

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

O.A.No.310 of 2018

Present: **Hon'ble Mr.Gokul Chandra Pati, Member (A)**
Hon'ble Mr.Swarup Kumar Mishra, Member(J)

Gouri Kumar Patnaik, aged about 49 years, S/o. late Pravakar Patnaik, at present working as Senior Section Engineer (Bridge), Titilagarh, Dist-Balangir, Odisha.

...Applicant

VERSUS

1. Union of India represented through its General Manager, East Coast Railway, Rail Sadan, Chandrasekharapur, Bhubaneswar-17, Dist-Khurda.
2. General Manager, East Coast Railway, Rail Sadan, Chandrasekharapur, Bhubaneswar-7, Dist-Khurda.
3. Chief Bridge Engineer, East Coast Railway, Rail Sadan, Chandrasekharapur, Bhubaneswar-17, Dist-Khurda.
4. Deputy Chief Engineer (Bridge), East Coast Railway, Rail Sadan, Chandrasekharapur, Bhubaneswar-17, Dist-Khurda.
5. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharapur, Bhubaneswar-17, Dist-Khurda.
6. Inquiry Officer-cum-Asst.Divisional Engineer/Low Height Sub-way (LHS), Waltair Division of East Coast Railway, At/PO/dist-Visakhapatnam, Andhrapradesh.

...Respondents

For the Applicant: Mr.S.Das, Counsel

For the Respondents: Mr.N.K.Singh, Counsel

Heard & Reserved On: 04.02.2020

Order On:26.05.2020

ORDER

Per Mr.Gokul Chandra Pati, Member (A):

The reliefs sought for in this OA by the applicant are as under:-

- i) Admit the Original Application.
- ii) Call for the Records.
- iii) And quash the order dated 24.02.2015 passed by the disciplinary authority, order dated 28.05.2015 passed by the appellate authority, the re-written enquiry report dated 13.12.2016 of the enquiring officer and the order dated 29.08.2017 passed by the revisional authority under Annexures-A/8, A/10, A/14 and A/17 respectively and further be pleased to direct the respondents to regularize the service of the applicant for the period from 24.07.2013 to 3.03.2014 as commuted leave from the Leave on Half Average Pay(LHAP) account and he may be extended all such

service benefits as is due and admissible for the above period within a reasonable time to be stipulated by this Hon'ble Court.

- iv) And also pass any other appropriate order(s)/direction(s) as this Hon'ble Tribunal may deem fit and proper keeping in view the fact and circumstances of the case.

2. The applicant was initially appointed by respondent-Railways as Bridge Inspector Grade-III after being selected for the post and he joined on 20.5.1992 as apprentice and was regularized in the said post on 10.5.1993. He was then promoted as Section Engineer (Bridge) (in short as SEB) on 20.7.2007. While working as SEB at Cuttack, he was transferred on administrative grounds to Titlagarh on 22.5.2013. He fell ill as per the Railway Medical Certificate (in short RMC) dated 23.7.2013 (Annexure-A/1) declaring him to be unfit for duty for about 3-5 days. The applicant alleges that on pressure from senior officers, he was declared fit on 24.7.2013 though he had not fully recovered and hence, he underwent treatment under a private doctor from 24.7.2013 to 13.3.2014 and during this period he had kept the authorities informed about the same and his progress at an interval of 15 days. He was declared medically fit on 14.3.2014 vide the RMC certificate at Annexure-A/2.

3. When the matter stood thus, the applicant was issued a charge memo dated 24.3.2014 (Annexure-A/3) for unauthorized absence, to which he submitted the reply on 9.4.2014 (Annexure-A/4) explaining the situation arising because of his illness. The Disciplinary Authority i.e. Respondent No. 4 (referred in short as DA) appointed the Inquiry Officer (in short IO) to inquire into the charges. The inquiry Report dated 29.9.2014 (Annexure-A/5), copy of which was sent to the applicant for his reply. He submitted his reply dated 19.10.2014 (Annexure-A/7) to the DA, who decided to impose the punishment of reduction to one lower stage in the pay band vide order dated 24.2.2015 (Annexure-A/8). The appeal filed was dismissed. The applicant filed Revision Application dated 30.9.2016 (Annexure-A/12), pointing out the fact that the IO in his report has not found the charges proved. The Revisionary Authority (in short RA) vide order dated 3.11.2016 (Annexure-A/13) has recorded the findings that the inquiry report was not as per the rule 9(25) of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short Rules, 1968) and the matter was remitted to the DA to get the inquiry report prepared as per the rule 9(25) and resubmit the case for taking a final decision.

