

CENTRAL ADMINISTRATIVE TRIBUNAL

JABALPUR BENCH

CIRCUIT AT INDORE

Date of Order : 02.09.2003

O.A. No. 366/1999.

Purshottam Singh Rathore S/o Shri Pancham Singhji Rathore,  
Office Superintendent, Loco, Western Railway, Nimach.

... Applicant.

v e r s u s

1. Union of India, through General Manager, Western Rly., Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Do Batti, Ratlam.

... Respondents.

Shri S. L. Vishwakarma counsel for the applicant.  
Shri Y. I. Mehta counsel for the respondents.

CORAM

Hon'ble Mr. V. K. Majotra, Administrative Member.  
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :  
(per Hon'ble Mr. J. K. Kaushik)

Shri Purshottam Singh has filed this OA for the following reliefs :-

"8.1. Respondent's orders to debit the period from 19.03.1996 to 4.4.96 to the leave account of the humble applicant may be cancelled, being ab initio void.

8.2. Humble applicant has been unnecessarily put to mental agony. The period of absence from 19.3.96 to 4.4.96 may be treated as spent on duty."

2. We have heard the learned counsel for the parties and have carefully perused the records of this case.

3. The applicant who was initially appointed as Assistant Station Master and has enjoyed his further promotion to the post of Deputy Train Controller w.e.f. 08.03.1988.

He was found fit in medical category (Annexure A-2). He was sent for the medical examination in the year 1996 and was again found fit in A/2 medical category with the remark that "Fit for category A/2 but to be kept away from train operational duties for safety purpose.". He was treated as medically decategorised for the post of Deputy Train Controller and was sent on compulsory leave from 19.02.1996. He was subject to appear before a Screening Committee on 18.03.1996 and was declared fit to work in Control Office. He was accordingly posted back to work as Chief Train Controller vide letter dated 4.4.96 where he joined on 5.4.96. A period of 46 days i.e. from 19.02.1996 to 5.4.1996 was debited to his leave account. The OA has been filed primarily on the ground that despite <sup>th fact</sup> that he was not declared medically unfit for the post he was holding, he was kept on forced leave. There is no rule to grant leave in such cases etc.

4. The respondents have contested the case and filed a reply to the OA. It has been submitted that the respondents had no choice but looking to the medical opinion for keeping await the applicant from train operational duties. He was subjected to appear before the Screening Committee and granted leave in accordance with Para 1304 of IREM, and the intervening period has ~~been~~ been treated as leave. No fault can be found on the same and the ~~xxxx~~ OA deserves to be dismissed.

5. Both the learned counsel have reiterated their pleadings. There is no quarrel regarding the material facts of this case. It is the admitted position of the

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case that the applicant was not decategorised and was also not declared as incapacitated for the service. The sequence of the events indicate that the applicant has been fully fit for performing the duties which he was earlier performing. We have also been taken through the relevant rule i.e. Rule 1301, 1302, 1303 and 1304 of IREM Vol.1. These rules relate to absorption of medically incapacitated staff in the alternative employment. From the perusal of the medical opinion, it is very clear that the applicant was not in any way incapacitated for the service and question for invoking the provisions of the said rules did not arise. We find substance in the contentions raised on behalf of the applicant. On the other hand, learned counsel for the respondents has not been able to countenance his submissions as to how a person who is not incapacitated could be sent for alternative job or kept on leave. In our considered opinion we ~~mixx~~ feel that the applicant has been kept away from the duty without any reason and his leave for the said period not to have been debited to his leave account. Therefore, the OA is ample force and the prayer of the applicant deserves acceptance.

6. The OA is hereby allowed in the following terms :-

" The impugned order dated 01.04.1998 (Annexure A-1) is hereby quashed and the period of absence from 19.03.1996 to 4.4.1996 shall be treated as spent on duty for all purposes. If any type of leave has been debited for the said purpose and the same shall be credited to his account, within a period of 3 months from the date of receipt of a copy of this order. No costs."

*J. K. Kaushik*  
(J. K. KAUSHIK)  
MEMBER (S)

*V. K. Majutra*  
(V. K. MAJUTRA)  
MEMBER (A)

कृष्णकला एवं और्ज्ञा ..... जलपुर, दि.....

कृष्णकला एवं और्ज्ञा

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Rathnam

S. L. Venkateswara Reddy

Y. J. Mehta, Nellore Andhra

~~W. Madras~~  
12/9/03

~~Received~~  
17/9/03