

23.08.2021
SL No.6
Court No.16
(gc)

WPCT 58 of 2021

Union of India & Ors.

Vs.

Debashis Dutta

(Via Video Conference)

Ms. Anita Kundu,
...for the Petitioners.

Affidavit of service filed in Court today be kept with the record.

The writ petition is arising out of an order passed by the learned Central Administrative Tribunal, Kolkata Bench, Kolkata on 18th January, 2021 in connection with an application filed by the original applicant praying, *inter alia*, for a direction upon the respondent authorities to release the leave salary for the period from 21st July, 2015 to 21st February, 2016, that is 216 days within a specific period along with interest.

Learned Counsel for the petitioners submits that the Medical Board constituted by the Railway authorities found the original applicant physically and medically fit and in view thereof, the original applicant is required to join the transferred post and is not entitled to any leave salary.

It is not in dispute that the period of absence of about 216 days was subsequently regularised by way of sanction of Extraordinary leave, which amounts to leave without pay. This regularisation of the period was in compliance with the

earlier order of the Tribunal in O.A.641 of 2015, dated 22nd February, 2016. This order is not under challenge.

The original applicant contended before the Tribunal that once the leave was regularised, the applicant was entitled to the salary during the aforesaid period and by granting Extraordinary leave for the period, the respondents have not complied with the spirit of the directions of this Tribunal in O.A. 641 of 2015 dated 22nd February, 2016. The contempt application filed before the Tribunal in between was, however, dropped, as there has been substantial compliance with the specific directions of the Tribunal namely, in regularising the period during which the applicant was absent. The Tribunal on examination of the record found that there was sufficient earned or commuted leave to the credit of the applicant during the period when he was absent from duty on medical ground and he is entitled for regularisation of the period by way of sanctioning earned leave in the first instance and commuted leave in the second instance if sufficient number of days are not in the balance of earned leave account.

In view of the fact that the extraordinary leave would amount to a punitive action and the learned Tribunal on the earlier occasion had directed regularisation of the period during which the applicant had applied for medical leave, in our considered opinion that the direction of the learned Tribunal upon the writ petitioners specifically upon the Respondent No.3, namely, the Senior Divisional Personnel

Officer, Eastern Railway, Sealdah Division, to regularise the period of absence for 216 days by sanctioning Earned Leave, if available in the credit of the original applicant during the period, and, if not regularise it by way of commuted leave again on the condition that it is available in the credit of the applicant does not call for any interference. The Tribunal was justified in holding that the regularising by way of Extraordinary leave may be resorted to only if none of the other two leaves is available in the account of the original applicant during the relevant period.

In view of the pendency of the writ petition, the time to pass a reasoned order in terms of the order of the learned Tribunal dated 18th January, 2021 is extended by two months from date.

With the aforesaid observation, the writ petition being WPCT 58 of 2021, accordingly, stands disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Hiranmay Bhattacharyya, J.)

(Soumen Sen, J.)