

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Monday the 1st day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)
THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1301/2016

D.S. Bright Singh,
S/o. C. David Singh
644, Madurai Road,
Viruchunagar-626 001.

.....Applicant

(By Advocate: M/s. S. Meenakshi)

Vs.

1. The Union of India Rep. By
The Divisional Officer,
Transportation Branch,
Southern Railway,
Madurai;
2. The Senior Division Operation Managers,
Madurai Division,
Transportation Branch,
Southern Railway,
Madurai;
3. The Additional Divisional Railway Manager/Madurai,
Divisional Office,
Personnel Branch,
Southern Railway,
Madurai;
4. Chief Passenger Transportation Manager,
& Reservation Authority,
Headquarters Office,
Personnel Branch,
Southern Railway,
Chennai-600 003. ...Respondents.
(By Advocate: Mr. Y. Prakash)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking the following reliefs:-

"To set aside the order No.U/T.411/Misc./CII/221 dated 16.03.2015 and the charge sheet No. U/T. 411/Misc/C11/221 dated 25.07.2014 issued by the 2nd respondent read with the order No.U/P.94/II/41/2015 dated 06.08.2015 and order No. P(A)94/2015/1902 dated 02.06.2016 issued by the 2nd and 3rd respondents respectively and consequently direct the respondents to reinstate the applicant with continuity of service with full backwages and all other consequential benefits and thus render justice."

2. The applicant was working as a Station Superintendent. The applicant had completed 34 years of service. Owing to frequent transfers, his health suffered much and had to undergo treatment. On 27-8-14, applicant went to the Railway Hospital, Madurai for treatment. He was treated as Out Patient (O.P). He was asked by Doctor to come on 29-3-14 for further treatment. The applicant went to see the Doctor on 1-4-2014 and he was asked to come on 3-4-14. But on that day, he found that his name was struck off from sick-list. But, he was not informed of it. His sickness was aggravated and he sought permission to continue treatment under *siddha* medicine. The doctor advised him to undergo a course of medicine. So, he applied for leave on 21-4-14 to Senior DOM on

medical ground. The leave application was returned stating that it should be accompanied with railway doctor's certification as per Rule 538(1) of IR medical manual. He re-submitted the same with certificate. But the senior DOM rejected the application stating that he is treated as absent. On 25-4-14, the leave application given along with the railway doctors recommendation is produced as Annexure-A5. The respondents without giving an opportunity to explain the facts, framed a charge memo on 25-7-14 stating that applicant failed to show devotion to duty and absented himself from duty unauthorisedly from 22-4-14 to till then and failed to report for duty and hence violated Rule 3(1)(ii) of Railway Services Conduct Rules 1966. A copy of attendance register, copy of fit certificate issued by ADMO dt. 21-4-14 were shown as documents relied upon by the respondent. The copy of charge memo is produced as Annexure-A7.

3. When the charge memo was received, he was severely sick and had already started treatment. He could not come to the office and offer explanation to the same. Instead of giving time to file statement, respondent threatend him that he will be set-exparty(Annexure-A8) despite knowing the fact that he was sick and, the respondents appointed an Inquiry Officer on 25-9-14(Annexure-A9). He thereafter, received a letter stating that

preliminary enquiry will start on 11-11-14 (Annexure-A10). The applicant made arrangements for a defence help through one Mr.S Balasubramonian. He has informed that he was under medicine of one, Dr. AP Sivan and he was advised to avoid travels and sought Mr. Balasubramonian as Defence Assistant to participate in the Inquiry. But, the respondents did not permit the Defence Assistant to participate in the inquiry stating that the Defence help has not given his consent letter stating his details(Annexure-A12). Thereafter, he decided to participate personally in the inquiry and sought for copies of documents(Annexure-A13). Instead of sending the documents, the I.O. informed that the documents are available in the office for perusal and gave a final chance to appear on 16-12-14. On 3-2-15, he was given a copy of inquiry report proceeding as ex-party against him and finding him guilty(Annexure-A15). Again the applicant made a request to consider his leave request considering his health condition. Respondent No.2 rejected the request made. The applicant was *removed from service* by order dt.16-03-2015. He filed an Appeal on 5-5-15 and sought for re-consideration of penalty imposed. The Appeal filed by him was also dismissed on 6-8-15. Thereafter, he filed a Review Petition on 22-09-15 BRM/MDU. But it was not considered. The applicant then filed OA796/16 before this bench

