

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.933/90

Date of Order: 8.10.93

BETWEEN:

1. Divisional Railway,
Mangalore-1, South
Eastern Railway,
Waltair.
2. Senior Divisional Operating
Superintendent, South
Eastern Railway, Waltair.

.. Applicants.

A N D

Jana Naradha, SCLM South Eastern
Railway, Gunupur represented by
Shri K.Ch.Konda,
Branch Secretary, S.E.Rly.,
Mens Union, Srikakulam Road (RS),
Srikakulam.

.. Respondent.

Counsel for the Applicant

.. Mr.M.R.Devraj

Counsel for the Respondent

.. Mr.P.Krishna Reddy

CORAM:

HON'BLE Mr.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

HON'BLE Mr.P.T.THIRUVENGADAM : MEMBER (ADMN.)

DA.933/90

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri N.R. Devaraj, learned standing counsel for the applicants and Sri P. Krishna Reddy, learned counsel for the respondent.

2. It was pleaded for the applicants that the respondent herein ^{while} working as Sweeper-cum-lampman at Pundi did not attend to the sweeping work from 14-2-1983 to 15-3-1983 and hence ^{absence} ~~absent~~ was marked to him for those days and when he was transferred to Lakholi Station as per Order dated 4-4-83, the respondent, who was residing in the Railway quarters, reported sick under private medical certificate and he was absent on the alleged ground of sickness till 8-5-1983, the date on which the Railway Medical Officer certified that the respondent was physically fit for duty and then the respondent joined duty at the new station. The further case of the applicants is that the period from 4-4-1983 till 8-5-1983 was treated as extraordinary leave, as the respondent had not produced the sick ^{new} certificate from the Railway Doctor in whose jurisdiction the quarters in which the respondent was residing during the relevant period was situated. Then the respondent herein filed PW.34/85 before the authority under Payment of Wages Act, Visakhapatnam, praying for salary for the two periods referred to and also for ten times of the same by way of penalty for the delay in payment. The said authority held that the respondent herein is entitled to the wages for the two periods referred to and ordered ~~five~~ ^{five} times of the same as penalty. The Appellate authority i.e. the learned District Judge,

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held in
Visakhapatnam, ~~allowed~~ AS.238/88 against the order in
PW.34/85 that the respondent herein was not entitled to
the wages for the period from 14-2-1983 to 15-3-1983,
the period which was marked as absent. It is stated that
as against that portion of the order, CRP was filed in
High Court and it is still pending.

3. In regard to the period from 4-4-1983 to 8-5-1983, the
learned District Judge held that as the respondent herein
was sick and as he applied for leave by enclosing medical
certificate from a private doctor and ^{as} the same was counter-
signed by the Railway doctor and forwarded to the concerned
authorities for sanction, and as it had come in evidence
that the medical certificate granted by the ^{private} Medical doctors
were accepted and acted upon, ~~it was held~~ that the respon-
dent was entitled to the leave salary on medical ground
for the period from 4-4-1983 to 8-5-1983. The order of the
authority for payment of five times as penalty was not
disturbed by the Appellate authority. The order of the
Appellate Court in regard to the period from 4-4-83 to
8-5-1983 and the penalty thereon is challenged in this OA.

4. The two points which arise for consideration in this
OA are :

- i) As to whether the respondent herein who ^{was} ~~were~~ residing in
the Railway quarters which was within the jurisdiction of the
competent Railway doctor is entitled to the sick leave for
the period referred to when he had not produced the sick
certificate from the competent Railway doctor and when the
sick certificate produced by ^{him} (the respondent herein) was from
a private medical practitioner, which was countersigned by
the competent Railway doctor; and
- ii) Whether it is a case where penalty had ^{to} ~~been~~ imposed.

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i) Rule 1471 and 1472 of the Indian Railway Establishment Manual, (Second edition) which are relied upon by the applicants for consideration of this point read as under :-

"1471.(1) Except as provided in Rule 1472, a railway servant who applies for leave on medical certificate, being unable to attend duty by reason of sickness, must produce without delay a sick certificate in Form No.56 of Appendix 9 from the competent railway doctor,

(2) The submission with the District Medical Officer.

1472 A railway servant residing beyond the jurisdiction of a railway doctor either of the home line or of a foreign line must, if he requires leave on medical certificate, submit without delay a sick certificate from his medical attendant. Such certificate should be as nearly as possible in Form No. 56 of Appendix 9 and should state the nature of the illness and the period for which the railway servant is likely to be unable to perform his duties. The competent authority may, at its discretion, accept the certificate or refer the case to the District Medical Officer for advice or investigation and then deal with it as circumstances may require."

