

(2019) 01 DEL CK 0037

In the Delhi High Court

Case No : Civil Writ Petition No. 23872 Of 2005

Rajvir Singh

APPELLANT

Vs

Uoi & Ors

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Railway Protection Force Rules, 1959 — Rule 104(3), 153(4)
Constitution of India, 1950 — Article 226

Citation : (2019) 3 AD(Delhi) 74

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Chandan Kumar, Rajan Sabharwa

Final Decision : Dismissed

Judgement

Sanjeev Narula, J

1. The Petitioner who has been compulsorily retired from service has filed the present writ petition under Article 226 of the Constitution of India assailing the orders passed by the Disciplinary and Appellate Authority of the Railway Protection Force (Respondents).

Factual Background

2. The Petitioner was recruited as Sub-Inspector in Railway Protection Special Force on 20th March, 1979. He was promoted to the rank of Inspector, Grade-II on 6th May, 1991 and was posted at Ferozpur. It is the stand of the Petitioner, that at that time, he fell ill with pain in his gall bladder and was admitted to the Railway Hospital, Ferozpur. He was diagnosed with gall bladder stones and was referred to the Northern Railway Hospital, New Delhi, where he was advised to undergo surgery for the aforesaid illness. The Petitioner was hesitant to undergo surgery and opted for Ayurvedic and Unani treatment.

3. The aforesaid modes of treatment being time consuming, the Petitioner

accordingly filed an application dated 18th April, 1992, seeking sanction of 75 days leave w.e.f. 25th April, 1992. This request was accepted vide order dated 14th May, 1992, and accordingly he was sanctioned leave for a period of 75 days w.e.f. 1st June, 1992. A movement order dated 1st June, 1992 was issued to the Petitioner to move to Danapur. Petitioner requested for an extension of leave by 90 days, which was allowed for 45 days LWOP (Leave Without Pay) by the competent authority w.e.f. 16th August, 1992 to 29th September, 1992. On 30th September, 1992, Petitioner applied for a further extension of 45 days LWOP, however, his request was not acceded to as he had already availed maximum permissible leave of 120 days.

4. The letter rejecting his request for grant of further extension reads as under:-

"Shri. Raj Vir Singh,

Inspector,

Quarter No. A-602

Sector No. 19,

Noida Ghaziabad (U.P)

Sub: Extension of Leave.

Ref: Your Application dated 01.10.1992.

With reference to your application dated 01.10.92, requesting for further grant of extension of 45 days leave on the ground of your treatment, you are hereby informed that no further extension of leave is admissible, because you have already been given the maximum leave (120 days) permissible at a time, in one case, as per extant rules.

However, you are directed to report to the nearest Rly. Doctor for proper treatment of the reported disease of 'Gall Bladder Stone'.

Necessary intimation be also sent to this office, accordingly."

5. Thereafter, despite a lapse of 50 days Petitioner did not comply with directions as noted in the aforesaid letter, constraining the Respondents to issue a reminder dated 8th December, 1992, which reads as under:-

"To

Shri. Raj Vir Singh, Inspector,

Quarter No. A-602

Sector No. 19, Noida Ghaziabad (U.P)

Sub: Extension of Leave.

Ref: Your Application dated 01.10.1992.

.....XXX.....

Your extension of leave was rejected by this office vide registered A/D Letter of even No. (3710) dated 17.10.92 with the direction that if you are not well then report to nearest Rly. Hospital for proper treatment of the disease under advised to this office. But a period more than 50 (fifty day) have elapsed but you have not sent any intimation to this office.

Therefore, you are directed to report for duty on receipt of this letter failing which you will be liable to be dealt under the extant disciplinary rule."

6. The aforesaid letters were delivered to the Petitioner and he acknowledged the receipt thereof. Petitioner ignored the warning given in the aforesaid letter and neglected to join duty and overstayed beyond sanctioned leave. As a result, Respondents issued a charge sheet on 5th March, 1993, inter-alia containing the followings charges:-

"ARTICLES OF CHARGES:-

Inspector /5029 Raj Vir Singh of 'E' Coy, No.6BNIRPSF is hereby charged for unauthorisedly overstaying, disobedience of lawful orders and utter carelessness, in that he is overstaying unauthorisedly wef.30.9.92 after availing from BN/HQr. his sanctioned 120-days leave/Extension as granted wef.02.06.92 to 29.06.92. He had applied for further extension of 45-days leave, which was not granted and he was instructed by an intimation sent at his home address by post, to report to Rly. Doctor. This letter was acknowledged by him on 23.10.92. He has neither sent any intimation whatsoever, so far, nor has he responded in any manner, in spite of personally receiving on 16.12.92, this office letter No.(6085) dated.08.12.92-vide which he was directed to report for duty on receipt of the letter, failing which, he will be liable to be dealt under the extant disciplinary rules. He is till overstaying without any further intimation."