for setting aside the order. The Tribunal directed the respondents to consider the Review Petition and pass a speaking order. The Review Petition was dismissed by respondent on 2-6-16. So, he filed this OA alleging the violation of principles of natural justice, arbitrariness, giving no opportunity to participate in the inquiry, disproportionate punishment etc.

4. The respondent filed a detailed reply denying the allegations made. They admitted the issue of charge memo(Annexure-A7). According to the respondents, though the charge memo was received by applicant on 26-7-14 and acknowledged the receipt, he didn't file any explanation till 21-9-2014. Hence respondent as per letter dt.12-9-14 advised the applicant again to file explanation before 22-9-14. But, the applicant did not give any valid grounds for continued absence and hence inquiry was ordered into the charges. The applicant had reported sick on 26-3-14 at Dindigul and his case was transferred to Madurai. While he was taking treatment at Madurai hospital, he did not attend the Doctor on 29-3-14. He reported there only on 1-4-14. Even after that, he was kept in the sick list and permitted to take Homeopathy treatment as per his wish from 10-4-14. His case was then transferred to Asst. Divisional Medical Officer, Dindigul on 21-4-14. He was given a fit certificate on 22-4-14 for the period from

26-3-14 to 21-4-14 (except for 3-4-14 to 8-4-14) when he did not attend the Railway Hospital. The fit certificate was given to the applicant after obtaining his signature. There is no merit in the statement that he was removed from sick-list without informing him (copy of certificate as Annexure-R1). So, the applicant was medically declared fit on 21-4-14. There is no record to show that the applicant was permitted to take treatment from outside. The para 538(2) of IRMM reads "*should a railway employee residing with in the jurisdiction of the railway doctor, desires 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 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 railway doctor. Para 538(3) states "sick certificate may be issued by the railway doctor of the section in which the railway employee resides for the time being."*"

The applicant had neither produced any sick certificate from Railway Hospital, Madurai or from Railway Health Unit at Virudhunagar where he resides. So, the applicant's request for leave on medical grounds was not considered for the above reason. Notice was also given to applicant that his leave was not sanctioned. Since, he did not rectify the defect even after 2

months, the charge memo was issued on 25-7-14. The applicant did not bother to give any explanation to charge memo for two months, ie: till 12-9-14. Then, he was informed that if no explanation is given, he will be proceeded ex parte. The DAR proceedings cannot be held up in-definitely. He was given 45 days for the same. Owing to his silence, an inquiry officer was appointed on 25-9-14. As regards the appointment of Defence Assistant, the Railway Board letter No.E(DTA)68RG6-8 dt.25-5-68 insist on obtaining the consent of the Defence Helper. The applicant did not produce the consent letter for appointing the Defence Helper before appointment. Hence the request could not be allowed. The IO has permitted the applicant to peruse the documents relied upon in the inquiry, but it was not used by the applicant. He did not attend the preliminary inquiry and hence a regular inquiry was fixed on 29-12-14. He failed to appear in the next two sittings and hence inquiry was proceeded ex parte. The applicant was given copy of the Inquiry Report on 3-2-15. The applicant failed to file any statement and sought for adjournment. Hence after considering the report, the DA imposed the *penalty of removal from service*.