4. It is stated in the OA that another IO was appointed by the DA for conducting fresh inquiry and he issued a notice to the applicant to attend the inquiry. But the authorities got the earlier inquiry report re-written on 13.12.2016 (Annexure-A/14) by the earlier IO, copy of which was sent to the

applicant for his reply. The applicant vide his letter dated 23.2.2007 (Annexure-A/16) informed to the RA denying the charges. But the RA passed the order dated 29.8.2017 (Annexure-A/17) upholding the punishment imposed by the DA.

5. The applicant challenges all the orders passed by the authorities and the re-written report of the IO as illegal while challenging those orders in this OA mainly on the ground that no inquiry under the rule 9(25) of the Rules, 1968 has been conducted as per the order dated 3.11.2016 of the RA and subsequent order dated 29.8.2017 (A/17) failed to consider the procedure laid down under the Rules, 1968 under which the re-written inquiry report dated 13.12.2016 was in violation of the Rules, 1968. It is averred in the OA that the applicant was not given any opportunity of hearing by the IO before re-writing the report and that such report should have been first placed before the DA as per the provisions of the Rules, 1968, before consideration by the RA. It is also averred that the charge against the applicant has not been established as per the inquiry report, which held the charge to be proved due to failure to submit the RMC within the time as stipulated under para 538 of the Indian Railway Medical Manual (in short IRMM).

6. Counter filed by the respondents stated that the applicant was transferred to Sambalpur Division by the order dated 22.5.2013 (Annexure-R/1) and in his place one Sri S. Ghosh was posted, who joined at Cuttack on 19.7.2013. But the applicant, instead of handing over the charge to Sri Ghosh, intentionally reported sick on 23.7.2013. Since his illness was not grave, he was declared medically fit on 24.7.2013 and he was directed to report at Titlagarh and released from Cuttack vide letter dated 24.7.2013 (Annexure-R/2). But he avoided to report at the place of transfer on plea of sickness and joined at Titlagarh on 14.3.2014 after a lapse of 7 months. It is averred in the Counter that he remained under unauthorized absence from 24.7.2013 to 13.3.2014 for which he was issued the charge memo for major penalty.

7. When the RA remitted the matter to the DA for preparation of the report as per the rule 9(25) of the Rules, 1968, the DA wrongly appointed another IO for conducting the inquiry afresh. It was pointed out by the CPO vide his letter dated 1.12.2016 (Annexure-R/7 series) stating that the RA did not order fresh inquiry and his order required to prepare the report as per the rule 9(25) of the Rules, 1968 and to resubmit that matter to the RA. On receipt of the letter, the DA vide his order dated 8.12.2016 cancelled his order dated 16.11.2016 for conduct of fresh inquiry and issued a letter to the original IO to prepare the report as per the rule 9(25). Accordingly, the revised report of the IO was prepared and the same was placed before the RA for order.

8. Rejoinder has been filed by the applicant, reiterating the stand taken in the OA. It is stated that as per the rule 9(25), the inquiry report will be prepared after conclusion of inquiry, which was not conducted by the new IO who was appointed after the order of the RA. It is also pointed out that the RA has recorded his finding that the inquiry findings were extraneous to the charges, for which fresh inquiry was required. The re-written inquiry report dated 13.12.2016 was a violation of the Rules, 1968. It is further stated that once the matter is remitted to the DA by the RA, the punishment order of the DA is set aside and there is no valid punishment order of the DA which was upheld by the RA in his order dated 29.8.2017 (Annexure-A/17 and hence, the order dated 29.8.2017 is not sustainable in the eye of law.

9. Heard learned counsel for the applicant who also filed a written note of submission relying on the following judgments :-

- i) Chennai Metropolitan Water Supply and Sewerage Board and Ors. Vs. T.T.Murali Babu, AIR 2014 SC 1141: (2014)4 SCC 108, Paras-21, 22 and 26.
- ii) H.P.State Electricity Board Ltd., vs. Mahesh Dahiya, AIR 2016 SC 5341 : (2017) 1 768, paras-21, 25.
- iii) Bhaskar Sabat vs. Union of India and Ors., 2019 (I) OLR 176, Paras-9 (...15), 11 (...18) and 12.
- iv) M.P.State Agro Industries Development Corporation ltd., vs. jahan Khan, AIR 2007 SC 3153 ; (2006) 10 scc 88, Para-3, 5 and 9
- v) Chamoli District Co-operative Bank Ltd. Vs. Raghunath Singh Rana and Others, AIR 2016 SC 2510: (2016) 12 SCC 204, paras-11, 19, 20, 21 and 22.
- vi) Ram Surat Pandey vs. Union of India passed by Central Administrative Tribunal, Allahabad in O.A.No.1098 of 2006.

