

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O.A.No.260/00804/2016**

Reserved on : 11.04.2019  
Pronounced on: 14.05.2019

**CORAM:**

**HON'BLE MR.GOKUL CHANDRA PATI, MEMBER (ADMN.)  
HON'BLE SWARUP KUMAR MISHRA, MEMBER (JUDL.)**

Balaram Behera, aged about 39 years, Son of Janardan Behera, At-Gajapatinagar-2, PO. Palur, PS. Humma, Dist. Ganjam (Odisha)

...Applicant

By the Advocate(s)-M/s.G.N.Rout, R.N.Behera, R.K.Dash

**-VERSUS-**

1. Union of India represented through General Manager, East Coast Railway, Bhubaneswar, Rail Bhawan, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, Khurda, East Coast Railway, Khurda Road Division, At/Po/Ps. Jatni, Dist. Khurda.
3. Chief Personnel Officer, East Coast Railway, Rail Vihar Chandrasekharpur, Bhubaneswar-23, Dist. Khurda.
4. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/Po/Ps.Jatni, Dist. Khurda.
5. Senior Section Engineer (P.Way), SSE/PW, East Coast Railway, Baranga, At/Po. Baranga, Dist. Khurda.

...Respondents

By the Advocate(s)- Mr.D.K.Mohanty-A

**ORDER**

GOKUL CHANDRA PATI, MEMBER(A)

By way of filing this OA, the applicant seeks the following

reliefs:-

- “(i) The impugned order dated 29.06.2016 at Annexure-13 passed by the DRM, Khurda Road Division be set aside;
- (ii) The respondents be directed to consider the case of applicant afresh in keeping with extant Rules,

Circulars and provisions of law and allow the applicant to join in his post by regularizing the irregularities happened in his service due to his higher study followed by prolonged illness, within a stipulated time;

- (iii) To pass any other order(s) as this Hon'ble Tribunal deems fit and proper in considering the facts and circumstances of the original application."

2. The applicant was selected for the post of the Supervisor (P. Way) after appearing in the test. He was duly appointed and he also joined for training for the post on 1.7.2005. While under training, the applicant received the information that he has been selected for higher study (i.e. M.Sc.) in IIT, Kharagpur and in July, 2006 he took admission in IIT. He successfully completed the course from IIT in July, 2008 and he claims that while he was planning to join his post, he fell ill from July, 2006 to June, 2014.

3. On 28.6.2014 (Annexure-8), the applicant submitted a representation to join. This was followed by another representation to the CPO (respondent no.3). On 5.4.2015, he was recovered fully as per the medical certificate. He submitted another representation to the respondent no.2, but did not receive any response.

4. Then the applicant filed the OA No. 175/2016 which was disposed of directing the respondents to consider his case and dispose of by passing a speaking order (Annexure-12). Thereafter, the respondent no.2 passed the order dated 29.6.2016 (Annexure-13), rejecting the representation of the applicant. This order is challenged in this OA mainly on the ground that the impugned order has been passed in violation of the provisions of the Master Circular No. 29, IREC Volume-I and the Railway Servant Study

Leave Rules. It is stated that after his recovery from illness, he was running from pillar to post for his legitimate entitlement. It is stated that the applicant had completed the training when he proceeded on leave for higher study. It is therefore, stated that as per the Master Circular No. 29, a 14 day notice is required before terminating his service and since no prior notice was issued, the termination order is illegal and arbitrary. It is further averred that the applicant was selected for a permanent post and hence, he should not be treated as a temporary staff. His service cannot be treated as deemed termination since no prior notice was issued to him. The applicant had proceeded for higher study by submitting an application for study leave to the authority and while his study leave was under process, he was compelled to take admission for higher study. It is also stated that no order has been issued terminating his services.

5. Counter has been filed by the respondents, not disputing the facts. It is stated that the applicant had completed some institutional and field training on 5.7.2006, when he was advised to report to the Training Institute at Kharagpur for second phase training. It is stated in the Counter that instead of reporting to the institute for second phase training, he absconded. The counter denies the contention of the applicant that he had submitted a study leave application before proceeding for higher study. It is also stated as trainee, he was not entitled for study leave. Then after lapse of more than 8 years, the applicant submitted a representation on 7.4.2015 (Annexure-11). This representation has been considered and rejected vide the speaking order dated

29.6.2016 (Annexure-13) giving the reasons in detail for rejecting the claim of the applicant.

6. The applicant submitted the Rejoinder mainly reiterating the averments in the OA. The applicant has enclosed the copy of the application stated to have been submitted by the applicant before proceeding for admission for higher studies.

