

Sadhu Ram Vs. Union of India Through the General Manager, Baroda House, New Delhi and Others

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-13-2012

Judge : The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Dr. Veena Chhotray, Member (a)

Appeal No. : O.A. No. 688 of 2010 & M.A. No.484 of 2011

Appellant : Sadhu Ram

Respondent : Union of India Through the General Manager, Baroda House, New Delhi and Others

Advocate for Pet/Ap. : For the Applicant: Yogesh Sharma, Advocate. For the Respondents: Shailendra Tiwary, Advocate.

Judgement :

ORAL:

MRS. MEERA CHHIBBER, MEMBER (J)

1. Applicant has challenged Medical Certificate dated 10.3.2010 and order dated 18.10.2010. He has further sought a direction to the respondents to treat the whole period from 21.8.2009 to 8.3.2010 as on duty for all purposes including pay and allowances and not to treat the said period as Earned Leave.

2. The brief facts, as stated by the applicant, are that he was working as Guard when he became sick on 20.8.2009 due to high fever. He remained under the treatment of Medical Officer till 28.8.2009. During this period he had some hearing problem. When he approached the DMO Ghaziabad for issuing fitness certificate on 28.8.2009, he was referred to the ENT Specialist under Senior Divisional Medical Officer Shri Divya Aggarwal. The Senior Divisional Medical Officer examined the applicant but did not give any treatment and referred him to the Chief Medical Superintendent on 14.10.2009. After examining the applicant, the Chief Medical Superintendent told the applicant that his papers would be sent to the concerned authorities within one week but the same were not sent.

3. On 23.11.2009, applicant was informed that all his medical documents had been misplaced, therefore, his examination would be started again. The Central Hospital gave its report on 12.12.2009 in respect of PTA report while Aruna Asaf Ali Hospital gave their report for PTA test on 4.1.2010. The applicant was referred to AIIMS also for some medical check up, who gave their reply on 14.1.2010 intimating therein that there is no facility of ASSR test in AIIMS. Ultimately, ASSR test was got done in Asha Hear Centre, Karol Bagh on 9.2.2010. Thereafter, all the medical reports were sent to the Chief Medical Superintendent on 24.2.2010 and on 8.3.2010 the applicant was declared medically decategorized for the post of Guard. However, he was declared fit in C-1, C-2 category with hearing aid.

4. It is submitted by the counsel for the applicant that since from 21.8.2009 to 8.3.2010, the applicant was made to undergo various examinations and tests for declaring him medically unfit but no treatment was given to him during this period, therefore, this period has to be treated as period spent on duty.

5. Applicant has further stated that he has become disabled due to negligence of the doctors as he was not given any treatment, therefore, the period of 200 days could not have been treated as leave nor could it have been deducted from his leave account. Being aggrieved, he gave a representation on 12.8.2010 requesting the authorities to treat the period in question from 20.8.2010 to 8.3.2010 and especially from 23.11.2009 to 8.3.2010 as on duty because in the second spell his documents were misplaced by the hospital but ultimately, his

request has been rejected on flimsy grounds. In these circumstances, he had no other option but to file the present OA seeking the relief, as mentioned above.

6. OA has been opposed by the respondents. They have stated the Railway working is connected to the transportation business and safety of the numerous commutates is involved with operation related works, therefore, a person with disability cannot be deputed for operation of the train. The post of Guard is one of such safety category of the Railways. The safety aspect cannot be compromised at any cost by the respondents.

7. They have stated that the misplacing of the medical records did not make any difference because photocopies were given to the applicant and the examinations continued on the basis of photo copies of the records available with the employee himself. They have further stated that after examining the applicant, he was explained that his deafness problem is not treatable with medicine. He was further told that after undergoing surgical treatment, his hearing problem could be benefited to some extent. He was also told that in case he was unwilling to undergo surgery, he could use a hearing aid to improve/benefit his hearing problem. It was in view of above, that the applicant was examined at the Divisional office and various tests were being conducted to assess all aspects of his hearing defect and its progress/improvement. They have categorically denied the allegation of the applicant that he has become disabled due to the negligence of the doctors rather it is he, who refused to undergo surgery which could have benefited his hearing to some extent. He was advised a hearing aid to overcome his hearing handicap with the help of which he was declared fit in the relevant medical category. They have further stated that the leave taken for the period of 199 days was due to applicant's disease. Accordingly, the sick certificate dated 10.3.2010 was rightly issued in this context.

