

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

O.A. No. .... 192 ..... of 1997.

DATE OF DECISION 25.5.2001

PETITIONER(S)

Re: No. Dhar

In Person

ADVOCATE FOR THE  
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Mr. B.K. Sharma

ADVOCATE FOR THE  
RESPONDENT(S)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

THE HON'BLE MR. JUSTICE D.N. CHOWHURY, VICE-CHAIRMAN.  
O.A. No. ....

THE HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER.

DATE OF DECISION.....

1. Whether Reporters of local papers may be allowed to see the  
judgment ? PETITIONER(S)

2. To be referred to the Reporter or not ?

3. Whether their Lordships wish to see the fair copy of the  
judgment ? ADVOCATE FOR THE

4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member.

RESPONDENT(S)

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

ADVOCATE FOR THE  
RESPONDENT(S)

THE HON'BLE CHAIRMAN ..... of

THE HON'BLE

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4. Whether the Judgment is to be circulated to the other Benches ?

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No. 192 of 97

Date or Order: This the 25th Day of May 2001.

HON'BLE MR.JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN  
HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER

Mr. R.N.Dhar,  
Retd. Asstt. Personnel Officer,  
N.F.Railway, Maligaon.

C/O.Sri T.K.Datta Roy, Advocate  
East Gotanagar Hill side.  
P.O. Guwahati-11.  
Dist-Kamrup(Assam)  
Pin-781011. ... applicant

In person: Mr.

-Vs-

1. Union of India & Ors.  
Chief Personnel Officer,  
N.F.Railway, Maligaon.  
P.O.Guwahati-11,  
Dist.Kamrup(Assam)  
Pin-781011 ... ... Respondents.

Mr. B.K.Sharma

O R D E R.

K.K.SHARMA, ADMINISTRATIVE MEMBER:

The only relief claimed in this applicant is the Encashment of leave on retirement for 240 days. The applicant retired from service on 28.2.93. He was claimed that the leave to his was credit of 240 days which he was entitled to encash on retirement and he have been paid the amount of Rs. 46000/-. The respondents paid him for 126 days of leave. Being aggrieved, the applicant moved this Tribunal by filing the C.A.No.259 of 93, which was disposed of on 7th Day of August 97, A direction was given to the Chief Personnel Officer, N.F.Railway to consider the claim of the applicant and the applicant

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*K.K.Sharma*

and the applicant was asked to file representation by 11.8.97. Three weeks time was given to the C.P.O, N.F.Railway to dispose off the representation. The representation has been disposed off by the C.P.O on 12.8.97.

The main facts relevant for this case are that the applicant, while working as Chief Labour Welfare Inspector/ Chief Vigilance Inspector with N.F.Railway was empanelled as Assistant Personnel Officer (APO) a Group 'B' post. On 11.2.85 he was promoted as APO and was posted at Lumding. On account of unsatisfactory performance he was reverted on 20.8.96 from Group 'B' post to Group 'C' post. The applicant challenged the reversion order by moving this Tribunal by filing the O.A.No.14 of 87. Vide order dated 2.6.87 the reversion order was set aside. The respondents filed a S.L.P before the Supreme Court. The respondents in the meantime paid the pay and allowance to the applicant for the post of APO to avoid contempt proceedings. The applicant was posted as APO(G&S) on 28.1.86, but he joined this post only on 8.4.86 after lapse of 3 months. The Supreme Court granted the interim stay on 16.11.87 against the order of this Tribunal dated 2.8.87. On 13.12.89 the Hon'ble Supreme Court upheld the decision of this Tribunal dated 2.6.87. Honouring the Supreme Court's by an order dated 25.1.90 the applicant was restored as Group 'B' Officer with effect from 11.2.85 and posted as APO at Tinsukia. In the order it was specifically mentioned that the period of absence of the applicant between the date of original reversion on 20.8.86 and date of resumption will be regularised under operation of normal rules and also in consonance with the judgment of this Tribunal. The applicant submitted his representation for posting at

K. U. Sheth

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Hqs at Maligaon, where no vacancy was available. Thereafter he applied for voluntary retirement on 6.6.1990. The applicant did not join at Tinsukia. The respondents finally posted him as APO/Training Maligaon vide office order dated 12.6.90. The period of absence in different spells could not be regularised as he did not submit any application for regularisation of his absence. The applicant wanted that his period of absence in different spells should be treated as Duty in terms of Rule 2044 R.II. The respondents observed that the aforementioned Rule was applicable in cases of removal/dismissal/compulsory retirement under Rly. Servant (D&A) Rules and none of these actions had taken place. The respondents regularised the period of unauthorised absence in accordance with Rule 518 and found that only 126 days leave was to the credit of the applicant, which was informed to the applicant by Memorandum dated 15.3.94. Even after issue the order dated 25.1.90 the applicant had remained absent upto 11.6.90.

