

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.980 : OF 2003

New Delhi, this the 24th day of May, 2004

HON'BLE SHRI SARWESHWAR JHA, ADMINISTRATIVE MEMBER

Shri Jage Ram
S/o Shri Chandu Ram
Retired Chief Booking Supervisor
Northern Railway, Karnal
R/o House No.9/1046, New Post Office Street,
Gandhi Nagar, Delhi-110031.Applicant

(By Advocate : Shri S.K. Sawhney)

Versus

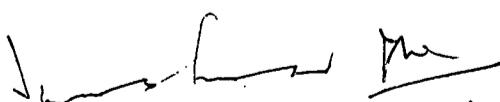
1. Union of India through
General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway, D.R.M. Office,
Chelmsford Road, New Delhi.Respondents

(By Advocate : Shri Sat Pal Singh)

ORDER (ORAL)

Heard learned counsel for the parties.

2. This Original Application has been filed with prayers that the respondents be directed to treat the period from 27.2.2000 to 2.6.2000 as duty ; that the respondents pay TA/DA for the period from 27.2.2000 to 2.6.2000 when he had attended office daily at New Delhi from his Headquarter at Karnal; that the respondents pay leave salary for the period decided vide letter dated 16.8.2000 (Annexure A1) except for the salary of November, 1999 and March, 2000 which has been paid to the applicant; and further that the respondents pay him penal interest for culpable delay in making payments for the period as conveyed vide the orders of the respondents.

 *Mr.*

3. The applicant has submitted that, in the meanwhile, the respondents have paid leave salary for the period not only as covered under sub paragraph 8 (3) but also for the further period as mentioned in para 8 of the Original Application.

4. The grievance which the applicant is still having is regarding the period from 27.2.2000 to 2.6.2000 being treated as duty, which has not been done by the respondents so far, and also with regard to non-payment of interest for the delay which the respondents have committed in making payment of leave salary for the said period. In this connection, it is also mentioned that the respondents have paid an amount of Rs.71,958/- in August, 2003 towards payment of leave salary for the period in question, and what has been mentioned in the order of the respondents dated 16.8.2000.

5. The applicant has submitted that he was directed by the Station Superintendent, Northern Railway, Karnal to report to Senior Divisional Commercial Manager at D.R.M.'s Office at New Delhi for duty, when he had come from Karnal to report for duty on 27.2.2000. In compliance of the said order, as stated by the applicant, he did go to the said authority, i.e., Senior Divisional Commercial Manager for duty. But he was not assigned any duty till 2.6.2000 when he voluntarily retired. He claims to have submitted representations also to the authorities



concerned (Senior Divisional Commercial Manager) on 27.4.2000 and also on 6.5.2000, copies of which are placed at annexures A/4 and A/5 respectively. In both these representations, it has been submitted that his request for payment of leave salary for the period as referred to by him in such representations be paid to him. There is also a representation from him dated 3.9.2001 in which a reference has been made to some payments having been made to him. Obviously, these payments had been made to him prior to the payment of Rs.71,958/- as made in the month of August, 2003.

6. The learned counsel for the applicant in this regard has referred to the decision of the Railway Tribunal as given in paragraph 6.226, a copy of which is placed on record, and the relevant portion of the same is extracted hereunder:-

"(1) Hours of employment shall be those during which an employee is at the disposal of his employer at the employer's instance, i.e., duty of an employee commences when he places himself at the disposal of his employer at the latter's instance, and such duty continues until he is fully at liberty to leave the place of duty."

Learned counsel of the applicant has claimed that the duty period of the applicant thus starts from the date he has placed himself at the disposal of the employer.

