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CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Transfer Application No. 87 of 1992

IN

Original Application No. 587 of 1987

Munsarif Khan Applicant

Versus

Union of India & Others Respondents

Hon'ble Mr. Justice U.C.Srivastava,V.C.

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. Justice U.C.Srivastava,VC)

The applicant who was Assistant in the R.D.S.O. has approached this tribunal praying that the order dated 27.1.1986 terminating his services may be set aside and the order dated 14/15.4.1986 passed by Railway Board may also be set aside and the applicant may be deemed to be in continuous service.

2. According to the applicant, he was on medical leave with effect from 3.7.85 to 1.1.1986 with due information to the authority concerned, and in between certain correspondence, the certificate from private Doctor were sent, but even then the disciplinary proceedings were taken against the applicant and he was deemed to have resigned ^{from} service vide order dated 27.1.1986. According to the applicant that this resignation has been applied in the case of the applicant by holding the provisions of para 732 of the Railway Establishment Code Vol-I, which is applicable in those cases where extra ordinary leave is granted to a railway employee, though, no such leave was granted or no such leave communicated to the applicant. From the facts as stated by the applicant, it appears that the applicant proceeded on one day's compensatory casual leave for 26.11.1984 and requested for extension upto 28.12.1984 on account of his father's illness.

A17

:: 2 ::

He was informed on 27.11.1984 in writing that no further extension of leave would be granted and the absence beyond the above date would be treated as unauthorised absence, but even thereafter the applicant requested for extension of leave from 29.12.1984 to 26.6.1985 in various spells but the leave was not granted to him and he was directed to report for duty immediately advising that the period of absence has been treated as unauthorised. He was served with a Charge-sheet on 10.6.1985. It was only thereafter for the first time, he reported his presence on 27.6.1985. He was directed to proceed to Calcutta, but he did not carry out the order but he made the representations against his posting in Calcutta, but he was directed to go and join at Calcutta he did not join and chose to remain on leave. In the mean time, he has preferred a representation, it was decided to cancel his posting order to Calcutta and the applicant was posted back at R.D.S.O., Lucknow, but even then he continued to be on leave upto 2.1.1986 inspite of the warnings and letters issued to him, he did not join duty. He was directed to report for duty and also produce fitness certificate from Railway Doctor, but which order was not complied with. He was further advised that if he fails to join duty within a period 6 months commencing from 3.7.85 even if he produced a medical certificate, he shall be deemed to have resigned from Railway Service in terms of para 732-RI (para 530 the New Code). The applicant did not report himself

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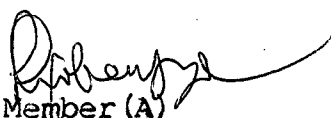
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A18

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for duty during the 6 months and no medical certificate from authorised medical attendant Railway Doctor was filed and in these circumstances, he was deemed to have resigned from Railway Service w.e.f. 2.1.1986 resulting in termination of his services.

3. According to the applicant, he has been sending the medical certificate from private Doctor, but even then leave was not granted, a registered letter was sent to the respondents to both the addresses of the applicant, the applicant who was stated to be ^{living} in Bombay, but the letter were never served on him, as there was no leave was granted and sanctioned under the rules the applicant was duty bound to produce the medical certificate of the Railway Doctor, which would alone have indicated his presence in the city or which would have proved that in fact that he has not gone out side though he was not available. According to the respondents a letter sent to him, returned back unserved, but he did not comply with the rule, the sending of the medical certificate by any person was not the compliance of the rule. It should have been sent by any third person on his behalf. There was the clear violation of the rules. Obviously, the respondents were obliged to act in accordance with the rules. The para 732 in these circumstances were rightly invoked. The applicant will be deemed to have resigned in service. There appears to be no merit in this case, and accordingly, this application deserves to be dismissed and it is dismissed. No order as to the cost.


Member (A)


Vice-Chairman

Lucknow Dated: 16.11.1992.

(RKA)