It is evident that para 1472 is not attracted as the respondent herein was then residing in Government quarters for which there was a competent Railway doctor. As such, Rule 1471(1) is applicable. It envisages that in order to have sick leave, a railway employee residing in the railway quarter had to obtain the sickness certificate in Form 56 of Appendix 9 from the competent railway doctor. It is clear from the above provision that as there may be difficulty in later considering as to whether the sickness alleged is genuine or feigned one, it is laid down that the railway employees who are residing in railway quarters for which a railway doctor is attached, ~~that the railway employee~~ had to obtain the certificate from that railway

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doctor. But when a railway employee residing in such quarter submitted a certificate from a private medical practitioner and when the same was countersigned by the competent railway doctor, we feel that the genuineness of the alleged sickness cannot be doubted. The learned standing counsel for the applicant submitted that on the basis of mere countersignature of the competent railway doctor on the sickness certificate issued by private medical practitioner, it cannot be stated that the respondent herein was really sick for the competent railway doctor may not be in a position to know as to whether that railway employee was sick before he reported to him. If the Railway doctor ^{could} ~~would~~ not know about it, he ~~would~~ ^{should} ~~naturally~~ ^{not} countersign the sickness certificate but when once he countersigns, it means that he was satisfied with the certificate issued by the private medical practitioner about the sickness. When the object in laying down Rule 1471, ^{as to} ~~it~~ ensures that sick leave had to be granted only in case of genuine sickness, and when in view of ^{counter} ~~giving~~ signature of the competent railway doctor, the sickness alleged by the applicant can be held as genuine, ^{we} ~~we~~ feel that there are no grounds for not treating ^{it} as sick leave when applied for ^{merely} ~~grossly~~ on the ground that the certificate produced is not the certificate issued by the railway doctor and when it is ^{only} ~~merely~~ a sickness certificate issued by private medical practitioner ^{and} ~~but~~ countersigned by the competent railway doctor. Hence, we find this point against the applicants.

ii) The purpose of ordering penalty is to ensure that there should not be wanton delay or ^{deliberate} ~~refusal~~ of payment. But when a doubt arises in view of Rule 1471(1) as to whether

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the leave applied for from 4-4-1983 to 8-5-1983 in this case can be granted as sick leave or not, ^{we} ~~we~~ feel that it is ^{not} a case where penalty ^{has to} be imposed. ~~For~~ Admittedly it is not a case of deliberate refusal to pay for the leave period in question. Thus, this point ^{has to be held} ~~is already~~ in favour of the applicants.

5. In the result, the order of the authority in PW.34/85 as confirmed by the Appellate authority in regard ~~to the~~ ^(creating) ~~leave salary~~ for the period from 4-4-1983 to 8-5-1983 ~~be~~ ^{be} treated as sick leave is confirmed. But the order directing the applicants herein to pay five times of the said salary is set aside.

6. OA is ordered accordingly. No costs.

P.T. Thiruvengadam
(P.T. Thiruvengadam)
Member (Admn)

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Dated : October 8, 1993

Dictated in the Open Court

[Signature]
Dy. Registrar (Judl.)

Copy to:-

- sk 1. Divisional Railway Manager, South Eastern Railway, Waltair, Mangalore-1.
2. Senior Divisional Operating Superintendent, South Eastern Railway, Waltair.
3. One copy to Sri. N.R. Devaraj, Sr. CGSC, CAT, Hyd.
4. One copy to Sri. M. Krishna Reddy, advocate, CAT, Hyd.
5. One copy to Library, CAT, Hyd.
6. One spare copy.

Rsm/-

O.A-933/90

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE V.NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR.A.B.GORTHY :MEMBER(A)

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY
MEMBER(JUDL)

AND

THE HON'BLE MR.P.T.TIRUVENGADAM:M(A)

Dated: 2/10/-1993

ORDER/JUDGMENT:

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

in

O.A.No.

933/90

T.A.No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

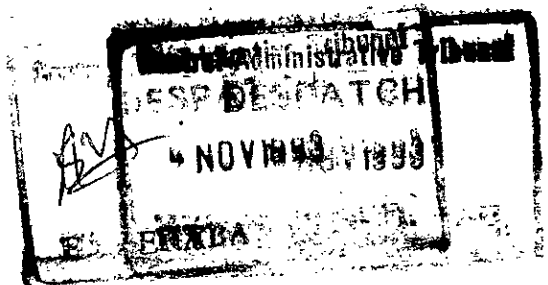
Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

pvm



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