7. Shri. Rajender Singh, the Enquiry Officer, initiated the enquiry, but on account of his superannuation, he was replaced by Shri. George Thomas who concluded the enquiry and submitted the enquiry report dated 7th 27th September, 1994, which holds the Petitioner guilty of the aforementioned charge. The enquiry report was examined and accepted by the Disciplinary Authority and resultantly vide order dated 2nd December, 1994 Petitioner was awarded punishment of dismissal from service w.e.f. 2nd December, 1994.

8. The Petitioner preferred an appeal to Director General (DG) against the order of dismissal. The appeal was allowed on 10th October, 1995 on the ground that the enquiry report was not served upon the Petitioner, before imposing the punishment. Accordingly, a direction was given that the Petitioner be reinstated in service and the enquiry report be served upon him affording him an opportunity to make representation, if any, within a stipulated time. The Disciplinary Authority was further directed to record its findings afresh and pass the final orders after consideration of the enquiry report and the representation

of the Petitioner. In compliance of the aforesaid order passed by the Appellate Authority, the Petitioner was reinstated in service from 14th November, 1995 and he joined duty on 16th September, 1996. The enquiry proceedings were reopened and a copy of the enquiry report was furnished to the Petitioner. He submitted a representation on the enquiry report and on its consideration, the Disciplinary Authority vide order dated 30th September, 1997 awarded the punishment of dismissal from service. He preferred an appeal to DG/RPF which was rejected vide order dated 23rd April, 1998. Petitioner thereafter filed a revision petition before the Central Government of India against the order passed by the Appellate Authority. The Central Government of India, vide order dated January, 1999 modified the penalty of dismissal from service to "compulsory retirement". The order passed by the Central Government was given effect to by the Respondent vide order dated 18th June, 2003 by striking off Petitioner's name from its strength w.e.f. 30th September, 1997. The Petitioner filed a Review Petition dated 24th August, 1999 before Hon"ble President of India followed by reminders seeking its disposal. Petitioner's request for review was rejected by the competent authority.

9. Compulsory retirement from service entailed grant of retiral benefits to the Petitioner and in order to process the payments, Petitioner was requested to submit the relevant documents. He submitted an application for regularization of "overstay period" and also the "intervening period". The Railway Board partly allowed the request vide order dated 3rd January, 2004 and regularized the "intervening period" from 3rd January, 1995 to 16th September, 1996 (i.e. from the date of dismissal to reinstatement in service) as period spent on duty. The regularization for the overstay period was declined. Petitioner was called upon to submit the required documents for furnishing the final settlement, but for the reasons best known to him, he did not do so. Petitioner has assailed the aforesaid orders in the present petition.

Submissions of the Parties

10. Learned counsel for the Petitioner has primarily challenged the impugned orders on the ground that the Enquiry Officer has proceeded on an incorrect premise, inasmuch as the relevant provisions of Indian Railway Medical Manual have not been taken into consideration.

11. According to the Petitioner, Rule 541(3) of the Indian Railway Medical Manual (IRMM) is applicable to his case and the Enquiry Officer as well as the Appellate Authorities have proceeded to wrongly apply Rule 541 of the IRMM. He further relied upon Rule 530 of the IRMM and urged that the aforesaid provision does not require any application to be made in the event that the leave was exhausted and there is no discussion by the Respondent as to why the request for further leave was not granted.

12. The learned counsel also argued that the Respondents had acted malafidely against the Petitioner. He submitted that the Petitioner was directed to join duty

at New Jalpaiguri (NJP) vide order dated 14th November, 1995 and this action was in violation of Rule 153.4 of the Railway Protection Force Rules, which prohibits transfer of an employee pendente inquisitionis. To buttress the aforesaid submission, he pointed out certain observations made in the enquiry report. Learned counsel has also argued that the punishment awarded by Respondent is disproportionate to the allegations of misconduct. He stated that Respondents did not issue a duty pass to enable the Petitioner to go to NJP and thereby caused delay in his joining at NJP. The duty pass was issued on 3rd September, 1996 enabling the petitioner to join on 16th September, 1996.

13. The learned counsel for the Petitioner further argued that the Petitioner should have been granted extraordinary leave, which is admissible as per the Rules, in the event no other leave is admissible. According to him, the Disciplinary Authority in its order dated 30th September, 1997 takes note of the aforesaid provision, but has wrongly denied the benefit of the same on a flimsy ground that the medical certificate submitted by the Charged Officer did not inspire confidence and denied the leave.

