

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**  
**OA/050/00019/2016**  
**With**  
**MA/050/00061/2017**

Date of Order: 29.07.2019

**C O R A M**  
**HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**  
**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

Nand Kishore Prasad, S/o Late Nageshwar, Permanent resident of Village- Raily, P.S.- NTPC, District- Patna, presently posted as Junior Engineer and working under Section Engineer (Permanent Way), East Central Railway, Dildarnagar within Divisional Office, Danapur.

.... Applicant.

By Advocate: - Mr. S.K. Singh

-Versus-

1. The Union of India through the General Manager, East Central Railway, Hajipur.
2. The Chief Personnel Officer, East Central Railway, Hazipur.
3. The Divisional Railway Manager, East Central Railway, Danapur.
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
5. The Senior Divisional Engineer, East Central Railway, Danapur.
6. The Assistant Engineer, East Central Railway, Buxar.
7. The Section Engineer (Permanent Way), East Central Railway, Dildarnagar within Danapur Division.

.... Respondents.

By Advocate: - Mr. S.P. Singh

**O R D E R**  
**[ORAL]**

**Per Dinesh Sharma, A.M:-** In the instant OA, the applicant has prayed for direction to the respondents "to make regularisation of leave sought by the applicant". He has alleged that he had to remain absent from the period 24.10.2014 to 14.12.2014 due to medical reasons. However, despite his

presenting medical certificates from a private hospital and later from Patna Medical College Hospital and Indira Gandhi Hriday Rog Sansthan Patna, instead of granting him leave as applied this period of absence has been illegally regularised as leave without pay. Such sanctioning of leave without pay is against the rules .

2. The respondents have denied the claim of the applicant. They have alleged that since the applicant remained on unauthorized absence and reported for duty with private medical certificate, the competent authority allowed him duty but the period in question has been treated as leave without pay. They have therefore prayed for dismissing the claim of the applicant.

3. The applicant has filed a rejoinder in which he has cited Para 503 of India Railway Establishment Code Vol. I, according to which the kind of leave due and applied cannot be altered except at the written request of the railway servant.

4. We have gone through the pleadings and heard the learned counsels of both the parties. In general, the facts in this case are not in dispute. While the applicant is insisting on having his leave sanctioned in the form of a medical leave or earned leave, the respondents have granted him leave without pay since he did not seek prior sanction and did not approach the Railway Hospital. A leave cannot be claimed as a matter of right. Para 503 of the IREC Vol. I expressly says so but it also adds that the type of leave applied cannot be altered except on the written request of the railway servant. Para 503 of IREC Vol. I is reproduced below: -

“ 503. *Right to leave*- Leave cannot be claimed as of right and leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Railway servant.”

5. A plain reading of this paragraph would show that the applicant has no right to get the leave sanctioned and the respondents have no right to alter the kind of leave except at the written request of the railway servant. We, therefore, remit the matter back to the respondents while giving liberty to the applicant to again apply for appropriate leave, if he wants the period of absence regularized. The respondents are directed to consider the application sympathetically since the applicant has already retired and has produced evidence of his having been sick during the period of absence. Since the granting of leave is not a matter of right, the applicant should also be willing to suffer the consequences if the authorities, for reasons to be recorded, do not grant him the leave applied for and he is unwilling to alter the type of leave he is seeking to avail. Accordingly, the OA is disposed of. MA for early hearing is also disposed of. No order as to costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**