

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. O.A. 350/01360/2014

Date of order: 22.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Debabrata Mazumder,
Son of Late Madhusudan Mazumder,
Aged about 53 years,
Working as Deputy CTI/Howrah,
Under the over all control of
Divisional Railway Manager,
Eastern Railway, Howrah,
Residing at 10/1, Raj Krishna Kumar Street,
Post Office - Belurmath,
Police Station - Bally, District-Howrah,
Pin Code - 711 202.

.. Applicant

- V E R S U S -

1. Union of India,
Through the General Manager,
Eastern Railway,
17, Netaji Subhas Road,
Kolkata - 700 001.
2. Chief Personnel Officer,
Eastern Railway,
Fairlie Place,
17, Netaji Subhas Road,
Kolkata - 700 001.
3. Chief Commercial Manager,
Eastern Railway,
3 No. Koilaghat Street,
Kolkata - 700 001.
4. Divisional Railway Manager,
Eastern Railway,
Howrah, P.O. & Dist. Howrah,
Pin Code - 711 101.
5. Sr. Divisional Personnel Officer,
Eastern Railway,
Howrah, P.O. & Dist. Howrah,
Pin Code - 711 101.
6. Sr. Divisional Commercial Manager,
Eastern Railway,
Howrah, P.O. & Dist. Howrah,

17/9

Pin Code - 711 101.

7. Additional Divisional Railway Manager,
Eastern Railway, Howrah.

.. Respondents

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. A.K. Guha, Counsel

O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard Ld. Counsel for both sides.

2. This O.A. has been filed seeking the following reliefs:-

"a. To set aside and quash impugned office order No. EAC(1)/150/2013 dated 7.11.2013 as far as applicant is concerned for treating the period from 28.12.2011 to 19.10.2012 as Leave Without Pay (LWP).

b. To set aside and quash impugned letter No. EAC(1)/Dy. CTI/Misc./2008 dated 10.9.2012 issued by Sr. DPO, Eastern Railway, Howrah.

c. To direct the respondents to regularise the sick period of the applicant from 28.12.2011 to 19.10.2012 first against LAP and then against LHAP and pay salary and allowances for the said period.

d. To direct the respondents to treat the period from 07.12.2012 to 20.12.2012 where applicant was sick under RMC (Railway Medical Certificate) as LAP and pay salary and allowances for the said period.

e. To direct the respondents to pay interest @ 10% p.a. on the amount of salary so paid.

f. Any other order or order(s) as the Hon'ble Tribunal deems fit and proper."

3. The nitty, gritty, the gist and kernel of the germane facts absolutely necessary for disposal of this O.A. would run thus. The applicant was Deputy Chief Ticket Inspector, Howrah as on the date of date of filing of this O.A. and now he is working as Chief Ticket Inspector. According to him he is suffering from Cancer for which he

took prolonged treatment between 28.12.2011 and 10.8.2012 and he produced the necessary medical certificates also. When he wanted that his sick period should be treated as leave period, the respondent authorities passed the impugned order as per Annexure A-11 and it is extracted hereunder for ready reference:-

" EASTERN RAILWAY

No. EAC(1)/Dy. CTI/Misc./2008 Howrah, dated: 10.9.12

Sri Debabrata Mazumder,
Dy. CTI/HWH,
10/1, Raj Krishan Kumar Street,
P.O. Belurmath,
Dist - Howrah,
Pin - 711202.

Sub:- Regularisation of sick period from 28.12.2011 to still (10.8.2012).

Ref:- Your application dated 18.8.2012.

In reference to above, it is to inform you that your appeal was put up to competent authority who has treated your sick period from 28.12.2011 to still (10.8.2012) as LWP.

Accordingly, your sick period from 28.12.2011 to still (10.8.2012) has been treated as LWP.

He has also ordered you to report to nearest Rly. Hospital.

Hence, you are also requested to report to nearest Rly. Hospital under intimation to this office.