8. They have further stated that apart from his hearing problem, applicant had been suffering from other ailments also which is evident from the attendance record at the Divisional Hospital. Since applicant did not have adequate sick leave in his leave account, the period was treated as LAP. They have stated that period when applicant was sick could not have been treated as period spent on duty.

They have thus prayed that the OA may be dismissed.

9. Applicant has reiterated his stand in the rejoinder and placed reliance on Railway Board's letter dated 11.12.2000 at the time of arguments.

10. We have heard both the counsel and perused the pleadings also.

11. As per applicant's own saying he had fallen sick on 20.8.2009 as he was suffering from fever till 28.8.2009. Thereafter he was referred to the ENT specialist and was sent for further examinations or tests, namely, PTA, ASSR etc. etc. meaning thereby that the applicant was not declared fit by the Medical Officer on 28.8.2009. It is also relevant to note that when applicant had filed an appeal, a detailed reply was given to him on 18.10.2010 which is quoted below and reads as under:-

12. From perusal of above, it is clear that apart from problem of hearing, applicant had other medical problems also which were different from the grounds on which applicant was medically decategorized. It is also mentioned that even as back as in October, 2010, applicant was taking the treatment of psychiatrist for 'Hallucination and diminished interest in work'. It is thus clear that applicant could not have been declared as fit for joining the duty during the period 20.8.2009 till he was medically decategorized on 8.3.2010. As per applicant's own case, he was sent for PTA test and safety related tests to different Hospitals and private clinics. One of the test was not available in AIIMS, therefore, it had to be got done from a private centre. In above facts, naturally applicant could not have been declared as fit to join the duties. Since applicant was not declared fit and was throughout taking treatment for one or other problems, which have been mentioned in order dated 18.10.2010 and have not been controverted by the applicant in his OA, the period in question could not have been treated as spent on duty.

13. Counsel for the applicant placed reliance on Railway Board's letter dated 11.12.2000 but that deals with the situation after a person is medically decategorized, therefore, this Railway Board's letter would not help or advance the case of the applicant. Admittedly, applicant was declared medically decategorized on 8.3.2010 (page 10) and the period in question is before he was declared

medically decategorized. In this letter, it was specifically mentioned that the sensorineural component of his deafness cannot be cured by surgery. His deafness has been confirmed by the members of the Medical Board who were of the opinion that he is unfit in medical category 'A' and 'B' permanently which was required for the post of Guard, being a safety post. Moreover, while issuing fitness certificate on 10.3.2010 the Medical Officer had given the certificate that applicant was sick and under treatment from 21.8.2009 to 10.3.2010 (page 9), therefore, by no stretch of imagination the period could have been treated as duty.

14. Counsel for the respondents informed us that ultimately applicant has taken voluntary retirement on the ground that he had been declared medically unfit in the medical category 'A' and 'B' permanently. Copy of the order dated 25.1.2010 is taken on record which is not disputed by the counsel for the applicant.

15. In view of above, we cannot agree with the counsel for the applicant that the period from 20.8.2009 to 8.3.2010 should be declared as duty for all purposes and a direction be given to the respondents to pay him the pay and allowances for the said period. It is not even stated by the applicant that he performed any duty during this period. If he was taking treatment for various ailments, naturally the period could not have been decided as duty and had to be treated as leave. Applicant has sought a direction to treat the period from 21.8.2009 to 8.3.2010 as duty for all purposes whereas as per his own case he had fallen sick on 20.8.2009 and was sick up to 28.8.2009. Thereafter, respondents have explained that he was taking treatment for various ailments, therefore, the relief, as claimed by the applicant, cannot be granted. The OA is accordingly dismissed. No order as to costs.