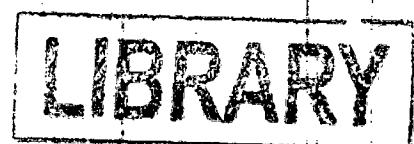


**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, 234/4 A.J.C Bose Road Nizam Palace Kolkata**

ORDER SHEET



COURT NO. : 1

27.08.2018

O.A./350/117/2016
(SB)

PAWAN KUMAR SINGH
-V/S-
EASTERN RAILWAY

ITEM NO:25

FOR APPLICANTS(S) Adv. : Mr. S. K Datta

FOR RESPONDENTS(S) Adv. : Mr. S. Banerjee

Notes of The Registry	Order of The Tribunal
<u>ORDER (ORAL)</u>	
<p><u>Mr. A.K Patnaik, Member (J):</u></p> <p>Heard Mr. S. K Datta, Id. counsel for the applicant and Mr. S. Banerjee, Ld. counsel for the official respondents.</p> <p>2. In this O.A, notices were issued on 19.02.2016 and after filing of reply and rejoinder, the pleadings were completed and the matter was listed for hearing. After several occasions, today ultimately the matter was taken up.</p> <p>3. Without divulging to the entire issue, Mr. Datta, Ld. counsel for the applicant pin pointedly brought to my notice an order passed by the Chief Commercial Manager, i.e, the Respondent No. 3, on the appeal made by the applicant alleging injustice being meted out to him as 594 days of leave has been sanctioned without pay by the immediate superior authority, i.e the Divisional Railway Manager, who is the Respondent No. 4. Ld. counsel for the applicant pin pointedly brought to my notice the observation made by Respondent No. 3 in his appellate order dated 10.05.2013, which reads as under:</p> <p style="padding-left: 40px;">“ It is understood from the above that the staff Sri Paswan Kumar Singh, Ex. Sr. BC/TBAE now working at SDAH Division as</p>	

CCC/SDAH not at all responsible for non-joining duty from 19.08.1998 to 01.03.2001 and accordingly his leave period from 19.08.1998 to 01.03.2001 may be re-examined and regularized by the concerned authority as per Rule (503 Chapter – 5 of Leave Rules- Indian Railway Establishment Code, Volume – I), to avoid future complication if any.”

4. Ld. counsel for the applicant submitted that as the Respondent No. 3, i.e., the Chief Commercial Manager, is the Principal HOD and higher in rank than the DRM (Respondent No. 4), therefore, the Respondent No. 4 ought to have obeyed the instructions/ advice of the Respondent No. 3 and consider the period of leave which has been treated as without pay keeping in mind the provisions enumerated in Rule 503 Chapter- 5 of Leave Rules of the Indian Railway Establishment Code, Volume- 1.

Therefore, Mr. Datta, Ld. counsel for the applicant to sum up his arguments submitted that this impugned order under Annexure A-25, dated 26.03.2015, be quashed and the matter may be remanded back to the said authority, i.e., the Respondent No. 4, to reconsider the entire issue, particularly, grant of leave, keeping in mind the observations and advice rendered by the Respondent No. 3 in the appellate order as per under Annexure A-23.

5. On the other hand, Mr. S. Banerjee, Ld. counsel appearing for the official respondents vehemently opposed the submission made by Mr. Datta, Ld. counsel for the applicant, by stating that when admittedly the Respondent No. 4 is a lower rank in the hierarchy than the Respondent No. 3 and a case of disobedience has been meted out against the applicant, the applicant should have at first approached the Respondent No. 3 ventilating his grievance before approaching this Tribunal by filing the instant O.A and, therefore, this O.A deserves to be dismissed being hit by Section 20 of the Administrative Tribunals Act, 1985.

