

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR. 6

O.A.No.196/93

Dt. of order: 19.10.94.

S.C.Saxena

: Applicant

Vs.

Union of India & Ors.

: Respondents

Applicant present in person

Mr.Manish Bhandari

: Counsel for respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

Applicant S.C.Saxena in this application under Sec.19 of the Administrative Tribunals Act, 1985, has prayed that the respondents may be directed to pay him salary for the period from 9.8.'92 to 26.2.'93 and to pay him leave salary for the period from 1.1.'92 to 2.3.'93. He has also prayed that the respondents may be directed to pay the packing allowance and transfer allowance to the applicant in view of his transfer from Kota to Bombay and his joining at Bombay. His yet another prayer is that interest @ 22% per annum may be allowed on payments not made to him.

2. The applicant was an Asstt.Engineer in Kota Division of the Western Railway. According to him, he was on sanctioned leave from 1.7.'91 to 27.7.'91. During this period of leave he fell sick and he sent an intimation in this regard alongwith Medical Certificate to the respondents seeking grant of leave. The applicant was under treatment of a Private Doctor, who had retired from the Railways. He remained on Medical Leave from 2.7.'91 to 2.3.'92 and reported for duty on 3.3.'92 in the office of respondents No.3, the Sr.Divisional Engineer (H.Q.), W.Rly, Kota. The respondent No.3 there upon instead of allowing the applicant to join duty sent a communication Annx.A1 dated 6.3.'92 to the General Manager, W.Rly, stating there there was no vacancy of Assistant Engineer and therefore Shri Saxena had been directed to him (the General Manager) for further posting orders. A copy of this communication was given to the applicant ~~he~~ and he was asked to report to the Head Quarters of the Western Railway. On receiving

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the aforesaid order the applicant made a request for Travelling Pass and Kit-pass so that he could join at Bombay. He was not provided with the Travelling Pass etc. Since the applicant was sick, he proceeded to Agra which is his native place. From Agra he sent a communication on 27.3.'92 to the Sr.Divisional Engineer with a copy to the General Manager, W.Rly, informing them about proceeding to Agra and again seeking Travelling Pass to enable him to report for duty at Bombay (Annx.A2). He did not receive any information or Travelling Pass. He sent 5 reminders between March 1992 and May '92 (Annx.A3, A4, A5, A6 and A7). Since he was not provided with the Travelling Pass and other requirements for reporting for duty at Bombay, he filed O.A.No.259/92 before the Tribunal which was decided on 14.8.92. In this order, the Tribunal directed the respondents to pay salary to the applicant from 3.2.'92 till the date on which transfer order dated 7.4.92 was served upon him. According to the applicant, an order dated 7.4.92 (Annx.A10) was issued transferring and posting him at Bombay. This order was not communicated to him. However, the Tribunal by its order dated 14.8.92 directed the respondents to grant facilities to the applicant to enable him to proceed to Bombay on transfer and the applicant was directed to file fresh application for the aforesaid purpose. The applicant sent a telegram to respondent No.2, the Divisional Rly.Manager, W.Rly, Kota (Annx.A12) wherein he requested that a copy of the transfer order as well as admissible allowances may be given to him, to enable him to join duty at Bombay. Since these directions were not complied with the applicant filed a Contempt Petition which was registered as C.P.No.27/92 and was decided on 15.1.'93. In reply, the respondents had submitted that the amount of the payment to the applicant is ready and can be collected from the Sr. Divisional Personnel Manager, Kota on 20.1.93. The respondents had also submitted in reply to the Contempt Petition that the applicant is required to furnish Medical Certificate of fitness from a Railway Doctor. Directions were given by the Tribunal by order dated 29.1.93 (Annx.A14) in the aforesaid C.P. to the

effect that the applicant shall be medically examined at Bombay. The applicant proceeded to Bombay and reported for duty to the Dy.Chief Personnel Officer (Gazetted) on 8.2.93. After his medical examination, he was allowed to resume duty on 26.2.93 (Annex.A17)

3. The applicant's grievance is that he has not been paid full salary from 1.1.92 to 2.3.92. However since by the Tribunal's order in O.A. No.259/92, salary has been paid to him upto 8.8.92, his grievance is now restricted to non-payment of the salary for the period 9.8.92 to 26.2.93. Yet another grievance that remains is that leave salary for the period from 1.1.92 to 2.3.92 has not been paid to him.

4. As regards the leave salary for the period from 1.1.92 to 2.3.92, the applicant appeared before us in person and admitted that he had not submitted any application for leave for this period, nor had he made any averments to this effect in this O.A. Also since there was no application for leave, there was no order sanctioning leave for this period. Grant of leave is subject to a government servant's submitting an application for leave and where he claims to be on sick leave, the leave application is to be supported by a certificate of sickness from a competent Doctor. Since the applicant did not admittedly even submit an application for leave, the question of grant of leave salary for this period to him does not arise. His prayer for grant of salary for the period from 1.1.92 to 2.3.92 is therefore rejected.

5. Now we shall deal with the period from 9.8.92 to 2.6.93.

6. We have heard the applicant and the learned counsel for the respondents and have perused the present records as also the records in O.A.No.259/92 and C.P.No.27/92.

