far as the salary for the period of 04.01.2007 to 20.11.2008 is concerned, the respondents may take a decision as per rules.

11. Thus, the O.A No. 107 of 2009 is dismissed as redundant and the O.A No. 415/2010 is disposed of with a direction to the respondents to take a decision regarding sick leave application and salary as per rules within four months from the date of receipt of copy of the order and communicate the decision taken to the applicant. No costs.



(Ms. Jayati Chandra)
Member (A)

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