

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA /050/00764/2016
[MA/050/00429/2016]

Reserved on 24.10.2019

Date of order : **6th Nov., 2019**

CORAM

HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER (J)
HON'BLE MR. DINESH SHARMA, MEMBER (A)

Subhas Chandra Chatterjee, son of late Panchanan Chatterjee, resident of Railway Quarter No.SE/40C, Type-I, Gandhi Park, Road No.-0, Samastipur, PO & SP – Samastipur, District – Samastipur.

..... Applicant.

By advocate: Shri Gautam Saha.

Verses

1. The Union of India through the General Manager, East Central Railway, Hajipur, Vaishali.
2. The Chief Personnel Officer, East Central Railway, Hajipur, Vaishali.
3. Divisional Railway Manager, Samastipur Division, East Central Railway, Samastipur.
4. Senior Divisional Personnel Officer, Samastipur Division, East Central Railway, Samastipur.
5. Senior Divisional Operating Manager, Samastipur Division, East Central Railway, Samastipur.
6. Chief Medical Superintendent, Samastipur Division, East Central Railway, Samastipur.
7. Chief Office Superintendent [Operating], Samastipur Division, East Central Railway, Samastipur.
8. Station Superintendent, Samastipur Division, East Central Railway, Samastipur.

..... Respondents.

By advocate: Shri S.K.Raj

ORDER

JAYESH V. BHAIRAVIA, MEMBER [J]- In the instant OA, the applicant has prayed for the following reliefs:-

“8[1] For quashing/necessary modification of the order dated 19.03.2013 [Annexure-1], copy of which has neither been served upon the applicant till date nor any body has intimated him regarding said order dated 19.03.2013 till recently [however hand written contents of the said order 19.03.2013 has been obtained by the applicant after much effort on 04.10.2016] after calling the original order dated

19.03.2013 from the respondent authorities particularly from the respondent no.4, Senior Divisional Personnel Officer, Samastipur by which the RMC period/PME period of the applicant has been regularized in most illegal, arbitrary and malafide manner totally detrimental to the interest of the applicant.

8[2] For direction upon the respondents to make payment of salaries to the applicant for the period 19.12.2005 to 22.06.2006 when the applicant was under Periodical Medical Examination treating the same as duty as per rule and law without deducting any leave from the leave account of the applicant.

8[3] For direction upon the respondents to make payment of salaries of the applicant from 01.07.2008 to 21.07.2009 when the applicant remained under waiting for duty as is also apparent from the fact of the record itself treating the same as duty as per rule and law without deducting any leave from the leave account of the applicant.

8[4] For direction upon the respondents to make payment of arrears of salaries along with appropriate rate of interest.

8[5] For direction upon the respondents to make necessary correction in the leave account of the applicant by reallocating the leave which has illegally, arbitrarily and malafidely been deducted from the leave account of the applicant in lieu of payment of salary.

8[6] For holding that the applicant cannot be made to suffer without his any fault and due to the fault on the part of the respondents.

8[7] For granting any other appropriate relief or reliefs which this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

2. The applicant's case in short, is as follows : -

[i] The applicant submitted that since he was de-categorized in Medical Category-A/2, vide medical certificate dated 24.01.1984, he was posted as Line Clear Porter [in short LCP] in the scale of Rs. 196-232. Subsequently he was promoted against the sanctioned vacancy of Points-man in the scale of Rs. 210-270 and posted at Samastipur Station, vide office order dated 31.12.1984.

[ii] While the applicant was working as Points-man, he fell seriously ill due to acute "Sciatica" on 12.12.2005 and remained

under private medical treatment till 19.12.2005. After recovery from illness, the applicant approached the Respondent No.8, Station Superintendent, Samastipur with a request to permit him to resume duty but on 19.12.2005 itself, he sent the applicant to the Respondent No.6, the Chief Medical Superintendent, ECR, Samastipur for obtaining fitness certificate. The respondent no.6, Chief Medical Superintendent detained the applicant for periodical medical examination. It is further submitted that after different medical examination during the period 19.12.2005 to 29.03.2006, the Respondent No.6 issued an order dated 30.03.2006 directing the Sr. Divisional Operating Manager, Samastipur to send details of the applicant through Form No. G/103 for special medical examination of the applicant. The officials of Operating and Personnel Department took time from 31.03.2006 to 24.04.2006 to complete the process and referring the same to the Respondent No.4, Senior Divisional Personnel Officer, ECR, Samastipur for necessary action.