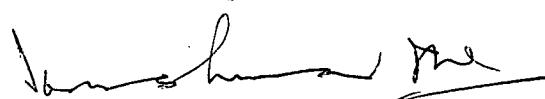
7. The respondents, however, in their reply have submitted that the applicant never reported for

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duty to the Senior Divisional Commercial Manager as claimed by him. According to them, as submitted in their counter reply, they would not have allowed the post of Chief Booking Supervisor at Karnal unmanned, if the applicant was available for the said duty. As explained in paragraph 4.4. of the counter reply, they have also stated that it was not practicable on the part of the respondent department to keep the applicant waiting for duty in the office of Sr.D.C.M. for such a long period.

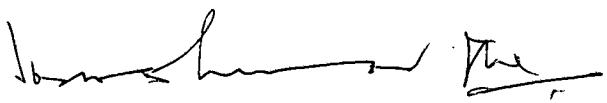
8.. On having been asked as to why so much delay took place in making the payment of the amount in question without assigning any reason, particularly, when the periods of absence/leave related to 1998-1999 and further to 2000 had been paid for in the month of August, 2003. The respondents had no specific explanation. It is also not clear from the order passed by the respondents vide their order dated 16.8.2000 as to how and why they could make the payment of Rs.71,958/- only on 19.8.2003 when the said order had been issued in August, 2000. This gap of about three years should have been explained by the respondents.

9.. The applicant in his rejoinder has reiterated the points as have been stated by him in the Original Application. He has also taken a position in paragraph 4.4 of his rejoinder that it was not within his right to return to his parent station



unless directed by the said office, i.e., Senior Divisional Commercial Manager at New Delhi.

10. On careful examination of the facts as stated by both sides, it is observed that the dispute relates to only whether the period from 27.2.2000 to 2.6.2000 during which the applicant claims to have waited for duty should be treated as spent on duty. It is also not explained very categorically by the respondents that they had any valid reasons for making the payment of the amount in question after a gap of three years. Obviously, the grievance of the applicant on account of delay having been committed by the respondents in making the payment of the said amount is not without any basis. However, weakness in the position which the applicant has taken appears to be in regard to the fact that there is no proof that he waited for posting or duty being assigned to him with the office of Senior Divisional Commercial Manager for a long period of four months. There is very reason to give due consideration to the arguments as advanced by the respondents that they could not have allowed unmanned the post of Chief Booking Supervisor remaining unmanned such a long period when the individual was available for rendering that duty. Under these circumstances, obvious plausible explanation would be that, for the said period, the applicant was not available to the respondents for duty as Chief Booking Supervisor even to the Senior Divisional Commercial Manager at DLS. It, therefore,



appears that the respondents will have to explain accountability for delay as having been committed in making payment of leave salary for the period in question as noted in the orders of the respondents dated 16.8.2000 and will have to consider paying the same as admissible under the rules. It will be difficult under the given circumstances to consider, on the basis of the facts as are available before the Bench, that he be allowed the benefit of duty for the period from 27.2.2000 to 2.6.2000.

11. Having regard to the facts and circumstances of the case and after having heard the learned counsel for the parties, I am, therefore, of the opinion that this Original Application can be partly allowed with a direction to the respondents to consider paying interest to the applicant for delayed payment of leave salary for the period from Oct., 1998 to Dec., 1998 and from Nov., 1999 to Dec., 1999 and Dec., 1999 to June 2000 to the extent having been mentioned in the orders of the respondents dated 16.8.2000.

12. As regards the prayer of the applicant regarding consideration of the period from 27.2.2000 to 2.6.2000 as duty, the respondents are directed to examine the matter further with reference to their records and to see whether there is any proof of the fact that the applicant waited for assignment of duty to him as directed by the Station Superintendent,

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Karnal and proceed in the matter on the basis of the outcome of such examination. They are also directed to give a personal hearing to the applicant in the matter so that he get an opportunity to supply any further proof of the fact that he waited for duty being assigned to him during that period. The respondents shall, in any case, dispose of the entire matter within a period of three months from the date of receipt of a copy of this order by passing a reasoned and speaking order. No costs.

Sarweshwar Jha Dte

(SARWESHWAR JHA)
ADMINISTRATIVE MEMBER

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