

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7388 of 2013

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Ravi Shankar S/O Sri Jagat Dipendra Prasad Resident Of 1/C Shilpa Enclave, Ram Nagri, Ashiyana- Digha Road, Patna

.... Petitioner/s

Versus

1. United India Insurance, Through Its Chairman Cum Managing Director, United India Insurance Company Limited, 24 Whites Road, Chennai 600014
2. The Chairman Cum Managing Director/Memorial Authority United India Insurance Company Limited, 24 Whites Road, Chennai 600014
3. The General Manager Cum Appellate Authority, United India Insurance Company Limited, 24 Whites Road, Chennai 600014
4. The Deputy General Manager, Personnel United India Insurance Company Limited, 24 Whites Road, Chennai 600014
5. The Chief Manager, Personnel Department, United India Insurance Company Limited, 24 Whites Road, Chennai 600014
6. Chief Regional Manager, Regional Office, United India Insurance Company Limited, Chanakya Tower, 3rd Floor, R.Block, Patna- 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Naraiyan, Advocate

For the Respondent/s : Mr. Ramchandra Lal Das, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 25-07-2018

Heard learned counsel for the petitioner and the respondent insurance company.

2. Though many submissions have been made by the counsel for the petitioner regarding procedural lapses during course of enquiry but the position as emerging from the submissions made in the counter affidavit is that he did not respond to the various correspondences sent to him during his period of absence. The communications dated 30.09.2008, 18.11.2008 and 17.12.2008 are



said to have been issued to the petitioner requiring him to report immediately.

3. Counsel for the petitioner thereafter, submits that the absence of 434 days which started from 26.12.2007, continued up till 03.03.2009. Referring to the various documents on the record in the instant proceedings, he submits that he had been giving due intimation in respect of his absence on account of his continuing illness.

4. Since the petitioner has not responded to the said various communications sent to him, today he confines his prayer that at least the respondents were obliged to observe the procedure prescribed under the Leave Rules and Miscellaneous Provisions, more specifically Rule 13 (C) which requires that in case of absence beyond 180 days, leave on loss of pay could have been granted to the petitioner but only at the level of the CMD. Rule 13 (C) is being reproduced herein below for reference.

13(C) Except in exceptional circumstances, the duration of leave on loss of pay shall not exceed three months on any one occasion and 6 months during the entire period of an employee's service.

Leave on loss of pay beyond 180 days requires reference to CMD of the Company and it is required that such a reference is made before expiry of 180 days limit so that CMD of the Company would have adequate time to consider the merits.

5. This plea regarding grant of leave on loss of pay for



the period of absence was raised by the petitioner in his memorial which was decided by the Competent Authority under the leave rules being the CMD under order dated 29.01.2013. The specific plea of the petitioner regarding non-observance with Rule 13 (C) and his entitlement to leave with loss of pay has been dealt with by the CMD in the following manner:

“Regarding point no. 3. Grant of leave is not matter of rights or grant of leave is not something that can be inferred or presumed as granted. The Appellant cannot demand leaves as right and it is upto the Competent Authority’s discretion for approval of leaves.”

6. The decision of the CMD on point no. (3) regarding the discretion of the authority for approval of leave cannot be disputed. Whether the discretion vested in the authority has been exercised or not, is the issue which arises for consideration.

7. On going through the order dated 29.01.2013 issued by the CMD and on the basis of the findings in respect of point no. (3) recorded hereinabove, it is quite clear that the discretion has not been exercised to examine the claim of the petitioner for leave on loss of pay beyond 180 days. It is different thing that after examining the same and exercising the discretion, the competent authority could either have allowed or rejected the plea of the petitioner.



8. The petitioner during pendency of the writ petition has attained the age of retirement with effect from 31.12.2016. If the decision is taken to allow the benefit of leave on loss of pay to the petitioner, at best the same would have a bearing on post retrial benefits to the petitioner.

9. Be that as it may, since limited issue has been agitated regarding non-consideration of petitioner’s entitlement to leave on loss of pay by the CMD, the matter is being remanded to the CMD to take a final decision with respect to point no. (3) referred in his order dated 21.09.2003 and to take a final decision thereupon exercising his discretion, whether on the basis of communication and medical certificates on record the petitioner would be entitled to leave on loss of pay for the said period.

10. The final decision in this regard be taken by the CMD within a period of four months from today.

11. The writ petition is disposed off.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