[iii] The Respondent No.4 issued an order vide letter dated 27.04.2006 whereby the applicant was again referred to Respondent No.6 for special medical examination. Thereafter, the Chief Medical Superintendent, Samastipur conducted the special medical examination of the applicant on 21.06.2006 and issued a fitness certificate/physical fitness certificate dated 19.12.2005/22.06.2006 [Annexure-A/2] whereby the applicant was declared unfit as Points-man but fit in medical category – Aye-2 with sedentary job. The applicant submitted the physical fitness certificate dated 22.06.2006 [A-2] on 22.06.2006 itself to

the Respondent No.4, the Senior Divisional Personnel Officer, ECR, Samastipur for his absorption against any appropriate alternative post having sedentary nature. But after repeated request and persuasions of the applicant, the Respondent No.4, after much delay, issued an office order dated 18.12.2007 by which the applicant was directed for absorption to the post of Cabin-man in the scale of Rs. 3050-4590 although nature of job of cabin-man was not of sedentary in nature like the points-man. The applicant again represented but no action was taken by the respondents and accordingly, the applicant was compelled to remain under waiting for duty.

[iv] Subsequently, the applicant submitted a representation dated 06.09.2006 [Annexure-A/3] to the Respondent No.4 through proper channel, i.e. respondent no.8, and requested him to issue necessary direction to the concerned officials for payment of his salary for the period 12.12.2005 to 22.06.2006 treating the aforesaid period as LHAP, i.e. converted leave and the period from 19.12.2005 to 22.06.2006, when he was put under medical examination by treating the same as on duty but the respondents did not take any action on his representation.

[v] Thereafter, the Respondent No.4, after much delayed, issued an on 02.12.2008 addressed to Respondent No.5 whereby it was intimated that the meeting the Divisional Permanent Committee for absorption of medically de-categorized employees of the division including the applicant has been fixed on 23.12.2008, applicant the applicant was directed to be present in the chamber of Respondent No.4 on 23.12.2008. As per direction,

the applicant was present in the Chamber of Respondent No.4 on 23.12.2008 but due to the reason best known to them, the meeting was postponed to 26.12.2008. The applicant was again present on 26.12.2008 when the said committee decided to absorb the applicant to the post of Junior Clerk having the same scale of Rs. 3050-4590 as that of the Points-man and referred the matter to the Respondent No.2 for approval.

[vi] The Respondent No.2, Chief Personnel Officer, ECR, Hajipur approved the decision of the Committee for absorption of the applicant vide its letter dated 10.07.2009. Thereafter, the Respondent No.4 issued a memorandum dated 21.07.2009 [Annexure-A/5] whereby the applicant was directed to be absorbed against the post of Junior Clerk in the Operating Department of Samastipur.

[vii] The applicant submitted that from 23.12.2008 to 21.07.2009, he remained present in the office of Respondent No.4 and he was kept waiting for duty and on his repeated request to the Respondent No.4 for payment of salary for the period 23.12.2008 to 21.07.2009, nothing was done by the respondents without his fault.

[viii] The applicant submitted that after receipt of memo dated 21.07.2009 [Annexure-A/5], he immediately joined his duty. Thereafter, he submitted his representation dated 07.10.2009 [Annexure-A/6] through proper channel to the Respondent No.4 and again requested him for payment of arrear salary for the

period 23.12.2008 to 21.07.2009 treating the said period as on duty but the respondents did not take notice thereon.

[ix] Thereafter, the applicant filed an application dated 06.08.2012 [Annexure-A/7] under RTI Act and again requested for payment of salary for the period 19.12.2005 to 22.06.2006 when he was detailed for periodical medical examination and also for the period from 23.12.2008 to 21.07.2009 when the applicant was put under waiting for duty without fault of him but the same was returned to him vide letter dated 07.08.2012 [Annexure-A/8] stating therein that “Non Judicial Stamp” is not acceptable in RTI as also no document has been demanded by way of this RTI application and further advised to submit application along with IPO of Rs. 10/-, in case any document is required.

[x] The applicant again submitted his representation dated 07.11.2014 [Annexure-A/9] to the Respondent No.4 through proper channel which was duly recommended for redressal of his grievance. Thereafter, the applicant after much efforts, obtained a hand written contents of the order dated 19.03.2013 [Annexure-A/1] on 04.10.2016 whereby it is intimated to regularize the earned leave of the applicant as mentioned in the letter, hence this OA.

[xi] The applicant draws our attention to Annexure-A/10, the copy of Railway Board’s order No.86/H/5/11 dated 07.12.1990 wherein it is stipulated that : -

“524. Treatment of the period of absence of Railway employees sent for periodical medical re-examination : -

The period for which an employee is absent from duty for periodical medical re-examination may be treated as below: -

[i] Time spent in journey to and from the actual medical examination may be treated as duty.

[ii] Time taken by the examining medical authority to come to a decision in the matter may be treated as duty. In case where the examining authority is not quite sure of the decision to be taken, he makes a reference to the chief Medical Director and the first decision in this case is given after reference to the C.M.D. In such cases, the period up to the announcement of the decision may be treated as duty.”

