

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 1098 OF 2012
Cuttack, this the 29th day of June, 2017

CORAM
HON'BLE MR. R. C. MISRA, MEMBER (A)

.....
Bipin Bihari Pattnaik,
aged about 54 years,
S/o Late Jadumani Pattnaik,
Presently working as Station Superintendent,
Baruva Railway Station, Andhra Pradesh,
At/PO Khairapali, Via- Raj Ranpur, Dist-Nayagarh.

...Applicant

(By the Advocate-Mr. B.S.Tripathy-1)

-VERSUS-

Union of India Represented through

1. The General Manager, East Coast Railways, Bhubaneswar, Dist-Khurda.
2. The Divisional Railway Manager (P), East Coast Railways, Khurda Road, Dist-Khurda.
3. The Senior Divisional Operating Manager, East Coast Railways, Khurda Road, Dist-Khurda.

...Respondents

By the Advocate- (Mr. S. K. Ojha)

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O R D E R

R. C. MISRA, MEMBER (A):

The applicant, in this O.A., is a Railway employee working as Station Superintendent at Baruva Railway Station in the State of Andhra Pradesh and has approached the Tribunal praying for the following reliefs:

“i) quash the impugned order dt. 19.10.2011 by holding the same as not only bad and illegal but also arbitrary in nature but also is an outcome of grudge and malafide;

ii) pass such other order.....”

2. The brief facts of the case are that the applicant while working as Station Superintendent at Humma, in the State of Orissa, was transferred by the Respondent No.2 as Station Superintendent, Baruva Railway Station in the State of Andhra Pradesh by an order dated 08.03.2011. This order was challenged by the applicant in O.A. No. 133/2011, which was disposed of vide the Tribunal's order dated 15.03.2011 by granting liberty to the applicant to file a fresh representation in this regard to the Respondent-authorities. While the applicant made such a representation on 18.03.2011, the same was rejected by the Respondents by an order dated 31.03.2011. The applicant challenged this order in the Tribunal in O.A.No. 200/2011. However, in the meantime, he suffered from hypertension and continued on sick leave from 04.04.2011 to 11.08.2011 as per the advise of his treating doctor. The applicant after being medically fit joined at his new place of posting at Baruva Railway Station in the State of Andhra Pradesh as per the orders passed by the Respondent-authorities earlier. However, he submitted an application to DRM (P), E.Co.Railways, Khurda Road (Respondent No.2) for sanction of commuted leave for the period from 04.04.2011 to 12.08.2011 on the ground of sickness. The commuted leave application has been rejected

by the Respondent No.2 by an order dated 19.10.2011. The applicant being adversely affected has approached the Tribunal praying for quashing of the said order and that the authorities may be directed to sanction the commuted leave in his case for the said period.

3. The Respondents have filed a counter affidavit in this case in which they have submitted that the applicant was earlier Station Superintendent at Humma station and this being a sensitive post no incumbent should be allowed to work in such post for more than four years according to the guidelines. However, because of the administrative exigencies the applicant was allowed to continue beyond his normal tenure by the authorities. However, he was transferred by an order dated 08.03.2011 to Baruva station and on getting such a transfer order the applicant reported sick and, as evidence of his sickness, has submitted a medical certificate issued by the private doctor. He remained in sick leave from 04.04.2011 to 12.08.2011. According to Rules, if a Railway employee is sick he can go to a Private Medical Practitioner immediately but he is to go to the Railway Hospital or to the Chief Medical Superintendent of the Division to get a certificate of sickness for praying for leave. In the present case, the applicant did not go to the nearest Railway Hospital at Berhampur. He also failed to intimate the administration about his availability in the Headquarters. He did not return the keys of the Humma Station and safety equipments for essential running of the station in clear violation of the guidelines. Although, the applicant had approached the Tribunal against the order

of transfer, he finally assumed charge in the new place of posting on 13.08.2011. After assuming such charge, the applicant made an application dated 25.08.2011 to the authorities for sanction of commuted leave. Since the application for leave was not in conformity with the rules, the same was rejected. The Respondents have also quoted the para-538 of the Indian Railway Medical Manual, 2000 Edition, which relates to sick certificate. The said paragraph is quoted below:

“538. Sick Certificate : -

- 1) When a railway employee, who is residing within the jurisdiction of a Railway doctor, is unable to attend duty by reason of sickness, he must produce within 48 hours, a sick certificate from the competent Railway doctor in the prescribed form as given in annexure XI to this chapter.
- 2) Should a Railway employee, residing within the jurisdiction of the Railway doctor, desire to be attended by a non-Railway doctor of his own choice, it is not incumbent on him to place himself under the treatment of the Railway doctor. It is however essential that if leave of absence is required on medical certificate, a request for such leave should be supported by a sick certificate from the Railway doctor.”