14. He also submitted that, the Disciplinary Authority in its order dated 30th September, 1997, while recording that the Charged Officer remained "unauthorisedly absent" does not hold him to be absent "without sufficient reason". The finding of intentional disobedience of the orders of the superior officers is also incorrect, inasmuch as the Petitioner had sent a letter dated 30th September, 1992 seeking extension of leave. Relying on the aforesaid letter, the counsel submitted that the authority while issuing the letter dated 17th October, 1992, knew about Petitioner's continued sickness, hence, without considering the two PMC's submitted by the Petitioner, Respondents have wrongly rejected his request. Counsel for the Petitioner points that, Respondents failed to take note of Rule 539(2) of the IRMM, in as much as the enquiry report records that the Charged Officer had submitted two PMCs for the period from 28th September, 1992 to 19th April, 1993, covering a period of 50 days, yet they have not taken any decision on this issue and not rejected the said certificates. In absence of rejection of PMC, Respondents have acted in a malafide manner by not allowing the Petitioner to join the service, in violation of Rule 541 (3) of the IRMM. He further submitted that the doctor who had given the certificate was a medical practitioner registered with UP Medical Council having a valid registration number and there was no reason to disbelieve the said certificate.

15. Per contra, learned counsel appearing on behalf of the Respondent has argued that the Petitioner is misconstruing the rules in the Medical Manual.

Learned counsel also referred to the order dated 4th April, 2016 passed by this Court, requiring the Respondents to produce the fitness certificate dated 15th March, 1993 referred to in para 21 of the legal notice dated 13th April, 2004 issued by the Petitioner's counsel.

16. Learned counsel for the Respondent urged that it can be clearly discerned

from the fitness certificate dated 14th/15th March, 1993 that it had not been issued by a Railway Doctor and it also did not bear the address of the doctor certifying the said certificate.

Analysis and Findings

17. The key question that arises for consideration in the present appeal is with respect to the applicability of the rules provided in IRMM. It would therefore be apposite to note the said rules, before proceeding to deal with the rival submissions of the parties on this issue. The relevant Rules read as under:-

"537. The different types of certificates that are issued by the Railway doctors in the event of sickness of a Railway employee are as under:-

- (1) Sick certificate.
- (2) Continuation sick certificate.
- (3) Certificate of recommendation for change of air or recuperation.
- (4) Fit certificate.
- (5) Duty fit certificate.
- (6) Invalidation certificate.

538. Sick certificate:-

(1) When a railway employee, who is residing within the jurisdiction of a Railway doctor, is unable to attend duty by reason of sickness, he must produce, within 48 hours, a sick certificate from the competent Railway doctor in the prescribed form as given in annexure XI to this chapter.

(2) Should a Railway employee, residing within the jurisdiction of the Railway doctor, desire to be attended by a non-Railway doctor of his own choice, it is not incumbent on him to place himself under the treatment of the Railway doctor. It is however essential that if leave of absence is required on medical certificate, a request for such leave should be supported by a sick certificate from the Railway doctor.

(3) Sick certificate may be issued by the Railway doctor of the section in which the Railway employee resides for the time being.

(4) When a Railway employee residing outside the jurisdiction of a Railway doctor requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. Such certificate should be, as nearly as possible, in the prescribed form as given in the annexure XI and should state the nature of the illness and the period for which the Railway employee is likely to be unable to perform his duties. The competent authority may, at its discretion accept the certificate or, in cases where it has reasons to doubt the bonafides, refer the case to the Authorised Medical Officer for advice or

investigation. The medical certificates from the Registered private practitioners produced by the employee in support of their applications for leave may be rejected by the competent authority only after a Railway medical officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications. However, where the Railway medical officer could not be deputed for such verifications, the certificate from the registered private medical practitioner may be accepted straightaway.

Note :- (i) Ordinarily, the jurisdiction of a Railway doctor will be taken to cover Railway employees residing within a radius of 2.5 K.M of railway hospital or health unit to which the doctor is attached, and within a radius of one kilometer of a Railway station of the doctor's line jurisdiction.

(ii) To prevent misuse of private medical certificates, the Divisional Railway Managers may withdraw the privilege as given in the concluding portion of the above sub-paragraph by special notification to the staff for special periods. In respect of workshop employees, the power to withdraw the privilege of acceptance of certificates from registered private practitioners shall be exercised by the administrative officers in J.A.G and S.A Grades.

(5) When issuing the certificates, Railway doctors will exercise care and judgement in recommending the period of absence for which the Railway employee is unable to attend duty which should be commensurate with the nature and severity of illness.

(6) The submission of sick certificate as prescribed in sub-para(1) to (5) above shall be tantamount to only an application for leave on medical certificate, and shall not be held to carry with it permission to quit the station, unless such permission is expressly given by the competent Railway doctor.

Note:- (1)A Railway employee who is placed on sick list by a Railway doctor should continue to report to him when fit to travel, or send intimation about his condition if he is bed-ridden, at such intervals as directed by the Railway doctor. If a Railway employee fails to do so, he is liable to be discharged from sick list for non-attendance.

(2) Special provisions for members of Railway Protection Force reporting Sick:

No member of the Force shall be taken on sick list by any Railway Medical Officer unless such member comes with written reference known as "Sick Memo" from his controlling officer and also gives declaration in triplicate as per the proforma given at the end of this para.

