

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order:- 10.04.02

OA No.643/1996

S.S.Gupta s/c Shri Prarelalji Gupta r/c Raj Hans Bhawan,
House No.A-44, Prem Nagar, Foysagar Road, Ajmer.

..Applicant

Versus

1. Union of India through the General Manager,
Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western
Railway, Ajmer.
3. The Divisional Commercial Manager, Western
Railway, Ajmer.
4. The Senior Divisional Personnel Officer,
Western Railway, Ajmer.
5. Assistant Personnel Officer (Bills), Western
Railway, Ajmer.

.. Respondents

Mr.P.V.Calla - counsel for the applicant.

Mr. U.D.Sharma - counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Member (Judicial)

Hon'ble Mr. H.O.Gupta, Member (Administrative)

ORDER

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the action of the respondents to effect recovery vide order dated 6.11.1995 (Ann.A7) at the rate of Rs. 2000/- per month from the salary of November, 95 onwards. In relief, he has prayed for quashing the said order and regularise the period from 23.11.94 to 19.5.95 as LAP/HLAP as per his leave account




as on 22.11.94 maintained by the respondents and also to refund the amount of Rs. 26,000/- deducted so far.

2. The case of the applicant as made out, in brief, is that:-

2.1 He joined Railway Organisation as Commercial Apprentice w.e.f. 23.12.73. He is working as Divisional Commercial Inspector in the pay scale of Rs. 2375-3500 w.e.f. 24.7.94. He worked as Divisional Commercial Inspector in Ajmer Division during 1985 to April, 87 when he was transferred to Baroda Division. The leave account maintained by the Ajmer Division was not sent alongwith his Last Pay Certificate with the result his leave balance account for the period 23.12.73 to 16.4.87 was not in the knowledge of the D.R.M., Baroda.


2.2 He suddenly developed eye trouble and was subjected to medical treatment in Western Railway Hospital, Ajmer from 22.11.94 to 15.12.94 and thereafter since there was no improvement, he consulted the private Doctor and was under his treatment from 16.12.94 to 30.5.95. He submitted a Sick Certificate obtained from the private Doctor, when he became fit to perform his duties and after the Railway Doctor fully satisfied, issued necessary Fit Certificate which was accepted by the respondents without any objection. His leave account during the year 1995 came under examination and the Divisional Accounts Officer, Ajmer Division, Ajmer forwarded a note dated 27/31.10.95 to the D.R.M. Office and advised recovery from the applicant. As a follow up action, it was decided by the Senior Divisional Personnel Officer, Western Railway, Ajmer that a recovery of Rs.



49,575/- in monthly instalments of Rs. 2000/- be made from the month of November, 95 onwards vide the impugned order dated 6.11.1995 (Ann.A1).


2.3 He represented vide his representation dated 17.11.1995 (Ann.A8) requesting to re-examine the matter and to supply full details of Rs. 49,575/-. He again preferred a representation dated 21.12.95 addressed to the Divisional Railway Manager, Ajmer, but no response was received from the respondents and hence this O.A.

3. The respondents have contested this application and have submitted that the applicant has not submitted any representation against the order dated 6.11.1995, but filed his OA in December, 1996 and, therefore, it is barred by limitation. It is not correct that the Leave Account on his transfer to Baroda Division was not sent as per the normal practice and procedure. The leave record and other service records are always sent alongwith the Last Pay Certificate to the concerned officer on his transfer. In none of the certificates submitted by the applicant, it has been indicated that he was suffering from eye trouble. Through his application dated 6.3.1995, he has sent Duty Certificate dated 2.3.95 granted by the Divisional Medical Officer, Western Railway certifying him fit to resume duty from 2.3.95 and in the said certificate it was mentioned that he was under the treatment of a private Doctor from 16.12.94 to 25.2.95. The applicant produced four certificates from the private Doctors for the period 30.11.94 to 25.2.95. However, the said period has not been indicated in the certificate dated 2.3.95 issued by the Railway Doctor. Copies of these certificates