The applicant appeared in person and Mr. S. Sarma learned counsel for the applicant. We have perused the records considered the submissions of the applicant, the written statement of the respondents and also gone through the annexures to the application. The applicant has questioned the authority of the respondents in adjusting the period of leave against the unauthorised absence. The Rule 518 is reproduced below:-

"Rule 518 Absence after expiry of leave(1)unless the authority competent to grant leave extends the leave, a railway servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against leave account as though it were leave on half average pay, to the extent such leave is due, the period in excess of such leave due being

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treated as extraordinary leave.

(2) Wilful absence from duty after the expiry of leave renders a railway servant liable to disciplinary action.

A memorandum dated 24.2.93 was issued to the appellant showing the adjustments made under Rule 518 for the period of absence against the leave due. The applicant made a representation before the authorities dated 11.8.97 as per directions of this Tribunal. The C.P.O. by his response dated 12.8.97 has given the computation of leave account and period of absence. The relevant part of the reply dated 12.8.97 is reproduced below:-

"Para 5(ii) the following three periods were quoted in the said para.

1. Period from 21.8.86 to 29.10.86
2. Period from 1.6.87 to 20.10.87
3. Period from 4.11.88 to 6.1.89

With regard to the period from 21.8.86 to 29.10.86 the period was sanctioned as leave due on your specific application dated 22.8.86. Your contention of double entry is not correct. Even the Memorandum dated 15.3.94 regularising the entire period of absence from 21.8.86 to 11.6.90 i.e. in supercession of earlier memorandum. The particular period is regularised as leave due and it not counted twice as you alleged fictitiously.

With regard to period from 4.11.88 to 6.1.89 it is seen that you have reported sick under the Railway medical authority for 10 days from 4.11.88 to 13.11.88 by the period can be regularised as commuted leave in terms of para 527 RI. The period from 14.11.88 to 26.11.88 has not been found to be covered under Private or Railway Medical certificate by which you are entitled for the commuted leave though it has been so sanctioned. For the period from 27.11.88 to 6.1.89 the period is an unauthorised absence and accordingly the period can be regularised only as Extra-ordinary leave in terms of para 518 RI. The discrepancy for the period from 14.11.88 to 26.11.88 which was erroneously sanctioned as commuted leave though to be regularised only as Extra Ordinary leave by which you are not entitled for any leave salary resulting in recovery, it is not proposed to revive as it will be against your interest."

K. (Chauhan)

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Para 7 You are not entitled for encashment of 240 days and the eligible 126 days has been admitted in your case.

Para 8 and subsequent paras. The detailed clarification stated above will cover them, as they are only repetition.

It is reiterated that the period of absence from 21.8.86 to 11.6.90 has been regularised either as

1. Leave due on your specific application or
2. Commuted leave covered by sickness Private or Rlys) &
3. The remaining periods of absence as Extra Ordinary leave without entitlement for/any leave salary

Leave account so maintained with crediting and debiting as per extend rule you were eligible for establishment of leave salary for 126 days only on your superannuation and the same has been admitted. Therefore, there is no further action is called for."

The respondents have given adequate reply to the applicant. From the written statement of the respondents we do not find any reasons to interfere with the order dated 12.8.97. The applicant had claimed salary for the period of absence from duty and the same was considered by this Bench in O.A. No. 14 of 97 vide order dated 2.6.87, para 32 of the order is reproduced below:-

"Before parting with the case we would also refer to the Misc. application regarding the salary for the period after the release of the applicant from the post of APO. We are unable to support the stand taken by the applicant in this matter. He was free to take leave and then extend the period of his leave as allowed by the authority but he could not take a stand that he was to be paid the salary at the same rate at which he used to draw before the revision just because he preferred this application before the Tribunal. We are not aware of the facts and circumstances of the cases referred to by the applicant, but in this case he would have naturally got all the benefits that was due to him after he succeeds in the application, if he had joined the lower post or had been on leave for the entire period upto the disposal of the application before the Tribunal. We are unable to give a direction to the respondents to pay him at the same rate as on duty in the post of APO for the period of his absence after the impugned order and earn his salary without doing any work. We leave this matter to the competent authority to decide as to how the period of absence may be regularised."

*K. Usha*

The appellant has not been able to show us how the order dated 12.8.97 is erroneous. The appellant's claim that for the period from 27.10.87 to 23.2.88 adjusted against leave, he is entitled to add 120 days to the leave of 126 days to his credit and thus entitled to 240 days of leave encashment. He claims that he was not allowed to join during this period. From the order dated 12.8.97 it is seen that the applicants had himself made an application for L.A.P on 26.10.87 for the period 27.10.87 to 9.4.88. There is no basis for the applicant, when he had applied for leave, to say that he should be allowed credit for this period. The applicant's representation has been considered in detail and the applicant has been informed that he is not entitled for encashment of 240 days leave and was entitled 126 days leave only. We do not find any merit in the applicants' claim. We are of the opinion that there is no reasons to interfere with the order dated 12.8.97. Accordingly, the application is dismissed. There shall however, no order as to costs.

*KK Sharma*  
(K.K.SHARMA)  
ADMINISTRATIVE MEMBER

*D.N.Chowdhury*  
(D.N.CHOUDHURY)  
VICE-CHAIRMAN / MEMBER