The Controlling Officer shall issue "Sick Memo" to the member of the Force on demand, whether such member is on duty or on leave at the Headquarters. While issuing such a memo, the controlling officer shall mention on it whether the member is required/detailed for special duty, under transfer order, facing DAR action and avoiding to attend departmental enquiry or is habitual of reporting sick, etc. In case such a member is taken on sick list by a Railway

Medical Officer, the member shall intimate within 48 hours his controlling officer about being taken on sick list and submit the Railway Medical Certificate to the controlling officer.

The Railway Medical Officer taking the staff on sick list shall send one copy of the declaration as indicated in this rule to the controlling officer of the member, the second copy of the declaration will be kept by him for his record and the third copy will be handed over to the member of the Force along with Railway Medical Certificate and the member of the Force will submit the same to his controlling officer along with Railway Medical Certificate.

Provided that the member who, due to emergency, is not able to take "Sick Memo" from his controlling officer, may directly report to Railway Medical Officer for treatment. The member will have to inform the Railway Medical Officer immediately, if he wants to report sick and give the declaration as given at the end of this paragraph in triplicate. In case the member is taken on sick list as outdoor patient, it shall be obligatory for the member to get a "Sick Memo" from his controlling officer and submit the same to the Railway Medical Officer. If the member is taken on sick list as indoor patient, the Railway Medical Officer shall intimate the controlling officer by sending him a copy of the declaration and the controlling officer will issue "Sick Memo" on receipt of the declaration from the Railway Medical Officer. The sick certificate, in any case, will be issued on receipt of sick memo from the controlling officer or any other equivalent or higher official.

Provided further that if a member is on leave or on duty away from his Headquarters, he may take "Sick Memo" from the in-charge of the nearest Railway Protection Force post/out post or from Station Master/Assistant Station Master, if no Railway Protection Force post/out-post is located nearby. The incharge of Railway Protection Force post/out-post or Station Master/Assistant Station Master issuing a "Sick Memo" as mentioned above shall intimate the controlling officer of the member immediately. In case the member is taken on sick list as outdoor patient, he will immediately intimate his controlling officer about this fact. The attending Railway Medical Officer shall examine the member with a view to find out if the member is fit to travel up to his Headquarters, if so, he will issue fit to travel certificate.

If a member is found to be habitually reporting sick usually on occasion of his deployment to special duty or on refusal of leave he may be sent for special medical examination by competent authority to ascertain as to the genuineness of the illness.

Wherever there are more than one doctor in the hospital/Health Unit/OPD (Outdoor Patient Department), the issuance of Railway Medical Certificate for the RPF shall be dealt with only by one authorised doctor to be nominated by the in-charge of the Hospital/Divisional In-charge.

Ordinarily no Railway Medical Certificate shall be issued for more than 7 days at a time unless a member is admitted in the hospital as an indoor patient.

Similarly, after discharge from the hospital, a member shall not be kept on sick list for more than 14 days at a time.

Provided that in certain circumstances if the Medical Officer concerned is of the opinion that the patient will have to be kept as an OPD (Outdoor Patient Department) case for domiciliary treatment for a longer period, the same may be done but a detailed report will have to be sent about such patient to the Chief Medical Superintendent/Medical Superintendent in-charge of the division endorsing a copy of the same to the controlling officer of the patient:-

A member who has been issued Railway Medical Certificate shall be examined regularly during the period of sickness by the Railway Medical Officers.

A member of the Force on sick list shall not leave his place of treatment without the written approval of the leave sanctioning authority except for such exercise as may be prescribed and notified in the order by the Railway Medical Officer.

To matters not covered under foregoing rules, extant provisions of Railway Rule/ Indian Railway Medical Manual shall apply.

DECLARATION TO BE GIVEN BY THE MEMBERS OF THE FORCE AT THE TIME OF REPORTING SICK

I am not feeling well. I may please be issued a Medical Certificate w.e.f I shall bring the sick memo/I have brought the sick memo from my authorized Departmental Officer/Supervisor i.e.(mention designation, Head quarter/ Station of the departmental Officer/supervisor where intimation of sickness is required to be sent)

I declare that (strike out whichever is not applicable)

1) I am/am not under order of transfer, temporary/Emergency duty or under D&A action.

2) That I am on sanctioned casual leave/Leave on Average Pay w.e.f..... to

3) I was not on sick list/declared fit by any railway/Private doctor immediately prior to this date

Or

I was on sick list with and have been given fit/Transfer certificate on

Signature /L.T.I of the Employee

Name.....

Rank & Number.....

Place of Posting.....

539. Continuation sick certificate: (1) When a Railway doctor who has issued a sick certificate for a prescribed period in the first instance finds that the illness of the employee is likely to result in the absence of the employee from duty beyond the period prescribed in the original sick certificate, he will issue immediately a continuation sick certificate in the prescribed form as given in the annexure XII to this chapter. The certificates should be serially numbered.

