



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

CPC 135/2015
OA No.1177/2014
(Disposed of on 18.12.2014)

Reserved on - 04/10/2016
Pronounced on - 06/10/2016

PRESENT:

THE HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, JUDL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMIN. MEMBER

.....

Shrawan Pandey, son of Shri Narsingh Pandey, aged about 52 years by faith Hindu by occupation service as Senior Commercial Clerk, Sealdah under Sr. Divisional Commercial Manager, Sealdah, office of the Divisional Commercial Manager, Eastern Railway, Sealdah, Kaiser Street, Calcutta-700 014 and residing at O.S. 115, North Sealdah Road, Calcutta-700 009.

.....Applicant

-Versus-

For the Applicant - Mr. S.Samanta, Counsel

1. Shri R.K.Gupta, General Manager, Eastern Railway, 17, Netaji Subhash Road, Calcutta-700 001.
2. Shri P.K.Sinha, Chief Commercial Manager, Eastern Railway, 3, Koilaghat Street, Calcutta-700 001.
3. Shri N.K.Prasad, Chief Personnel Officer Eastern Railway, 3, Netaji Subhash Road, Fairle Place, Calcutta-700 001.
4. Shri C.R.Jha, Senior Divisional Commercial Manager, Eastern Railway, Sealdah, DRM Building, Kaiser Street, Calcutta-700 014.
5. Shri U.S.Lahiri, Senior Divisional Personnel Officer, Eastern Railway, Sealdah, DRM Building, Kaiser Street, Calcutta-700 014.

.....Respondents

For the Respondents - Mr. S.Banerjee, Counsel

ORDERJUSTICE V.C.GUPTA, JM:

By means of this application, the applicant has sought the compliance of the order dated 18.12.2014 in Original Application No. 350/01177/2014. The relevant portion of the order is extracted herein below for ready reference:

"10. Since in the issuance of the transfer order the aforesaid Board's directive has not been followed, the transfer order is quashed, however, with liberty to the respondents to act in accordance with law.

11. The learned counsel for applicant submits that despite a specific stay and direction to release salary of the applicant, the same has not been done. Hence, the respondents are also directed to release salary of the applicant from the date the stay order was granted in favour of the applicant.

12. OA is accordingly disposed of. No costs."

2. The Learned Counsel appealing for the Respondents filed affidavit of compliance on 18/11/2015. In paragraph 4 of the said affidavit, it has been stated that the Applicant is a Senior Commercial Clerk was working in the Office of the Senior Divisional Commercial Manager, Sealdah. He was transferred to Sealdah Station Booking Office under the Station Manager/Sealdah vide office order dated 11/09/2013. But he did not join his place of posting at Sealdah Station and tendered sick certificate of Railway Hospital from 19/05/2014 to 16/06/2014 and certificate from a Private Doctor from 15/06/2014. In the meantime the name of the applicant was struck off from the attendance register of Senior Divisional Commercial Manager,



Sealdah on 17/06/2014 and was spared on 17/06/2014. Copy of the sparing order dated 17/06/2014 was also sent to him by post at his residential address which he refused to accept on 19/06/2014. He was transferred to Asansol Division vide Office Order dated 08/08/2014. He filed Original Application challenging his order of transfer before this Tribunal which was disposed of on 18/12/2014 and the transfer order of the Applicant was cancelled by the competent authority vide order dated 20/02/2015. He was accordingly, informed to report to Station Manager/Sealdah for assuming his duty at Sealdah Booking after getting fit certificate from Railway Doctor. But he did not report to the Station Manager till date. It has further been stated by the Respondents that the applicant submitted a letter along with a copy of fit certificate issued by a Private Medical Practitioner on 05/11/2014 and the copy of the interim order dated 26/09/2014 of this Tribunal. However, he did not present himself personally with the fit certificate issued by the Private Medical Practitioner before the competent official of the office of the Senior DCM, Sealdah or Station Manager, Sealdah. Therefore, he could not be sent to Railway Hospital for his medical examination for fitness or otherwise as per extant rules as his period of sickness was more than 03 days.

Shri Debojit Samanta, Advocate of the applicant submitted a letter dated 02/03/2015 to Senior Divisional



Commercial Manager, Sealdah challenging the order issued on 20/2/2015 to the Applicant. Shri Samanta was suitably replied by the office on 11/03/2015. Again Shri Samanta sent a letter dated 27/04/2015 and reply of the same was given to him on 05/05/2015 intimating about the wrong date of the order of transfer mentioned in the judgment of this Tribunal dated 18/12/2014.

It has further been stated that the applicant filed the O.A. seeking of cancellation of his transfer order from the office of the Senior DCM to Sealdah Booking Office dated 11/09/2013 and cancellation of his transfer order from Sealdah Booking office to Asansol Division dated 08/08/2014. But the Tribunal vide order dated 18/12/2014 only cancelled the order dated 08/08/2014 for non compliance of Railway Board's circular dated 19/06/2014. Hence, the applicant was informed vide letter dated 20/02/2015 to join his last place of posting at Booking Office Sealdah but the applicant instead of joining at his last place of posting sent a letter through his advocate to withdraw the office order. In this manner, it has been submitted that the order of this Tribunal has been fully complied with. There is no wilful disobedience of the order of this Tribunal. Hence, this CPC is liable to be dismissed.

3. We have heard the learned counsel for the parties at length.

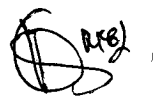
4. On perusal of records it reveals that the Applicant wilfully evading to join after cancellation of his order of transfer. He



is a Government servant and is fully aware that after long medical leave how he shall report to duty and what the Rules in this regard. This fact has not been disputed by filing any affidavit that the applicant was not personally present on 05/11/2014 along with fitness certificate of a competent authority. He still wants to take advantage of his absence and asked for release of salary without reporting to duty. If the applicant was aggrieved by the order of cancellation of his order of transfer, in pursuance of the order of this Tribunal, he should have taken the recourse known to law. The applicant did not join his duty even after the cancellation of his order of transfer in pursuance of the order of this Tribunal. He being a Government servant shall have to abide the Rules and discipline. He has no right to make a choice of posting. He was asked to join at Sealdah Station and not at Asansol, and, therefore, he should have first joined there after becoming fit and thereafter may claim the salary and not prior to it. Now not joining at his place from where he was transferred after the order of cancellation of his transfer order amounts to absent from duty which is unbecoming on the part of a Government servant.

5. In view of the discussions made above, we find no merit in this CPC which is accordingly dismissed. Notices, if any, issued to the Respondents are discharged.

However, it is made clear that as soon as the applicant reports to duty, question of payment of salary and regularization of



the period of absence shall be considered by the Respondents, as
per extant Rules.

(Jaya Das Gupta)
Member (Admn.)

Knm

(Justice V.C. Gupta)
Member (Judl.)