7. We have heard learned counsels for the applicant and the respondents and also considered the pleadings as well as the submissions by both the parties. The respondents' counsel has also furnished his written notes of submission enclosing 2 judgments of Hon'ble Apex Court. The applicant's contention that he had completed the training before he proceeded for higher study is incorrect, since in his application dated 4.7.2016, he has stated that he was undergoing field training and has mentioned his designation as Appr. Supervisor. Hence, he was in the midst of the training before he abandoned it for higher study, without approval of the competent authority. It is strange to note that the applicant has averred that he was not issued a prior notice before terminating his service as a trainee, but he did not take the approval of the competent authority before he proceeded to take admission in the M.Sc. Course in IIT, Kharagpur. While the applicant was understandably keen to pursue higher studies, he should have the minimum courtesy to complete the formalities before proceeding for higher study instead of just abandoning the training after submission of the application dated 4.7.2016. The applicant has himself mentioned in his pleadings that while the application for study leave was under process, he proceeded for

higher study without waiting for the order of the competent authority and the reasons for such urgency have not been disclosed by the applicant in his pleadings.

8. Further, after proceeding on leave, the applicant never bothered to remind the authorities to approve his application dated 4.7.2016 and after completion of his course in July, 2008, he never informed the respondents about his illness. The applicant remembered about the post on 28.6.2014 (Annexure-8), after about 6 years of completion of his higher studies in 2008 when he submitted representation for rejoining with medical certificates. Nothing prevented the applicant to have reported to the Railway authorities in 2008 informing about his illness. The reason for not informing the authorities about his illness from 2008 to 2014 has not been disclosed by the applicant in his pleadings. Hence, from the facts of the case, the applicant has not been able to project a good case in his favour.

9. The respondents, in the impugned order dated 29.9.2016 (Annexure-13), have referred to para 301 sub para (3) of the Indian Railway Establishment Code (in short IREC) Volume-I, which states as under:-

".....As per para-301, sub (3) note IREC, Vol.I "No notice of termination will be necessary in a case where temporary railway servant is deemed to have resigned his appointment and ceased to be in employment if such a person remained absent on extra ordinary leave beyond a limit of 5 years for whom no show cause notice is required as in the case of permanent railway Servants....."

10. In reply to the averments in the Counter about para 301 of the IREC, the applicant in the Rejoinder has stated that the applicant be treated as permanent railway servant, not a temporary

railway servant as he was recruited against a permanent post. It is also stated that as per the para 556 of the IREC pertaining to study leave, the higher study completed by the applicant is closely connected to their work. Regarding non-communication to the authorities after completion of higher study, the applicant has mentioned the following in the Rejoinder (para 7):-

“7. That it is further respectfully submitted that though the applicant has not specifically mentioned about illness in his representation in Annexure-8 and 9 but he has categorically stated that, due to personal reasons he was unable to communicate and report the authority after completion of his higher study.”

The applicant has referred to the Annexure- 10 for the reason for non-communicating the authorities after completion of higher studies. The Annexure-10 of the OA is the copy of the medical certificates. It is not shown in any of the medical certificate that the applicant was incapable of writing a letter informing the authorities after completion of higher studies. Moreover, no illness was mentioned by the Applicant in his representation dated 28.6.2014 and dated 16.10.2004 (Annexure-9) to the Railway authorities which are submitted after 8 years from the date when the applicant proceeded on his own for higher studies.

11. No satisfactory reason has been furnished by the applicant while denying applicability of the para 301 sub-para (3) to this case as averred by the Respondents. The fact is that the applicant has remained absent from the duty for about 8 years on the ground of higher study and his illness as claimed by the applicant, without approval of the competent authority. The explanations of the applicant for not informing the authorities after completion of his higher study in 2008 and for not obtaining approval of the

competent authority before proceeding for higher studies are not at all convincing. Clearly, he had remained on unauthorized absence for more than 5 years, for which the applicant will be deemed to have resigned from his post and no notice in such case is necessary as provided under para 301 sub-para (3) of the IREC, Volume-I.

12. In the circumstances as discussed above, we are not inclined to allow the reliefs prayed for in the OA or interfere in the matter. The OA, being devoid of merit, is liable to be dismissed. Accordingly, OA is dismissed with no order as to cost.

(SWARUP KUMAR MISHRA)  
MEMBER(JUDL.)

(GOKUL CHANDRA PATI)  
MEMBER(ADMN.)

*BKS*