(2) When a Railway employee who is residing outside the jurisdiction of the authorised medical officer and is under the treatment of a non-Railway medical practitioner to the competent authority who may at his discretion accept the certificate or refer the case to the Railway medical officer for advice or investigation and then deal with it as circumstances may require."

"541. Fit certificates:- (1) A Railway employee who has been on leave on medical certificate shall not be permitted to resume duty till he/she has produced a fit certificate or a duty certificate in the prescribed form from the competent Railway doctor.

(2) When a Railway employee, who has been under the treatment of the authorised medical officer and in whose favour a sick or a change of air or recuperation certificate has been issued is after examination found fit for duty, the competent Railway doctor will issue the necessary fit certificate in the prescribed form as given in annexure XI.

(3) Where a Railway employee remained on leave on medical grounds, up to and including three days duration and reported back for duty with a fitness certificate from a private medical practitioner, he may be allowed to join duties without obtaining fitness certificate from the Railway Medical Officer, subject to the condition that the employee furnishes a declaration that he/she has not suffered from any eye disease during this period. In cases where the duration of sickness is more than three days, the Railway employee should be put back for duty within 24 hours on his/her producing fit certificate from a private medical practitioner, provided he/she is found fit by the Railway medical Officer. However, in case there is any delay beyond 24 hours in obtaining a fitness certificate from the competent Railway medical officer, the employee concerned will be deemed to have been put back to duty within 24 hours of his producing the medical certificate from the private medical officer.

(4) When a Railway employee reports sick away from his/her head quarters, the local Railway doctor will, if he considers that the Railway employee is sick and unfit to work, issue a sick certificate, but as soon as the employee is fit to travel, issue a transfer memo and transfer him/her to his/her head quarter station and forward the case papers to the Railway doctor at the headquarters station for further action. In the case of relieving staff whose sickness is likely to be of less than ten days duration, the local railway doctor may return the employee to duty issuing fit certificate in his favour.

Note:- Both sick and fit certificates should have the same counter-foil and should bear the same number. Serial numbers should be printed."

18. A perusal of the aforesaid Rules clearly indicates that the Respondents have specific Rules dealing with the concept of leave of absence on medical certificate.

19. Rule 538 (2) of IRMM provides that, in case a railway employee residing within the jurisdiction of a railway doctor wants to be attended by a non-railway doctor of his own choice, it is not incumbent upon him to be treated by the railway doctor. In such a situation it is essential for the railway employee who desires to take leave of absence on medical certificate, to make such a request along with a sick certificate from the railway doctor. Rule 538 (4) of IRMM, deals with a situation where the railway employee is residing outside the jurisdiction of railway doctor and requires leave on medical certificate. Rule 539 deals with continuation sick certificate. This Rule provides for the procedure where a railway employee who is on leave on medical certificate, is desirous of seeking further extension of leave.

20. Rule 541 (1) of IRMM provides that railway employee who has been on leave on medical certificate shall not be permitted to resume duty till he or she has produced a 'fit certificate' in the prescribed form from a competent railway doctor. Rule 541 (3) of the IRMM provides a remedy for a railway employee who was on leave on medical ground for upto three days and resumes duty with a fitness certificate from a medical practitioner. The second part of Sub-Rule 3 of Rule 541 deals with a situation where the duration of sickness is more than three days.

21. Learned counsel for the Petitioner has made lengthy arguments and painstakingly, urged before this Court that Rule 541 (3) of IRMM is applicable and that the Petitioner should be considered to have resumed his duty on 15th March, 1993, on the strength of the fitness certificate issued by a private medical practitioner. Learned counsel for the Petitioner strenuously argued that the fitness certificate submitted by the Petitioner was sufficient compliance of the IRMM Rules and on submission of the fitness certificate, Respondents ought to have proceeded to verify the certificate. In the event of delay of verification, the Petitioner should have been deemed to have been put back to duty within 24 hours of his producing the medical certificate from a private medical officer.

22. In the instant case, it is worth noting that the Petitioner made a request vide letter dated 18th April, 1992 for sanction of 75 days leave. The said request reads as under:-

"No.6BN/B/PF/Insp-ACC-RVS/921 Dated;.18.04.92.

To

The Commandant,

No.6BN/RPSF/DBSI/Delhi-35.

Through

the Assistant Commandant- I, 6BN/RPSF/DBSI/Delhi-35.

Sub:- 75 days LAP + LHAP + LWOP application of Insp/ACC

Raj Vir Singh of B.Coy. 6BN/RPSF/DBSI/DLI-35.

An application with request for sanction of 75 days LAP + LHAP + LOWP of the undersigned for self treatment is being sent herewith for favour of your kind information and further n/a please.

Submitted please.

D.A/One.

Sd/- dated. 18.4.92.

(R. V. Singh)

Coy. Commander

6BN/RPSF/B.Coy.,

DBSI/Delhi-35."