3. The applicant has filed one MA bearing no.429/2016 for condonation of delay in filing the present Original Application on the ground that despite continuous persuasion to the concerned respondents for payment salary for the aforesaid period as also despite specific rules and laws, the respondents have not granted/paid salary to him for the period the applicant remained under periodical medical examination etc. for extraneous considerations vide his representation dated 06.09.2006 [Annexure-A/3]. We have gone through the grounds taken in MA for condonation of delay in filing the OA as also the law laid down by the Hon'ble Apex Court in the case of State of Jammu and Kashmir and Ors. Vs. Sat Pal, reported in 2013 [3] SLJ 341 [SC] [November Issue] wherein it is clearly held that a person not responsible for mistake by government cannot be faulted, and we feel it appropriate to condone the delay. Accordingly the MA is allowed.

4. The respondents have contested the case by way of filing their written statement and submitted as follows : -

[i] The applicant while working as Pointsman fell ill and was under private treatment from 12.12.2005 to 19.12.2005 and after

recovery from illness, he met with Station Superintendent requesting him to permit him to resume his duty. It is alleged that the Station Superintendent has sent him to CMS, Samastipur for obtaining fitness certificate but the CMS, Samastipur detained him for periodical medical examination. The respondents submitted that the cause of action pertains to the year 2005 to 2008 and after about seven years the instant OA has been filed, as such it is barred by limitation.

[ii] The respondents submitted that while the applicant was working as Poinstman, he intimated to his department that he was under private medical treatment since 12.12.2005 to 18.12.2005. Subsequently he was under treatment of Railway Hospital Samastipur from 19.12.2005 to 22.06.2006, therefore he was not on duty, as such the period from 19.12.2005 to 22.06.2006 was regularized by the competent authority in LWP and communicated to the applicant, vide letter dated 10.10.2006 [Annexure-R/1]. The respondents have further submitted that during the period 10.10.2008 to 29.07.2008, the applicant was under treatment of a private doctor, vide medical certificate dated 10.08.2008 [Annexure-R/2]. The applicant was again under private treatment from 01.08.2008 to 01.09.2008 of another doctor vide Annexure-A/3 dated 01.09.2008. The respondents further submitted that the applicant was under treatment in the Railway Hospital, Chapra from 02.09.2008 to 11.09.2008, vide Annexure-R/4.

[iii] The respondents categorically submitted that the applicant was absent from duty from 15.09.2008 to 28.10.2008 and again admitted in the hospital on 29.10.2008 to 30.10.2008, vide

medical certificate Annexure-R/5. Thereafter, the applicant was under treatment of Dr. S. Kumar since 02.11.2008 to 16.12.2008, vide medical certificate dated 16.12.2008 [Annexure-R/6] and subsequently the applicant was under treatment of Railway Hospital, Mansi from 17.12.2008 to 20.12.2008 [Annexure-R/7] for which a medical memo was issued on 20.12.2008, which is not a fitness certificate for duty.

[iv] The respondents submitted that the period for which the applicant had applied for regularization of his absence has been considered by the authorities concerned and as per rule the same has been regularized and the period from 15.09.2008 to 28.10.2008 was found to be unauthorized therefore the same has not been regularized. The respondents categorically submitted that the applicant was not on duty from 19.12.2005 to 22.06.2006 and 01.07.2008 to 21.07.2009. The period from 19.12.2005 to 22.06.2006 and the period from 01.07.2008 to 14.09.2008 has been regularized, vide Annexure-R/9 and R/10 by the competent authority as per rule. So, there is nothing wrong in the action taken by the respondents, therefore, the OA is liable to be dismissed.

5. Heard the learned counsel for the parties and gone through the records.

6. It is noticed that, vide letter dated 10.10.2006 [Annexure-R/1], the respondents have themselves admitted that – “Please note and informed the aforesaid employee [the applicant, Subhas Chandra Chatterjee] that the period spent on special medical examination has been sanctioned as leave without pay.” In this

regard, it is apt to note that the Railway Board's letter, vide Annexure-A/10 of the OA stipulates that [i] Time spent in journey to and from the actual medical examination may be treated as duty. [ii] Time taken by the examining medical authority to come to a decision in the matter may be treated as duty. In case where the examining authority is not quite sure of the decision to be taken, he makes a reference to the chief Medical Director and the first decision in this case is given after reference to the C.M.D. In such cases, the period up to the announcement of the decision may be treated as duty.

7. Under the circumstances, the case of the applicant deserves to be re-considered by the respondents. Accordingly, we direct the respondents to consider the case of the applicant for payment of salary for the period as aforesaid in the light of Railway Board's order dated 07.12.1990 and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Sd/-

[Dinesh Sharma]/M[A]

[Jayesh V. Bhairavia]/M[J]

mps