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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/126/2018

Date of order : 23.2.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

DR. JAGAT KISHORE PRASAD

S/o Sri Sukhdeo Prasad,
Sr. DMO(SG), IRMS Jamalpur,
Eastern Railway, Dist. - Munger,
Bihar, Pin - 811214,
R/o Quarter No. 3,
3 Jimkhana Road, East Colony,
Jamalpur, Dist. - Munger,
Bihar, Pin - 811214.

...APPLICANT.

VERSUS

1. Union of India, through
The General Manager,
Eastern Railway,
Fairly Place,
Kolkata - 700001.
2. Secretary (E)
Railway Board,
Rail Bhawan,
Raisinha Road,
New Delhi - 110001.
3. Member-Staff
Rail Bhawan
Raisinha Road,
New Delhi - 110001.
4. Chief Personnel Officer,
Eastern Railway,
Fairly Place,
Kolkata - 700001.
5. Chief Medical Director,
Eastern Railway,
14 Strand Road,
12th Floor,
Kolkata - 700001.
6. Chief Workshop Manager,
Jamalpur Locomotive Workshop,
Jamalpur,
Dist. - Munger
Bihar - 811214.

..RESPONDENTS.

For the applicant : Mr.S.Sen, counsel
Mr.D.K.Mukhopadhyay, counsel

For the respondents: Mr.P.K.Roy, counsel

O R D E R (ORAL)

Per Ms. Manjula Das, Judicial Member

Mr.S.Sen, Id. Counsel assisted by Mr.D.K.Mukhopadhyay, Id. Counsel appeared on behalf of the applicant and Mr.P.K.Roy, Id. Counsel appeared on behalf of the respondents.

2. By making this OA the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

- a) An order be passed directing the respondent authorities to recall and/or cancel the order dated 18.9.2017 being Annexure A/8 hereto and to issue order treating the applicant's absent period from 23.11.1998 to 26.12.2001 for pursuing higher scientific and technical study of MS Degree as Extraordinary Leave for counting the said period as qualifying service for promotion and to consequently issue orders shifting back the dates of the applicant's promotions to Senior Scale in the post of DMO w.e.f. 9.3.2002, promotion to JA Grade w.e.f. 9.3.2007 and promotion to Selection Grade w.e.f. 9.3.2011.
- b) Further order directing the respondent authorities to make payment of the difference of pay and allowance on account of shifting back of the dates of his promotions.
- c) Any other order or orders as t. this Hon'ble Tribunal may seem fit and proper in the facts and circumstances of the present case.

3. The brief facts of the case as narrated by the Id. Counsel for the applicant is that the applicant was appointed as ADMO (IRMS) in Eastern Railway. On 17.11.1998 the applicant submitted an application for grant of study leave as EOL and joined the PG(MS) course on 23.11.1998. The respondents rejected the application for study leave on 3.1.2001 and the applicant resumed back to his duty on 27.12.2001 as ADMO Kanchrapara, Eastern Railway. On 24.10.2002 the respondents regularized the period of absence by granting LWP instead of EOL. On 11.4.2005 the applicant was promoted to DMO w.e.f. 11.4.2005. On 5.2.2009 the applicant made a representation before the respondent authorities for conversion of the LWP to EOL for the period from 23.11.1998 to 26.12.2001 and thus to consider the same as qualified service effective for promotion and accordingly grant him

promotion to the post of Sr. DMO w.e.f. 9.3.2007 as has been done in respect of his batch mates. On 7.1.2009 the applicant was promoted to the post of Sr. DMO and again the applicant prayed that if the aforesaid period of LWP be treated as EOL, the applicant would have got the promotion as Sr.DMO w.e.f. 9.3.2007 instead of 7.1.2009. By a subsequent order dated 14.2.2014 the respondents granted the Selection Grade to the applicant w.e.f. 7.1.2013, whereas if the applicant's aforesaid period for pursuing higher study was treated as EOL, he would have got the promotion to Selection Grade w.e.f. 9.3.2011 instead of 7.1.2013.

The applicant then made a representation to the respondent No.4 requesting to regularizing the aforesaid period from 23.11.1998 to 26.12.2001 spent in pursuing higher study of MS as Extraordinary Leave instead of LWP so as to count the said period as qualifying service for promotion after return from higher study and on that basis three promotions would have been antedated. But such representation yielded no result. On the other hand IRMS officers who were junior to him were given promotion from earlier dates thus depriving him.

The applicant sent lawyer's notice dated 8.8.2017 to the respondents No. 1 & 2 requesting them for treating the period from 23.11.1998 to 26.12.2001 as EOL and antedate all his three promotions on the basis of that. On receipt of such lawyer's notice the respondents vide their reply dated 18.9.2017 stated that the said period was treated as unauthorized absence and therefore the same could not be taken into account as qualifying service for promotions.

Hence the applicant has approached this Tribunal in the present OA challenging the impugned order dated 18.9.2017.

4. Heard both the Id. Counsels for the parties and perused the pleadings and materials placed before us.

5. From the foregoing discussions it is clear that the applicant joined in RH/JMP on 9.3.1998 as ADMO and was working for about 9 months. He applied for EOL on 17.11.1998 for 3 years commencing from 23.11.1998. Admittedly his leave application was rejected and communication was sent to



him in January, 2001. Undisputedly the applicant was on unauthorized absence since 23.11.1998. Hence the disciplinary proceeding was initiated against the applicant vide order dated 7.8.2002. The Chief Medical Director vide order dt. 24.10.2002 regularized the period of absence from 23.11.1998 to 26.12.2001 as LWP and issued a 'warning' to the applicant as hereunder :

"Dr.J.K.Prasad is hereby warned and to be more careful in complying with the Railway Services and Conduct Rules and will not repeat the same in future. This lapse will be noted in his Personal File.

Dr. J.K.Prasad is directed to acknowledge the receipt of this order."

The applicant thereafter gave notice to the department through Advocate's notice dated 8.8.2017 to which the respondents vide their letter dated 18.9.2017 has already given reply. The letter dated 18.9.2017 reads as under :

"Dr. J.K.Pasad, now working as Sr.DMO(S)/JMP joined this railway on 9.3.1998 (AN). Before joining this Railway he appeared for PG Entrance Exam. He applied for EOL for 03 years w.e.f. 23.11.1998 for pursuing MS/General Surgery at RMCH/RNC/Bihar which was not sanctioned by the then General Manager, stating the fact that this Railway is running with shortage of doctors and Dr. Prasad being a new corner could not be sanctioned EOL for study purpose.

However, Dr.Prasad went on authorized absence w.e.f. 23.11.1998 and after completion of the course reported to CMD's office on 27.12.2001. As per extant rules DA action was initiated against Dr. Prasad and ultimately, order was passed in respect of treating the period of unauthorized absence from 23.11.1998 to 26.12.2001 as LWP i.e. EOL. Accordingly at the time of considering his promotion in Sr. Scale and JAG total period of unauthorized absence i.e. the period for EOL (not for study purpose) has not been taken into account as qualifying service for promotion to Sr. Scale and JAG."

From the foregoing discussions it is abundantly clear that the applicant remained unauthorized absent from 23.11.1998 to 26.12.2001 i.e. for long 3 years that too without the permission or sanction of the competent authority even if for further studies, which is not acceptable under the law. We do not find any illegality or irregularity in the action of the respondent authorities. Hence, we are of the opinion that there is nothing further to be adjudicated in this matter and the present OA is liable to be dismissed.

7. The OA is accordingly dismissed. No order as to costs.

(DR. NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

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(MANJULA DAS)
JUDICIAL MEMBER

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