23. It is therefore clearly evident that by making a request for sanction of leave, Petitioner did not obtain a sick certificate under Rule 538 (2) or 538 (4) of IRMM. The request as noted above was not on the basis of a sick certificate and could not therefore be classified as leave on medical certificate. This request for grant of leave was acceded to and sanctioned by the Respondent on 14th May, 1992 which also clearly provides that the sanction of leave is as LAP and LWOP. This is evident from the text of the sanctioned letter that reads as under:-

No.6BNIPF I ACC-RVS/9211606 Dated. 14.5.92.

To

IPF/HQr,

6BN/RPSF,

Dayabasti, Delhi-35.

Sub :- Inspector I ACC Raj Vir Singh of 'B' Coy.

Please not and inform the above named Inspector/ACC that he has been granted 75 days leave as under by the Assistant Commandant, BNIRPSF/DBSI Delhi.

1) One day LAP as due.

2) 74 days LWOP, being no LAP / LHAP due. Also passed the following orders.

"He may be spared on 15.05.92. The Inspector been attached to BN/HQr. Upto15.05.92 "

Sd/- dated.14.05.92.

For Assistant Commandant-I

6BNIRPSF /DBSI"

24. Therefore, it clearly emerges that the leave was not sanctioned as leave on medical certificate. Furthermore, extension of 45 days LWOP was granted on 16th August, 1992 and the same was to expire on 30th September, 1992. It is also significant to note that no request was made for grant of Extraordinary Leave initially or at the time of extension or at any stage thereafter.

25. Apparently, Petitioner applied for further extension on 29th September, 1992. This request was rejected vide letter dated 17th October, 1992. As noted above in the said letter, Petitioner was further called upon to report to the nearest railway doctor for private treatment of the reported disease of "gall bladder stone". Petitioner did not do so and also did not make any further effort to send any intimation to the Respondent about his inability to resume his duty.

26. A further reminder was sent by the Respondent on 8th December, 1992 but Petitioner failed to take any corrective steps. He neither reported to the doctor nor resumed his duty. On 5th March, 1993, a charge sheet was issued against the Petitioner. Thereafter, Petitioner approached the Respondent with a purported sickness certificate dated 14th March, 1993 and decided to resume duty. From the above narration of facts, it clearly emerges that the Petitioner was initially granted 75 days leave (one day Leave on Average Pay (LAP) + 74 days Leave Without Pay (LWOP)) and was also granted extension of 45 days as LWOP. The extant leave expired on 30th September, 1992. The Petitioner was thus required to report on duty on 1st October, 1992. Admittedly, he did not do so and did not join duty after the expiry of the leaves and instead requested for further extension of 45 days leave on the ground that he was undergoing treatment. His request was rejected vide letter dated 17th October, 1992 and he was directed to report to nearest Railway Doctor for proper treatment of the reported disease of "gall bladder stone". The Petitioner was also made aware that further extension of leave was inadmissible, because he had already availed the maximum leave permissible at a time as per the extant rule i.e. 120 days.

27. After a lapse of 50 days, the Assistant Commandant sent another letter dated 8th December, 1992 advising the Petitioner to report on duty, as the Petitioner had failed to report on duty. It thus clearly transpires that beyond 30th September, 1992, Petitioner's absence was unauthorised. When Petitioner's request dated 29th September, 1992 for extension was turned down, Petitioner ought to have resumed duty or at least made an effort to go before the railway doctor in order to get a confirmation from him regarding his purported illness. Till 15th March, 1993, that is, for a period of nearly six month, Petitioner continued

to be absent without any sanction of leave. Therefore, Petitioner's contention that when he resumed duty on 15th March, 1993, it was incumbent upon the Respondent to have taken him on duty on the strength of the fitness certificate is wholly misplaced and legally untenable. Since the Petitioner absented himself from duty, without a sanctioned leave for such a long period, this prima facie shows lack of interest in work. The rules provide for the mechanism for an employee to seek prior permission from the Respondents for seeking leave. This is to enable the Respondent- Employer to make alternate arrangements and to ensure that work does not suffer on account of the absence of the employee. Allowing an employee to remain absent without prior permission or condoning his unauthorized absence without justifiable reasons, would send a wrong message to the disciplined force like the Respondent-RPF. The Supreme Court in Delhi Transport Corporation v. Sardar Singh reported at (2004) 7 SCC 574 has in fact held that, merely making an application for absence from work does not assist the employee concerned, the requirement is obtaining leave in advance. The enquiry officer thus rightly concluded that the Petitioner was negligent in duties and exhibited lack of interest in the employer's work. The conclusion of carelessness, negligence and lack of interest has been arrived at by looking into the conduct of the Petitioner and the period of absence, more particularly when the same was unauthorized. Rule 104.3 of the Railway Protection Force Rules, 1959 stipulates that an employee shall not absent himself from his duty without first obtaining the permission from the competent authority. In case of sudden illness, an employee is expected to send intimation to the office immediately. In this context the Supreme Court in Mithlesh Singh v. Union of India reported at (2003) 3 SCC 309, held as under:-

