

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 3172/2013

M.A. No. 2411/2013

New Delhi, this the 25th day of April, 2016.

HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

Shri Sumant Lal Santoshi,
S/o Shri Rameshwar Pandit,
Loco Pilot (Goods)
Railway Station Shakurbasti'
Delhi.

...Applicant.

(By Advocate : Ms.Meenu Mainee)

Versus

Union of India : Through

1. General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Chief Medical Superintendent,
Northern Railway Divisional Hospital,
Delhi.
3. Divisional Railway Manager,
Northern Railway,
State Entry Road, New Delhi.

...Respondents.

(By Advocate: Shri S.M.Arif for R-1 and R-3 and
Shri Shailendra Tiwary for Shri A.K.Srivastava for R-2)

ORDER (ORAL)

By Mr. Justice Permod Kohli

The applicant was working as Loco Pilot (Goods). He complained of some pain in the both ears while sounding horn, followed by serious headache. He contends that vide his representation dated 09.05.2012,

he also requested not to post him on such duties till he fully recovered. The Senior Divisional Mechanical Engineer (Power) vide Memo dated 22.05.2012 referred the matter to the Senior Divisional Medical Officer for examination.

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2. It is admitted case of the parties that the Railway doctors after examining the applicant declared him unfit to perform the duties of a Driver, as is evident from Annexure A-5. The applicant having persistent complaint was referred to the Chief Medical Superintendent, Northern Railway, Divisional Hospital, Delhi, who recorded his findings in regard to the complaint of the applicant. From perusal of the aforesaid document, it appears that doctor found in all subjective tests, there was some hearing loss. However, the objective hearing test-BERA and other specialized hearing tests like OAE ASSR.LDL etc. showed normal hearing in both ears and even in MRI brain was found normal. The Chief Medical Superintendent recommended a Medical Board to be constituted to examine the applicant. The Medical Board was constituted which opined that the applicant was fit in his original medical category. A certificate to this effect from the Medical Board is annexed as Annexure A-8 with the OA. Consequent upon the above findings given by the Medical Board, the applicant submitted a representation dated 31.01.2013 requesting for

release of his salary for the period he remained under examination and treatment of doctors. This representation has been rejected vide impugned order dated 12.03.2013 (Annexure A-1) on the ground that since the applicant was examined at his own request, the period taken for medical examination was to be treated on his personal account.

3. The applicant is aggrieved by the order dated 12.03.2013 whereby his request for treating the period of medical examination as spent on duty has

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not been accepted. The applicant has accordingly claimed for the following relief:

"8.1 That this Hon'ble Tribunal may graciously be pleased to allow this application and quash the impugned order.

8.2 That this Hon'ble Tribunal may further be graciously be pleased to direct the respondents to treat the period from 14.06.2012 to 24.01.2013 as spent non (on sic) duty and make the amount due to the applicant for the aforesaid period so far as pay & allowances and other benefits are concerned.

8.3 Pass any other or further order which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

8.4 That the cost of the proceedings may kindly be granted in favour of the applicant and against the Respondents."

4. Shri S.M. Arif, learned counsel appearing for the respondents has vehemently opposed the claim of the applicant. It is argued that since the applicant was found medically fit on all examinations by the Board of Doctors, the period of medical examination has not been treated as spent on duty. Admittedly, for the period the applicant remained busy in medical examination in one way or the other, he has not been paid any salary. All the examinations of the applicant were conducted in the Government Railways Hospital. Though the applicant was ultimately found fit to discharge his duties, the fact remains that he was medically examined for a long period in Government Railways Hospital. If the respondents had any doubt about the claim of the applicant regarding his illness, they should have held an inquiry to find out the truth, but without holding inquiry, the respondents could not deny salary to the applicant. Even if it is assumed that the applicant remained absent from duty, it was obligatory upon the

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respondents to have held an inquiry, thus recovery from the applicant or denial of salary definitely amounts to imposition of penalty, as prescribed under the relevant rules governing the misconduct of the railway employees. Admittedly, no inquiry was conducted and no charge-sheet ever issued by the respondents.

5. We are of the considered view that withholding salary of the applicant is not justifiable without holding an inquiry. The impugned order dated 12.03.2013 (Annexure A-1) is not sustainable in law and is hereby quashed. It is, however, observed that respondents are at liberty to hold an inquiry in accordance with law. Due salary of the applicant shall be released within a period of two months.

6. The Application is disposed of in the above manner. No orders as to costs.

(SUDHIR KUMAR)
MEMBER (A)

(PERMOD KOHLI)
CHAIRMAN

/kdr/