4. The applicant has also filed a detailed rejoinder to the counter affidavit. The main submissions made in the rejoinder are that on 04.04.2011 when he became sick, there was no coaching train to send him to Railway Hospital. He continued under the treatment of the private medical practitioner but he asserts that he had handed over the keys and other safety equipments to the person-in-charge in the Humma

Station. The applicant received medical certificate from his treating doctor, who advised him to continue treatment and take rest for two weeks from 18.11.2011. The applicant further submits that according to the Railway Board Circular, IREC, Rule 521, ordinarily the jurisdiction of Railway Medical Officer is taken to cover Railway servant residing within the radius of 2.5 Kms. of the Railway Hospital or health unit. The applicant also quotes para 30.5 of Section-G of Medical Facilities and Medical Examination as quoted in the Bahri's Handbook for Railwaysmen, 2009, which is quoted below:

“30.5 Medical Certificate:

Normally the employee must take a sick memo from his office and report to Doctor. The Doctor may issue him a sick certificate if he feels that he is sick. A ‘sick’ employee cannot leave headquarters without the permission of Doctor. When he is fit, the doctor will issue him a ‘fitness certificate’. In case where an employee takes treatment from a Private Doctor or reports sick away from his headquarters, he must report his sickness immediately to (i) the Rly. Doctors of the area; (ii) if no Rly. Doctor is there within 2.5 Km. of his headquarters or 1 Km. from station in case of outstation, then a PMC should be produced by him which will normally be accepted unless there is doubt. Reporting false sick may attract DAR action.”

The applicant claims that he has complied with all the procedural requirements and, therefore, the authorities are not justified in rejecting his application of commuted leave on the basis of sick certificate given by the Private Medical Practitioner.

5. Having heard Ld. Counsels for both the sides, I have also perused the records of this case.

6. Certain submissions have been made about the transfer of the applicant from Humma to Baruva. It is not required to deal with such submissions because the matter of transfer is not the subject of challenge in this O.A. The applicant has already joined at Baruva Station in the year 2011 in obedience to the order of Respondent-authorities. The only issue to be addressed in this O.A. is whether the rejection of the commuted leave application on the ground that the applicant did not obtain necessary sick certificate from the Railway Doctor is justified as per the Rules.

7. I have seen Rule 538 of the Railway Medical Manual, which the Respondents have brought to the notice of the Tribunal. It is clear that there is no bar for an employee to go to a Private Medical Practitioner as an emergent measure since if someone falls sick he has to first go to a doctor, who is available, and he may not be necessarily a Government or Railway Doctor. But, subsequently, the Railway servant has to go to a Railway Doctor to obtain a sick certificate in the prescribed form. If the leave of the Railway employee is required on medical certificate, a request for such leave should be supported by a sick certificate from the Railway Doctor. In the Rejoinder, the applicant, himself, has quoted from para 30.5 from the Bahri's Handbook for Railwaymen, 2009, which has already been quoted above. In this paragraph also it is stipulated that in a case where an

employee takes treatment from a Private Doctor or reports sick away from the Headquarters, he must report his sickness immediately to the Railway Doctor of the area and if no Railway Doctor is there within 2.5 Kms. of his office headquarters or 1 Km. from station in case of outstation then the P.M.C., i.e. a Private Medical Certificate, should be produced by him which will normally be accepted unless there is doubt. In the present case, there is no evidence that the applicant had gone out of his station. He was available at Humma and he certainly could have gone to Railway Medical Facility at Berhampur. After his emergent treatment by the Private Medical Practitioner, he should have gone to the Railway Doctor for consultation and also for obtaining the sick certificate. As a Railway employee, he is bound by the Railway Rules and if the departmental rules lay down that he has to produce the certificate of Railway Doctor in order to apply for commuted leave, he should abide by that Rule. As an individual human being, he could go to any doctor of his choice for treatment. In an emergency, he can go to any doctor whether Private or Government because that is his right to life. But since he is employed by the Railways and he claims commuted leave on the basis of a medical certificate, he should go to the Railway Doctor as soon as possible and get appropriate medical certificate in the prescribed form. Therefore, strictly speaking, the applicant is seeking relief without he, himself, meeting the preconditions required under the Rules. I have a serious doubt on the point whether there were genuine grounds on which he could not produce himself before the Railway

doctor or whether there were extenuating circumstances favouring his case. But, I have not found a satisfactory answer from the facts as submitted before me. If the grant of commuted leave is contingent upon the production of a sick certificate from a Railway Doctor, the Tribunal cannot relax the condition. However, the Respondents are also advised not to take a stand that would put the applicant into trouble and harassment. They should not pass an order, which will cause a loss of service benefits to the applicant. Therefore the Respondents are also directed to regularize the period from 04.04.2011 to 12.08.2011 as per the Leave Rules applicable to the applicant so that he does not suffer any break of service and his pensionary and retirement dues are well protected.

8. As a result of the discussions made above, I do not find any merit in the O.A., which is dismissed, along with the directions given to the Respondents as stated above. No costs.

(R.C.MISRA)
Member (Admn.)

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