"8. Rule 147(vi) deals with the case of absence without proper intimation. A mere application for grant of leave cannot be construed to be a proper intimation for absence. Rule 104 indicates various modalities governing grant of leave. There is prohibition on any member of the Force to leave station even on holidays without specific permission of the authority empowered to grant casual leave. These modalities having been enumerated in Rule 104 clearly bring out the essence of discipline, which is required to be observed. Absence from duty without proper intimation is indicated to be a grave offence warranting removal from service. Therefore, mere making an application for leave cannot be construed to be of any consequence in the background of the strict requirement of giving proper intimation. Even if it is accepted that there was intimation, that by no such imagination can be construed to be a proper intimation for diluting the requirement of obtaining permission before absenting from duty. Stress is on the expression "proper". It means appropriate, in the required manner, fit, suitable, apt. The mere making of a request of leave, which has not been accepted is not a proper intimation. It cannot be said that the said word is a surplusage. The intention of the legislature is primarily to be gathered from the language used, and as a consequence a construction which results in rejection of words as meaningless has to be avoided. It is not a sound principle of

construction to brush aside word(s) in a statute as being inapposite surplusage; if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain. The authorities were, therefore, justified in holding that he was guilty of the offence of absence from duty without proper intimation."

28. Petitioner's reliance on Rule 541 (3) is also misplaced, inasmuch as discussed above, initial sanction of leave was not on medical grounds, though Petitioner had cited certain reasons for taking the initial leave of 75 days. The said communication also states that Petitioner would like to be on special diet, undergo certain medical tests etc and therefore this is indicative of the fact that Petitioner desired to undergo certain treatment and for that reason he had applied for leave. Petitioner did not have a sick certificate from the railway doctor or from a non- railway doctor, for applying for medical leave. More pertinently, after 1st October, 1992, when Petitioner failed to report on duty, his absence was unauthorised and therefore Petitioner's argument that since on 15th March, 1993, he had furnished the fitness certificate he would be deemed to be on duty, is completely bereft of merit.

29. After an inordinate delay of six months, he cannot be permitted to contend that he has an automatic right to resume his duty on the strength of a certificate from non-railway doctor, corroborating his treatment from 28th September, 1992 to 14th March, 1993. Clause 541 (3) of the Indian Railway Medical Manual ('IRMM') requires a certificate from the Railway Medical Officer, which was concededly not submitted by the Petitioner. Thus, the fitness certificate dated 14th March, 1993 was of no avail to the Petitioner.

30. There was sufficient evidence before the Enquiry Officer, to prove the charge of misconduct on part of the Petitioner. Petitioner after availing 120 days leave sanctioned to him, failed to report to duty on expiry of his leave i.e. on 30th September, 1992. He also did not inform the administration within 48 hours after the date of reporting sick and had sent two PMC's on 27th May, 1993, only after a period of about eight and a half months and then submitted additional PMC after a lapse of one year therefrom. The PMCs submitted did not meet the requirement prescribed in the Rules and the same were not considered as authentic proof of his sickness. It is thus evident from the record that after having failed to report on duty on 1st October, 1992, the Petitioner neither visited the Railway Hospital nor did he inform the Department. After having failed to report on duty on 1st October, 1992, the first communication that was received from the Petitioner was on 15th March, 1993. Relying on the fitness certificate dated 14th March, 1993 enclosed with the aforesaid letter, Petitioner contended that he was undergoing medical treatment which he submitted on 15th March, 1993, the date when he sought to resume his duties. The said

certificate states as under:-

"This is certified that Sh. Rajvir Singh S/o Sh. B. Singh R/o A-602 Sector-19 Noida was under my treatment since 28.9.1992 to 14.3.93 for "Hypertension, LNR disease". He has recovered from his illness and now he is fit to resume all his duties on 15.3.1993."

31. The said certificate curiously does not mention the alleged ailment of "gall bladder stone". It refers to the ailment of "Hypertension, LNR disease". The findings of the Enquiry Officer on the question of unauthorised absence from 1st October, 1992 to 2nd January, 1995, therefore, do not appear to be on incorrect premise and do not suffer any infirmity thus, Petitioner's challenge is legally untenable.

32. Petitioner's contention that the PMC certificate furnished by the Petitioner could not have been rejected by the enquiry officer is also an argument that is ex facie misconceived. Reliance on Rule 538 (4) and Rule 539 (2) on the aforesaid ground is also misplaced as noted above, since Petitioner did not apply for medical certificate at the first instance and therefore on 15th March, 1993, after a period of six months of unauthorised absence, he could not have claimed as a matter of right to join the duty, shifting the responsibility to the Respondent to verify the fitness certificate in order to allow him to resume duty.