5. The counsel for the applicant would contend that the applicant was not given an opportunity to defend his case. He was not permitted to appoint a Defence Helper and the proceedings had

become irregular. The applicant also seeks to set aside the order on the basis of violation of principles of natural justice. It was also argued that the punishment ought to have been imposed by the General Manager. In this case the punishment was imposed by a incompetent authority. The punishment imposed is highly disproportionate to the nature of offence committed.

6. The counsel for the respondent argued in line with his pleadings.

7. We have carefully gone through the inquiry report filed(Annexure-A15)in this case. Only the Muster Roll of CII stations and fit certificate issued on 21-4-14 by ADMO were relied upon by the respondent. One witness, V. Murugaih working as SS/chII was examined. On going through the report, we find that the respondents had given about 2 months time to the applicant to file his explanation. Even thereafter, a reminder was sent in his postal address on 12-9-2014. Then he filed a representation on 21-4-14. Only on 25-9-14, IO was nominated and a preliminary inquiry was ordered on 11-11-14. But, the applicant did not attend the same. He sent a letter stating that he is still under medical care and sought permission for Defence Help in the next hearing. Eventhough, the applicant was asked to produce the consent of the Defence Help, it was not given. The applicant sought copies of

documents and the IO had permitted the applicant to peruse the two documents. But this was not done by the applicant. The applicant did not care to attend the regular inquiry also and it is only on 20-1-15 the IO had decided to proceed ex-party. One witness was examined and enquiry was completed.

8. From the above facts, it can be seen that the applicant was given ample opportunity to defend him. But the applicant was not ready to do the same and respondent was compelled to proceed ex-party. There after, the IO filed his report that the applicant is found guilty for unauthorised absence. The DA had considered the Inquiry Report and imposed a penalty of removal from service. On a perusal of the report, it can be seen that the order of removal was passed by Senior Divisional Operations Manager/MDU. The main objection raised by the counsel for applicant was that only the GM can impose penalty of removal from service. A copy of order in OA1406/98 of Ernakulam Bench holding that only General Manager can impose penalty was cited in support of his case. The counsel for the respondent had produced a subsequent Circular No.161/2004 showing delegation of powers and officers who can exercise the powers of *the appointing authority for imposing penalties* of dismissal, removal or compulsory retirement of non-gazetted staff. As per the Circular, for all non-gazetted staff, Junior

Administrative Officers can act as Appointing Authority for imposing penalty. In this case, the penalty was imposed by Senior Divisional Operations Manager and we cannot find any illegality or incompetency in him to impose the penalty in this case. The order in OA 1406/98 of Ernakulam Bench has no application after the issue of Circular 161/2004. The counsel for the applicant thereafter invited our attention to the fact that the applicant had served 33 years with out any blemish. Even according to the respondents, the applicant had fell sick and was under treatment for some time. But, thereafter applicant had gone for treatment under *Sidha* system outside. The leave applied was rejected since the applicant had not obtained certificate from the Railway Doctor certifying his illness and for treatment in medicine as per provisions of IRMM. If he had rectified the mistake, he could have continued on medical leave. The punishment imposed is removal from service. It is shockingly disproportionate to the misconduct alleged against him.

9. We had gone through the facts and we find that the applicant entered Railway service in the year 1980 and he had completed about 34 years of service in 2014. The applicant would have been granted medical certificate from railway doctor as prescribed by IRMM. **In this view of the matter, the punishment imposed on the applicant is shockingly disproportionate which has to**

be interfered with. We find merit in the argument of the counsel for the applicant.

10. In the result, while confirming the finding of guilt by the DA, we hereby set aside the penalty of removal from service ordered dt. 16-3-2015(Annexure-A17). The disciplinary authority is directed to pass a fresh order of punishment taking into account the facts and seriousness of the misconduct and impose a penalty proportionate to the misconduct committed by applicant within a period of 3 months from the date receipt of copy of the order.

11. In the result, the OA is allowed to that extent. No costs.

(T. JACOB)
MEMBER(A)

Asvs

(P. MADHAVAN)
MEMBER(J)

01.06.2020