

(19)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 1238/95.

Date of Judgment: 18-12-95.

BETWEEN:

Kammalu Atehaiah

.. Applicant.

And

1. The Chief Permanent Way Inspector,
SC Rly, Mahebababad,
Warangal District.
2. The Permanent Way Inspector,
SC Rly, Mancherial.
3. The Asst. Engineer,
SC Rly, Kazipet, Warangal Dist.
4. The Divl. Engineer,
SC Rly, Sanchalan Bhavan,
Secunderabad.
5. The Sr. Medical Superintendent(BG),
CCSC Rly, @Secunderabad. SRI .. Respondents.

COUNSEL FOR THE APPLICANT: SHRI G.V.Subba Rao
COUNSEL FOR THE RESPONDENTS: SHRI C.V. Malla Reddy,
XXXXXXXXXXXXX SC for Rlys.

CORAM:

HON'BLE SHRI JUSTICE V.N.ELADRI RAO, VICE CHAIRMAN
HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

O.A.No.1238/95

Dt. of decision:18-12-1995.

JUDGEMENT

[As per Hon'ble Sri Justice V.N. Rao, Vice Chairman]

This O.A. was filed praying for a direction to the respondents to take the applicant on duty and offer him a light job in view of the recommendations made by the Sr. Medical Superintendent, Lallaguda by declaring that the action of R-1 to R-3 in not permitting the applicant to join duty is illegal, arbitrary and un-constitutional and violative of Art:14 and 16 of the Constitution, and for further direction to the respondents to pay him salary and allowances w.e.f. 7-10-93, the date on which he reported for duty before R-1 on the basis of the certificate issued by the DMO, Dornakal.

2. The facts which are relevant ^{and} ~~on~~ material for consideration of this O.A. are as under:

The applicant joined service as a Gangman on 19.7.6 and in due course he was promoted as Sr. Gangman. He was placed under Sick List by DMO, Dornakal from 13.4.93 due to the swelling of right knee. He was discharged from the hospital on 1.10.93. It was ^{then observed by Medical Officer} ~~held~~ that he was fit for duty from 7.10.93 and for 3 months he has to be given a light job. Thereupon the Asst. Engineer addressed a letter to the Divisional Engineer to take the applicant

(20)

as Watchman. But the A.E. was informed by DE that it is for him (AE) to accommodate applicant in the post of Watchman and if there is no post under his control, the applicant has to refer applicant to the DEN, Secunderabad.

3. But it is stated for the applicant that in the meanwhile he had again become sick and had undergone treatment under a Medical Practitioner and after he had become fit he addressed letter dt.29.6.95 (vide Annexure II) to the CPWI, Mahabubabad requesting him to take him on duty. When he was not so taken, the applicant filed this O.A.

4. It is stated for the respondents on oral instructions that the applicant was unauthorisedly absent from 4.4.93 and the applicant had not reported before any officer and the letter as per Annexure-II was not received.

5. This is a case where even though the notice was ordered on 20.10.95, the reply statement is not yet filed. It is submitted by the learned standing counsel for respondents that the draft counter was sent and the same is not yet returned to him.

6. This is not a case where the applicant was removed from service and as such it is necessary for the respondents to take him to duty if he reports in the office in which he worked last.

7. But it is stated for the respondents that in view of the mutual transfer, the applicant was transferred to Mancherial. The case of the applicant is that he was informed about the

22

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orders^{passed} on the basis of their request for mutual transfer, when he was in the hospital, and then he requested for cancellation of the same. But there cannot be any request for cancellation after it was already acted upon. This is a case where the applicant filed this O.A. ~~only~~ on 10.10.95, when as per the letter dt. 1.10.93 of the Medical Superintendent, ^{The applicant} ~~He~~ had to be appointed to the light job for only 3 months. That period has already expired. Further it is the case of the applicant that he had again become sick and he addressed letter on 29.6.95 stating that he is fit for duty. But the applicant had not chosen to address any ^{letter} ~~prints~~ till 19-6-95 praying for sickness. ^{leave}

8. It is seen from the correspondence filed between AEN and DEN referred to for the applicant that for one reason or the other the applicant could not be given the alternative post of watchman for 3 months though recommended by the medical authorities. In the mean while, ~~the applicant~~, it is stated ^{for the applicant} that he had again become sick. So, ~~in~~ the circumstances we feel that instead of again permitting the respondents to take disciplinary action for unauthorised absence, it will be just and proper to give a direction to AEN, Mancher to refer him to the Railway Medical authorities for consideration of fitness of the applicant, and if he so fit, he has to be taken on duty as Senior Gangman. The period from 7-10-93 till 7-10-95 has to be treated as dies non. The

28

period from 10.10.95 (the date of filing of this OA) till the date he reports has to be treated as leave due, and the period from the date on which he reports has to be treated as duty, if ultimately the applicant is going to be found fit for his duties. But if there is delay from the date of obtaining the medical fitness certificate, till he reports, the period of delay has to be treated as leave. If ultimately the applicant is not found fit for discharging his duties, it is for the applicant to apply for medical leave for the period from which he reported for duty on the basis of this order, and if such leave is applied for the same has to be considered in accordance with rules.

9. We felt that it is not a case where the O.A. has to be further adjourned, for if he is fit for attending to the duty, there will not be any ground for respondents to refuse to take him on duty. Hence, we dispose this O.A. even though the Reply Statement is not filed; but after considering the submissions for the respondents on the basis of the draft counters available with the learned standing counsel for the respondents.


10. In the result, the O.A. is order as under:

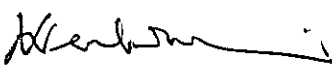
If the applicant is going to report for duty by 1-1-96 in the office of AEN.I/Kazipet, Mancherial along with copy of this order, the applicant has to be referred to the medical authorities for consideration of fitness of the applicant. The respondents have to act as referred

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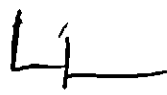
to in Para '8' on the basis of the certificate to be issued by the medical authorities. If the applicant is not going to report for duty by 1-1-96, the period from 1-1-96 till the date he reports has to be treated as leave without pay.

11. The O.A. is ordered accordingly. No costs.


(R. Rangarajan)
Member (A)


(V. Neeladri Rao)
Vice Chairman

Dt. 19-12-1995
Open Court Dictation


981295
DEPUTY REGISTRAR (J)

kmv

To

1. The Chief Permanent Way Inspector,
South Central Railway, Mahabubabad,
Warangal District.
2. The Permanent Way Inspector,
South Central Railway,
Mancherial.
3. The Asst. Engineer,
South Central Railway,
Kazipet, Warangal District.
4. The Divl. Engineer,
South Central Railway,
Sanchalan Bhavan,
Secunderabad.
5. The Senior Mechanical Superintendent (BG),
South Central Railway,
Secunderabad.
6. One copy to G.V. Subba Rao, Advocate, CAT, Hyderabad.
7. One copy to Mr. C.V. Malla Reddy, SC For Railways,
CAT, Hyderabad.
8. One copy to Library, CAT, Hyderabad.
9. One spare copy.

YLKR.

OA/238/95

TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELAKANTH
VICE CHAIRMAN

AND

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

DATED: 18-12-1995

ORDER/JUDGMENT

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

in

O.A.No. 1238/95

T.A.No. (W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Ordered/Rejected. _____

No order as to costs.

pvm.

No spare copy

