

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 196/89.

Date of Decision : 26<sup>th</sup> Sept 1991

T.A.No-

The Divl. Personnel Officer, S.E.Railway, \_\_\_\_\_ Petitioner.  
Waltair

Shri N.R.Devaraj, \_\_\_\_\_ Advocate for the  
SC for Railways \_\_\_\_\_ petitioner (s)  
Versus

P.Appala Raju & another \_\_\_\_\_ Respondent.

Shri M.Panduranga Rao \_\_\_\_\_ Advocate for the  
for RI \_\_\_\_\_ Respondent (s)

CORAM:

THE HON'BLE MR. J.Narasimha Murthy : Member(Judl)

THE HON'BLE MR. R.Balasubramanian : Member(Admn)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM  
M(J)

HRBS  
M(A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.196/89.

Date of Judgment 26/5 Sept 1991.

The Divl. Personnal  
Officer,  
S.E.Railway,  
Waltair

.. Applicant

Vs.

1. P.Appala Raju

2. The Labour Court  
(Central),  
Visakhapatnam  
rep. by its  
Presiding Officer.

.. Respondents

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Counsel for the Applicant : Shri N.R.Devaraj,  
SC for Railways

Counsel for the Respondents : Shri M.Panduranga Rao  
for Rl

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CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

I Judgment as per Hon'ble Shri R.Balasubramanian,  
Member(Admn) I

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This application has been filed by the Divl. Personnel Officer, S.E.Railway, Waltair under section 19 of the Administrative Tribunals Act, 1985 against Shri P.Appala Raju and another, praying that the order of the Labour Court, Visakhapatnam in CMP No.349/86 dated 29.7.88 be set aside.

2. The 1st respondent reported sick on 12.3.81 and he was declared medically unfit for B.1 category jobs. He was, however, found medically fit for B.2 category jobs. In terms of Para 2604 of the Indian Railway Establishment Manual (I.R.E.M. for short) he ceased to perform the duties of the post of Mechanic Gr.II from 20.6.81 and he was granted leave as admissible to him. Efforts were made by the Railways to absorb him in alternative posts but due to the action of the 1st respondent ~~of the applicant~~ insisting on only ~~in~~ Ticket Collector's job, there was delay. He filed a writ petition in the

High Court of Andhra Pradesh which was dismissed on 3.7.84 as infructuous since the applicant was already absorbed as Clerk on 3.5.83. The following spells of leave were granted to him:-

20.6.81 to 9.7.81. Leave on Average Pay (L.A.P.).

10.7.81 to 5.3.82. Leave on Half Average Pay (L.H.A.P.).

6.3.82 to 2.5.83. Extraordinary Leave (E.O.L.).

3. The 1st respondent filed an application before the 2nd respondent claiming full salary for the entire <sup>Court</sup> period. The Labour/ by an order dated 29.7.88 allowed the application and directed payment of Rs.11,685=35 towards balance salary and emoluments for the period 6.7.81 to 3.5.83. It is against this order of the Labour Court that the applicant herein has approached us for setting aside the order. It is the contention of the applicant that the Labour Court has misconstrued Para 2604 of the I.R.E.M. when they directed that the Railways should have created supernumerary posts to absorb the 1st respondent who was medically decategorised. It is the case of the Railways that supernumerary posts are created to provide lien for persons who are already there either by recruitment or by absorption. Such supernumerary posts are not created simply for the purpose of absorption itself. It is also pointed out that the Labour Court had erred in understanding the meaning of E.O.L. ~~E.O.L. means that~~ The Labour Court has <sup>observed</sup> ~~directed~~ that he is entitled to full salary even when he had no leave at his credit as he <sup>should be</sup> ~~is~~ given E.O.L.

4. A counter affidavit has been filed by the 1st respondent Shri P.Appala Raju. It is his allegation that he was denied alternative employment right from the first day viz: 20.6.81 when he was medically decategorised. It is, therefore, argued that he was not

responsible for the delay and, therefore, he was entitled for the full salary for the entire period.

5. We have examined the case and heard the learned counsel Shri N.R.Devaraj for the applicant and Shri M.Panduranga Rao for Rl. The short question<sup>before us</sup>/is whether the Labour Court, Visakhapatnam has correctly interpreted the provisions of the I.R.E.M. We have seen the judgment dated 29.7.88 of the Labour Court. In Para 4 they formed a short question before them whether the petitioner is entitled for the salary for the period 6.3.81 to 3.5.83. Para 2604 of the I.R.E.M. is reproduced below:-

" 2604. Railway servants incapacitated for service in posts held by them.