7. The applicant's case is that the order dated 7.4.92 (Annex.A10) was not served on him. However, another letter dated 1.7.92 was issued to the applicant which is marked as Annex.R7 in the file of CP No.27/92 and which was presented by the respondents as part of their reply. As per this letter, the applicant had been informed by the General Manager, W.Rly, Bombay that he

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had been ordered to report for duty under appropriate medical certificate from Railway Doctor and was transferred and posted as officiating AEN(WS) Parel, Bombay. By this letter^{dated} 1.7.92, the applicant was further directed to report for duty immediately. There is an acknowledgement Annx.B8 dated 8.8.92 showing that this letter had been received by the applicant on that date. Thus at least on 8.8.92, the applicant was aware about his transfer to Bombay. The dispute is now for the pay and allowances for the period from 9.8.92. The applicant himself sent a telegram to the General Manager (Annx.A12) dated 21.8.92, seeking transfer passes, leave salary, etc., as per rules. The case of the respondents is that the applicant was to collect the transfer passes and other allowances himself after producing a certificate of fitness from a Railway Doctor. According to them all through out his sickness the applicant never took any treatment from a Railway Doctor and never produced any fitness certificate from a Rly.Doctor. It was in pursuance of the direction by the Tribunal given in C.P.No.27/92 that he was examined by a Railway Doctor at Bombay and he thereafter resumed duty. According to them after a person has reported sick his being allowed to resume duty is dependent upon his producing a fitness certificate from a Railway Doctor. According to them the applicant was taking treatment at Agra where a Railway Hospital is available. The applicant deliberately took treatment from a private Doctor. They have drawn our attention to their reply in C.P. No.27/92 and the order of the Tribunal dated 15.1.93 wherein the Tribunal has recorded the respondents' statement that for the purpose of issue of passes for joining on transfer the applicant has to produce a medical certificate from a Railway Doctor while he has only produced a certificate from a private Doctor. The further statement of the respondents was also noted in this order to the effect that a letter has also been written to the applicant in this regard. Thereafter, the Tribunal had given direction to the effect that the applicant shall present himself before the Sr.DPO, Kota, who will then arrange for his medical examination by a Rly. Doctor. Subsequently, the Tribunal

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gave a direction vide order dated 29.1.93 in this CP No.27/92 that the medical examination shall be held at Bombay. Thus according to the learned counsel for the respondents submission of a medical certificate from a Rly.Doctor is a pre-requisite for obtaining passes for travelling for joining duty at another place, where a railway servant had been away from duty on ground of sickness and has taken treatment from a private Doctor. Since the applicant failed to produce medical certificate from a Railway Doctor he was not entitled to Railway Passes for travelling to Bombay. Further according to the learned counsel for the respondents, it was not clear why the applicant avoided producing a certificate from a Railway Doctor before claiming passes and proceeding to Bombay on transfer. Since the applicant had failed to meet this essential requirement he could not blame the respondents for not issue him passes due to which he could not travel to Bombay for joining duty earlier. Since the applicant had joined duty at Bombay only on 26.2.93, he was not entitled to pay and allowances for the period from 9.8.92 to 25.2.93.

8. The applicant has drawn our attention to Annx.A1 dated 6.3.92 which is a letter from the DRM, Kota to the General Manager, W.Rly. which reads as under:

"Sh.S.C.Saxena AEN (HQ) Ktt. who was on LAP w.e.f. 19.7.91 to 27.7.91 and latter on he has reported sick, has resumed his duties on 3.3.92.

As here is no post of AEN is vacant at Kota Sh. S.C.Saxena is directed at your's for further posting orders please."

According to the applicant, the DRM had himself stated in his letter that the applicant has resumed duty on 3.3.92 at Kota. He, therefore, did not understand why a medical certificate was required later on when he had already joined duty on 3.3.92 at Kota. We are unable to agree with the applicant with his interpretation of the aforesaid communication. The implication of this letter is that the applicant offered himself for joining duty at Kota on 3.3.92, but since there was no vacancy of AEN at Kota, he had been directed to report to the General Manager. This is not a communication which acknowledges that the applicant has in fact joined duty as AEN at Kota. Therefore, the respondents' requirement that he must submit a medical certificate before being entitled to Travelling Passes

for joining duty at Bombay remained unfulfilled. Therefore, in our view since the applicant had not fulfilled an essential requirement of the Railways for obtaining travelling passes, they did not issue travelling passes to him. In the absence of the Travelling passes the applicant failed to report for duty at Bombay till 8.2.93. We do not understand what prevented the applicant from obtaining a medical certificate from a Railway Doctor for the purpose of obtaining the Railway Passes for travelling to Bombay. Non-supply of Railway Passes has been mentioned as a ground by the applicant for not reporting for duty at Bombay. In the circumstances of the present case we are of the view that the respondents cannot be held responsible for the applicant's not reporting for duty at Bombay at least after the service of the letter dated 1.7.92 (Annx.R7) in the file of CP No.27/92, which was received by the applicant on 8.8.92 as per Annx.R8 in the same file. The respondents are, therefore, justified in not granting pay and allowances to the applicant for the period from 8.8.92 onwards. It is seen that the applicant reported for duty to the Dy.Chief Personnel Officer (Gazette) on 8.2.93. We are, therefore, of the view that the applicant shall be entitled to pay and allowances from 8.2.93 onwards. In other words the denial of pay and allowances to him shall be restricted to the period 9.8.92 to 7.2.93. The respondents shall arrange to make payment of pay and allowances for the period from 8.2.93 to 26.2.93 within a period of 3 months from the date of the receipt of a copy of this order. No other reliefs are admissible to the applicant.

9. The O.A. is disposed of accordingly with no order as to costs.

(O.P.Sharma)
Member(A).

C.Krishna
(Gopal Krishna)
Member(J).