(S.K. Chattopadhyay, APO-I)
For Sr. Divl. Personnel Officer/Howrah"

4. Challenging and impugning it, this O.A. has been filed. The Ld. Counsel for the applicant would invite the attention of this Court to the indisputable and indebutable fact to the effect that the applicant is having 300 days of LAP and also about 400 days of LHAP; even then the authorities for the purpose of punishing the applicant treated the sick period as Leave Without Pay.

5. Per contra, the Ld. Counsel for the respondents without denying the availability of leave details of the applicant as projected by Ld. Counsel for the applicant, would submit that the competent authority invoking para 503 of IREC Vol. I, 5th Edition held correctly that "leave is not a matter of right and the authority could grant leave without pay."

6. The Ld. Counsel for the applicant would also narrate with reference to the Hon'ble Calcutta High Court's order as to how the applicant was forced to approach the Hon'ble High Court challenging the transfer order as against him. At present we are not concerned with the transfer order and the stay order etc.

7. The point for consideration is as to whether the competent authority was justified in treating the sick period as leave without pay, despite adequate quantum of leave was at the applicant's credit.

8. The general proposition that leave cannot be claimed as a matter of right and leave of any type can be revoked or refused by the competent authority, is a well recognised one under the service jurisprudence. A Rule has to be implemented reasonably and not arbitrarily. Trite the appropriate proposition of law is that an order should be passed judiciously and not improperly. Here in the impugned order we could see no reason for rejecting the prayer for leave even though the applicant had leave with pay at his credit. As such, any order passed without appropriate reason would be considered as a nullity. We are of the considered opinion that whenever any representation is made it should be replied by stating reasons adhering to the principle of natural justice. The maxim *jura naturae sunt immutabilia* (the laws of nature are unchangeable) would be very much applicable in matters

of this nature. The Hon'ble Apex Court in *Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and Others*, reported in (2010) 3 SCC 732 held thus :

"40. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." [Vide *State of Orissa Vs. Dhaniram Luhar* AIR 2004 SC 1794; and *State of Rajasthan Vs. Sohan Lal & Ors.* (2004) 5 SCC 573].

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide *Raj Kishore Jha Vs. State of Bihar & Ors.* AIR 2003 SC 4664; *Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors.* (2008) 3 SCC 172; *Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors.* (2008) 9 SCC 407; *State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi* AIR 2008 SC 2026; *U.P.S.R.T.C. Vs. Jagdish Prasad Gupta* AIR 2009 SC 2328; *Ram Phal Vs. State of Haryana & Ors.* (2009) 3 SCC 258; *Mohammed Yusuf Vs. Faij Mohammad & Ors.* (2009) 3 SCC 513; and *State of Himachal Pradesh Vs. Sada Ram & Anr.* (2009) 4 SCC 422].

42. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected."

9. As such, in our opinion, here the discretion has been exercised by the administrative authority without any proper or valid reason. As such, it is liable to be set aside.

10. Accordingly, we set aside the impugned order and issue the following direction:-

The competent authority shall adjust the sickness period first towards LAP and if that is not sufficient his LHAP shall be adjusted doubly so that his pay is not affected. Accordingly, this exercise shall be undertaken within two months from the date of receipt of a copy of this order by the respondent authority concerned.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

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10. Accordingly, we set aside the impugned order and issue the following direction:-

The competent authority shall adjust the sickness period first towards ^{LHAP}~~LAP~~ and if that is not sufficient his ^{LAP}~~LAP~~ shall be adjusted doubly so that his pay is not affected. Accordingly, this exercise shall be undertaken within two months from the date of receipt of a copy of this order by the respondent authority concerned.

sl
(Jaya Das Gupta)
MEMBER(A)

sl
(G. Rajasuria)
MEMBER(J)

SP

*These
correction
are made
vide order
dated 14.10.15
passed in
OA 350/01360/2014.*

C.O.