(a) Permanent Railway servants: A permanent Railway servant in group (ii) of para 2602 must also cease to perform the duties of the post, he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the Leave Rules by which he is governed, from the date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit his leave shall be made upto six months by the grant of extraordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted, his service should be extended by grant of extraordinary leave subject to the condition that the total amount of extraordinary leave to be granted to the railway servant does not exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against a temporary post in a permanent cadre a supernumerary post may also be created and his lien counted against that post. It should, however, be noted that -

(i) the actual creation of a supernumerary post will follow the acceptance of offer of alternative posts;

and

(ii) the supernumerary post should be abolished as soon as a permanent post is found for the railway servant concerned.

Note 1. - The purpose of granting extraordinary leave envisaged in this para is that in case the

30/8/88

Railway administration is able to find a suitable alternative employment for a medically incapacitated employee, there should be no break in his service. Since the period of such extraordinary leave counts for the purpose of Special Contribution to P.F. in the case of a railway servant governed by the State Railway Provident Fund Rules but not in the case of a pensionable Railway servant the latter employee may not like to avail of the extraordinary leave but may instead prefer to quit service on pension, immediately on the expiry of his period of leave with allowances. In such cases extraordinary leave need not be granted to a railway servant, if he so desires.

2. - In the matter of absorption of a medically incapacitated staff in alternative posts, Railway administrations should take care to ensure that the interests of staff in service are not adversely affected as far as possible. The alternative appointment should be offered only in posts which the staff can adequately fill.

(b) Temporary Railway servants: A temporary Railway servant in group (ii) of para 2602, who becomes medically unfit for the post held by him on account of circumstances arising out of and in the course of his employment, the benefit of Rule 152 R.I. should be given i.e., the employee should be granted leave due plus leave without pay, so as to make a total period of six months within which alternative employment must be found.

If a temporary employee has become medically unfit for the post held by him, on account of circumstances which did not arise out of and in the course of his employment, the benefit of Rule 152 R.I. will not be admissible. While, therefore, it is strictly not obligatory to find alternative employment for such an employee, every effort should, nevertheless, be made to find alternative employment. The employee concerned should be granted such leave as is due to him plus extraordinary leave not exceeding three months; the total not exceeding six months. If no alternative employment can be found in this period, the employee should be discharged from service."

It no doubt provides for creation of a supernumerary post if the railway servant is absorbed against a temporary post in a permanent cadre. The purpose of <sup>is</sup> this ~~not~~ to create a supernumerary post merely for absorbing an official candidate within a certain time frame. Absorption will depend on the availability of the post and if such absorption warrants creation of a supernumerary post then only it need be created. The Labour Court is, therefore, wrong in deciding that a supernumerary post should have been created.

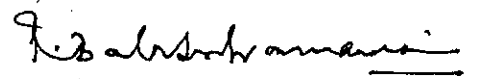
*Handwritten signature/initials*

6. The next question is about E.O.L. The Railways have been offering him other jobs but Shri P.Appala Raju was particular about a certain type of job and there was delay and the time gap between the day of his decategorisation and the day of his absorption has necessarily to be regularised by sanction of leave to the credit of the applicant. We find that the leave as applicable had been granted to him. E.O.L. means there is no pay and allowances during this period. The Railways are, therefore, right in regularising this period by sanction of leave as applicable under the rules.

7. In view of the above, we find that the direction given by the Labour Court, Visakhapatnam to the Railways is not sustainable. We, therefore, quash the judgment dated 29.7.88 of the Labour Court, Visakhapatnam in CMP No.349/86. There is no order as to costs.



( J.Narasimha Murthy )  
Member(Judl).



( R.Balasubramanian )  
Member(Admn).

Dated 26<sup>th</sup> September 91

Registrar.

To

1. The Divisional Personnel Officer,  
E.E.Railway, Waltair.
2. The B Presiding Officer, Labour Court, (Central)  
Visakhapatnam.
3. One copy to Mr.N.R.Devraj, SC for Railways. CAT.Hyd
4. One copy to Mr.M.Panduranga Rao, Advocate for R.1 CAT.Hyd.
5. One copy spare.

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Final  
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TYPED BY  
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RM  
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COMPARED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C.

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. J. Narasimha Murthy M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 26-9-1991

ORDER / JUDGMENT:

M.A./R.A./C.A. No.

in

O.A.No. 196/8

T.A.No.

Admitted and Interim directions  
Issued.

Allowed.

Disposed of with direction.

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

No order as to costs.