6. Mr. Banerjee, Ld. counsel for the respondents further brought to my notice Para 3 in the reply statement filed by the official respondents, in which the entire issue has been exhaustedly dealt with and submitted that those 594 days has been rightly sanctioned as without pay besides 175 days L.A.P, 254 days L.H.A.P. The respondents in their reply statement have stated as under:

" 3. That before dealing with the statements made in the said application in seriatim the following facts are being brought to the notice of this Learned Tribunal: Reply in O.A No. 350/000117/16 in continuation with OA No. 350/1353 of 2014 directing this office to take necessary action. Hon'ble CAT's order dated 27.01.2015 wherein the Hon'ble Tribunal has directed the Rly. Administration to re-examine Sri Singh's leave from 19.08.98 to 01.03.2001. In this connection it will be worth mentioning that Sri Paswan Kr. Singh, Ex. Sr. PC/BDC, while under order of transfer to RPH had filed OA 965/98 challenging the transfer order. To avoid the transfer he was on sanctioned leave from 13.5.98 and he went on extending the leave till 18.8.98 i.e the date after the interim judgment passed by the Hon'ble CAT on 17.8.98. In the interim order the Hon'ble CAT has directed the Rly. Administration to maintain status-quo for a period of fortnight. In CAT/Calcutta's order on 7.9.09, the above interim order was vacated and directed this office not to take any coercive measure against the petitioner to join at RPH. However, in its final judgement, the Hon'ble CAT/ Kolkata asked the Rly. Administration to dispose of the petitioner's representation dt. 13.8.98 with a speaking and reasoned order within two months. Accordingly, speaking order was issued on 7.7.99 advising Sri Singh to resume duty at RPH. Sri Singh again moved to CAT/ Kolkata and lodged O.A No. 920/99 against the speaking orders. However, Sri Singh ultimately withdrew the second court case (OA No. 920/99) on 1.3.99 and resumed duty at RPH on 2.3.01. Now, as per

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CS/BDC's memo No. BDC/Com/Staff /98 dt. 19.8.98, while Sri Singh came to join his duty, who denied the same on the basis of CAT's interim orders passed on 17.8.98 to maintain status-quo. But after vacation of said order Sri Singh did not resume his duty though spare letter was issued by BS/BDC on 21.7.99, nor did he submit any application for leave. Only after he withdrew the second court case 920/99, he resumed duty on 23.01 at RPH. The entire absence period was put up to the competent authority for regularization for the sake of service continuity of Sri Singh and regularized against leave as 175-LAP, 204-LHAP and 549 days' as LWP, which was reviewed and made known to Sri Singh through a memorandum No. EAC/2/Com. Clerk/Misc./PKS dated 26.3.15."

7. Mr. Banerjee, Ld. counsel for the respondents to sum up his arguments brought to my notice the impugned order in the instant O.A , in which it has been stated that Respondent No. 4 has obeyed the advice of Respondent No. 3 and reconsidered the entire issue keeping in mind the rule position of the Railways which is clearly stated in the said order.

8. After hearing the rival submissions of ld. counsel for both parties, I feel it proper to dispose of the O.A by quashing the order dated 26.03.2015, issued by the Respondent No. 4 and remand the matter back to the said Respondent No. 4, who will examine the issue, so far as grant of leave is concerned (in the instant applicant), and pass a reasoned a speaking order keeping in mind two aspects :

- (i) The observations made by the Respondent No. 3, when the applicant is not at all responsible for non joining of duty from 19.08.1998 to 01.03.2001,
- (ii) to the provisions enumerated under Rule 503 Chapter- 5 of Leave Rules of the Indian Railway Establishment Code, Volume- I.

The reasoned order shall be passed communicating the same to the applicant within a period of 3 months from the date of receipt of a copy of this order. After such consideration, if the respondent have subjective satisfaction that the applicant's grievance is genuine and certain omissions and commissions have been crept in, then they may rectify and pass appropriate order rectifying the said leave period as per his entitlement in accordance with law.

9. Accordingly, this O.A stands disposed of. No orders as to costs.


(A.K. PATNAIK)
MEMBER (J)

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