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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.48/96

Date of order:12.8.1997

Sultan Ahamed

: Applicant

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.

2. Divisional Railway Manager(E), Western Railway, Kota Division, Kota.

3. Divisional Operating Manager, Western Railway, Kota Division, Kota.

..Respondents.

Mr. Shiv Kumar - Counsel for applicant

None present on behalf of the respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Fatan Prakash, Judicial Member.

PEE HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Sultan Ahamed has prayed that the respondents may be directed to pay the salary for the period during which he was kept under periodical medical examination i.e. from 20.10.93 to 10.8.94 and this period may be treated as duty. He has sought a further direction to the respondents to revise the pensionary benefits of the applicant after counting the intervening period as having been spent on duty and consequential benefits may be given to him.

2. The case of the applicant is that he was appointed as Khallasi in 1957 at Shyamgarh and thereafter he was posted at different places and earned promotions from time to time. In 1993, he was promoted as Driver-A. Vide communication Anxx.A1 dated 14.10.93, he was referred to the Medical Superintendent, Kota. He was declared to be a heart patient by Sr.D.M.O, Kota and put on the sick list on 20.10.93. Thereafter the

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applicant's case was referred to J.F.H.Hospita, Bombay and then to S.E.H.Hospital, Madras. Ultimately he was declared fit vide communication dated 18.7.94 (a copy of which is however stated to be not available with the applicant). Thus, according to the applicant he was treated as sick w.e.f. 20.10.93 to 10.8.94 without his actually being sick and on account of the actions of the administration. On being declared fit, he joined duty and thereafter he superannuated on 31.8.95. During the period from 20.10.93 to 10.8.94 he was not granted any pay and allowances. He made a detailed representation dated 21.12.94 to the authorities (Annex.A4) but it has yield no results. The matter was also taken up through the Western Railway Employees Union (Annex.A5) but still the applicant has not been paid the pay and allowances for the aforesaid period of about 10 months. The nonpayment of his pay and allowances has also affected the quantum of the applicant's gratuity and other pensionary benefits. The applicant's claim is that ~~he has been declared fit~~ ~~he has been declared fit~~ and on account of the actions of the administration, ~~that~~ a doubt was raised about his not being fit and that he had to remain away from duty for about 10 months although eventually he was found fit to resume duty. Therefore, he is entitled to pay and allowances for the period of his absence from duty.

3. The respondents in their reply have not disputed that the applicant was kept on the sick list in view of the certificates given by the Railway Doctors from 20.10.93 to 10.8.94. They have added that the matter has been referred to the higher authorities for taking appropriate decision regarding treatment of the aforesaid period. They have added that since the matter has been referred to the Western Railway Conal Headquarters for decision, the applicant's application is premature.

4. The learned counsel for the applicant during his argument

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drew our attention to the applicant's averments in the O.A wherein he has quoted the relevant rules on the subject regarding treatment to be accorded to the period of absence on account of sickness or on account of medical examinations and added that the respondents have to take a decision in this regard. In any case since eventually the applicant was found fit, he is entitled to all pay and allowances for the period of absence when he was undergoing medical tests at various Hospitals and he is also entitled to all consequential pensionary benefits.

5. We have heard the learned counsel for the applicant. None is present for the respondents. We have also perused the material on record.

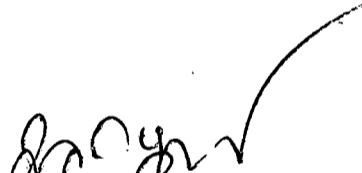
6. The applicant in his O.A has quoted the Railway Board's instructions dated 7.3.96 regarding treatment of the period during which an employee is absent from duty on account of the periodical medical examination. The respondents have taken the stand in their reply that they have referred the matter to the higher authorities. The respondents filed their reply on 28.10.96. The O.A was filed on 12.1.96. A period of about 1½ years has passed since the O.A was filed and a period of about 10 months has passed since the reply was filed by the respondents. As stated by the learned counsel for the applicant, no decision of the higher authorities has however been communicated to the applicant. The applicant retired from service as far back as on 31.8.95, i.e. nearly 2 years back. It appears therefore that there has been an inordinate delay on the part of the respondents in taking a decision regarding treatment of the period of absence of about 10 months as referred to in the O.A. We, therefore, direct the respondents to take an appropriate decision with regard to the applicant's absence for the aforesaid period in the light of the rules and

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instructions on the subject including those quoted by the applicant in the O.A within a period of two months from the date of the receipt of a copy of this order and make payment of the amount due to the applicant if any such amount is found payable, within a period of one month thereafter. After taking a decision in this regard and after making payment to the applicant, as may be due to him, the respondents shall also take a decision regarding the revision of the pensionary benefits of the applicant in the light of the decision taken up by them regarding regulation of the period of absence and make necessary payments as may be due as a lumpsum, within a further period of one month. If the payment found due to the applicant are not made within the stipulated periods, the respondents shall pay interest at the rate of 12% per annum from the expiry of the stipulated period till the payments are made. If the applicant is aggrieved by any decision taken by the respondents or he feel that the payment received is less than the amount he is entitled to, he shall be free to file a fresh application.

7. The O.A is disposed of accordingly. No order as to costs.

  
(Ratan Prakash)

Judicial Member.

  
(O.P. Sharma)

Administrative Member.