33. The Petitioner has failed to note that the applicability of the aforesaid Rule is for such employees who are on leave on medical certificate/grounds. Thus reading of the aforesaid provisions suggests that it's applicability would arise where a railway employee desires to take leave on medical certificate or when an employee is on such leave. We are unable to appreciate as to how the Petitioner has relied upon the aforesaid Rules. The Petitioner's contention that his unauthorised absence was for justifiable reasons and the Respondent authority had complete knowledge of the same and therefore he ought to have been granted extension of leave is also legally unsustainable. Petitioner's request for extension was rejected on 17th October, 1992 and therefore it was for him to have reported on duty or to at least have visited a railway doctor.

34. The other ground of challenge by the Petitioner being that the enquiry report was submitted with damaging comments also does not appear to be correct. The Enquiry Officer while making the report has used the expression "unauthorised absence for two years is quite serious". This comment has to be understood in the context of Article of charge. The charge of misconduct and negligence levelled against the Petitioner relating to unauthorised absence cannot be determined without appreciating the seriousness of the charges, keeping in mind the period of absence. We also note that the Disciplinary Authority has applied its mind and meticulously perused the findings of the Enquiry Officer before accepting the same and awarding the punishment. This critical evaluation is also visible from the orders of the Appellate and Revisional Authorities and thus the comments of Enquiry Officer singularly cannot be the ground to hold that the

enquiry proceedings and the report are vitiated.

35. Petitioner's contention that the Respondent could have granted him extraordinary leave on the basis of the medical certificate is without merit. The relevant Rule for obtaining extraordinary leave is Rule 530, which reads as under: -

530.Extraordinary Leave

(1) Extraordinary leave may be granted to a railway servant in special circumstances.

(a) when no other leave is admissible, and

(b) When other leave is admissible, but the railway servant applies in writing for the grant of extraordinary leave

(2) -xxx- -xxx-

(3) -xxx- -xxx-

(4) -xxx- -xxx-

(5) -xxx- -xxx-

Note 1. -xxx- -xxx-

Note 2. -xxx - -xxx-

Note 3. -xxx- -xxx-

No limit in case of permanent Railway servants but all kinds of leave together shall not exceed 5 years in one shell.

Note 4. -xxx- -xxx-

36. Petitioner after remaining absent unauthorisedly for six months cannot seek regularisation of the overstay period as extraordinary leave. On the date of the alleged joining i.e. 15th March, 1993, he was already facing the charges of misconduct. The aforesaid Rule clearly stipulates that for grant of extraordinary leave, the employee has to make a request in writing. In the present case, no such request was made by the Petitioner. The extraordinary leave can be granted to the railway servants under special circumstances, when no other leave is admissible. Merely because the upper limit for grant of extraordinary leave is five years, does not mean that the Petitioner is entitled to extraordinary leave at the asking. Petitioner's salary was stopped in accordance with the relevant rules dealing with "extraordinary leaves".

The leaves granted by the Respondent without pay was only for 120 days. Petitioner's request for extension was rejected and he was directed to report for duty or present himself before the railway doctor for his treatment. In the absence of any document to establish that railway doctor advised the Petitioner

to undergo surgery for removal of gall bladder, there is no merit in the contention of the Petitioner that the period w.e.f from 30th September, 1992 should be regularized as extraordinary leave.

37. We note yet another contention of the Petitioner that his request for documents was wrongly rejected. We have gone through the findings of the Enquiry Officer. The request for documents was rejected by the Enquiry Officer on the ground that none of the documents requested for by the Petitioner were remotely connected with the present case. The articles of charge are primarily on the ground of unauthorised absence and this misconduct had to be ascertained by the Enquiry Officer on the basis of the facts which appear to be undisputed. In order to rebut the charge, Petitioner essentially relied upon the legal provisions to assert his right to resume duty on the strength of his fitness certificate produced by him, therefore, the documents requested by him were found not be of any relevance so as to affect the outcome of the enquiry proceedings. Petitioner is also unable to show any prejudice caused to him on the account of the refusal by Enquiry Officer to provide such documents and thus this ground of challenge is misplaced.

38. The Petitioner's contention that enquiry conducted should have been by the officer where he was posted i.e. NJP does not warrant any consideration, as the present case has travelled to a stage where Petitioner's appeal as well as revision have been rejected and the aforesaid ground was never urged at any stage hereto before.

39. Lastly, the argument of the Petitioner that the revisional order has been signed by the Inspector General and the same is not in compliance with the rules, is also completely vague. The revisional order in fact, favours the Petitioner. It has reduced his punishment from removal of service to compulsory retirement. Moreover, it is to be noted that Inspector General has signed on behalf of the Government of India and as per the Rules, the Revisional Authority is Government of India.

40. In view of the foregoing discussion and the judgments noted above, we find there is no ground for interference and accordingly the appeal is dismissed.