are annexed as Ann.R1 to R6. Certificate submitted by the Railway Doctor dated 2.3.95 is a Duty Certificate and not a fit certificate. It is denied that the aforesaid period from 22.11.94 to 30.5.95 has been regularised by grant of full pay and allowances as the applicant had never submitted any application for grant of leave. During the inspection by the Accounts Department, it was noticed that the applicant has taken the over-payment towards his salary for the period from November, 1995 to May, 1995. The applicant has no leave to his credit and had not applied for leave and no leave of any nature has been sanctioned to him for the aforesaid period, even then the applicant has received full salary and allowances and the said over-payment was assessed as Rs. 49,575/-, as may be seen from Inspection Note Ann.R7. The applicant did not send any representation dated 17.11.95. However, he sent representation dated 21.12.95 and from the said representation it can be seen that it did not contain any reference to his earlier representation dated 17.11.95. During the personal interview, the applicant has been explained in person the correct position of over-payment having been made to him which was required to be recovered from his salary through easy monthly instalments.

4. In rejoinder, the applicant further submitted that as per rules of the Railways, when an employee is undergoing treatment under a Private Doctor, the sickness certificate is followed by a Fitness Certificate, which is to be submitted to the Railway Doctor, who thereafter issue Duty Certificate. In case of any doubt, the respondents should have referred the matter to the Railway



Doctor for clarification. Moreso, no office order treating the entire sickness period as unauthorised absence has been issued by the respondents. There is no reason to presume that the case of the applicant is of over-payment case. In case the applicant has Nil balance in his leave account, it was well within the competence and power of the respondents to regularise the sickness period by grant of leave not due under Rule 528 of the Indian Railway Establishment Code rather than to adopt the present mode of recovery. Instead of considering regularisation of sickness period as per rules in force, by sanctioning leave not due, the respondents have treated the period as leave without pay without following instructions contained in Circular dated 27.5.92 (Ann.A11).

5. Based on this Tribunal's order as per ordersheet dated 21.2.97, the respondents were directed not to make further recovery in consequence of their impugned order dated 6.11.95 (Ann.A7). From the ordersheet dated 31.8.98, it is seen that the respondents brought the original leave record and the learned counsel for the applicant was directed that either the applicant or the applicant alongwith his counsel in the presence of Chief Law Assistant of the respondents Department shall inspect the aforesaid record in the office of D.R.M., Ajmer before second week of September, 1998 after due notice to the applicant. Based on inspection of record, the applicant filed an affidavit dated 25.4.2000 bringing out the irregularities in the leave account from the year 1981 to 1988. The respondents have replied to the various alleged irregularities by the applicant.



6. Heard the learned counsel for the parties and perused the record.

6.1 In their reply to the alleged irregularities pointed out by the applicant based on perusal of record, the respondents have clarified the various alleged irregularities and submitted that the applicant was on leave on medical grounds from 3.1.81 to 15.1.81 and got his leave commuted. Thus for the said 13 days 26 days Half Pay leave was debited, which is correct. However, for the said period, LAP for 13 days was also debited and which has been corrected in his leave account accordingly. With regard to one day's leave in the year 1984, the respondents have submitted that leave application is not available. However, the respondents are willing to credit to the applicant with a view to solve the controversy. The applicant has neither countered these averments of the respondents nor during the course of arguments, the learned counsel for the applicant pointed out in what way the clarification given by the respondents are not in order.

6.2 The respondents themselves have submitted that the applicant has made a representation dated 21.12.95 to the D.R.M., Ajmer (Ann.A1) with regard to the recovery being effected from the month of November, 95 based on the inspection note of 17.10.95. This OA has been filed on 17.12.96. We do not think that the respondents have any case of limitation since the OA has been filed well within the limitation period of one year after having waited for the reply for six months.

6.3 We do not find any reason as to why any



clarification now given by the respondents should not be accepted. The applicant himself has perused the original record and after the clarifications of the respondents, we were not informed whether any irregularity still exist. Accordingly, we are of the view that subject to corrections based on the clarifications by the respondents, the leave account of the applicant may be finalised and part of the absence of the applicant may be regularised by the leave which is now become due and the balance period as per rules. It is accordingly directed. Let this case be finalised by the respondents within two months from the date of receipt of the order and till then no further recovery be made from the applicant.

7. With the above direction, this OA is disposed of with no order as to costs.


(H.O.GUPTA)

Member (Administrative)


(S.K.AGARWAL)

Member (Judicial)