Learned counsel submitted that the revised report of the IO should have been considered by the DA first. But it was placed before the RA directly. It was also pointed out that as per the law laid down by Hon'ble Apex Court as per the cited judgments, unauthorized absence will be treated as a misconduct if it is wilful. It was also submitted that the applicant was not given a reasonable opportunity to participate in the inquiry and also to represent on the re-written inquiry report dated 13.12.2016. Learned counsel for the applicant also submitted that the findings of the authorities are perverse.

10. Heard learned counsel for the respondents, who referred to the para 537 of the IRMM under which a certificate from a competent Railway Doctor is necessary in case of failure to attend the duty due to illness. He also reiterated the stand taken in the Counter. Learned counsel for the respondents relied on

the judgment of Hon'ble Apex Court in the case of **S.C. Saxena vs. Union of India and Others, reported in (2006) 9 SCC 583** to support his arguments. A written synopsis of arguments was also submitted by learned counsel for the respondents enclosing a copy of the judgment of Hon'ble Apex Court in the case of **Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T.T. Murali Babu, reported in (2014) 4 SCC 108**, which was also cited by the applicant's counsel.

11. We have considered the pleadings as well as the citations filed by both the parties. The charge sheet dated 24.3.2014 (A/3) contained one Article of charge alleging that the applicant was transferred to Titlagarh under Sambalpur division by order dated 22.5.2013 and he was released from Khurda Road division on 24.7.2013. But he did not report for duty in new place of posting and remained on unauthorized absence from duty w.e.f. 24.7.2013 and thereby, he failed to maintain devotion to duty. The defence of the applicant is that he was ill and had informed the authorities from time to time about treatment. Hence, the charge memo dated 24.3.2014 (A/3) is connected to the applicant's failure to join at his place of posting as per the order dated 22.5.2013.

12. The applicant's case is that his absence was not wilful and deliberate, but it was due to illness and he was informing the authorities from time to time. He had relied on a number of judgments to build his case. In the case of Raghunath Singh Rana (supra), the order of dismissal from service was passed by the authorities without conducting any inquiry, for which it was held that such punishment order deserved to be set aside. Since in the instant OA, the inquiry was held and the report was re-written without conducting fresh inquiry, it is factually distinguishable. In the case of Bhaskar Sabat (supra), the witnesses cited by the charged officer were not allowed to be examined in the inquiry and the IO was changed without hearing the charged officer and the appeal was rejected on the ground of delay. Hence, it was held that the petitioner was not allowed reasonable opportunity of hearing and punishment was imposed in perfunctory manner. The facts in the instant OA are different. In the case of Mahesh Dahiya (supra), it was observed that the disciplinary authority had already made up his mind to impose the punishment of removal from service before forwarding the inquiry report to the charged officer for his reply. Hence, the punishment orders were set aside and the disciplinary authority was directed to send the inquiry report to the charged officer to submit his representation as per the rules and deal with the matter as per the provisions of the rules after receipt of the representation. In the instant OA, the contention of the applicant is also violation of the provision of the rules and if

such contention is found to have merit, then the facts of the OA will be similar to the cited case.

13. In the case of Ram Surat Pandey (supra) decided by the Tribunal (Allahabad Bench in OA No. 1098/2006), which is cited by the applicant's counsel, it was observed that the inquiry officer held the charged officer guilty of charges which were not mentioned in the charge-sheet and the inquiry was conducted beyond the scope of the charge-sheet and the punishment imposed was stated to be harsh and disproportionate, for which, that OA was allowed by the Tribunal. In the instant OA, there is no such allegation that the inquiry was conducted beyond the charge-sheet. Hence, the cited judgment is factually different.

14. In the case of T.T. Murali Babu (supra) cited by the counsel of both the applicant and the respondents, the charged officer (respondent-employee in the cited case) was proceeded against for unauthorized absence from duty. Disciplinary proceeding was initiated against him and the punishment of dismissal from service was imposed by the disciplinary authority. The employee concerned challenged the said dismissal in a writ petition which was allowed by Hon'ble Madras High Court and the said order was challenged in the cited case. Hon'ble Apex Court held in that case as under:-

"22. We have quoted in extenso as we are disposed to think that the Court has, while dealing with the charge of failure of devotion to duty or behavior unbecoming of a Government servant, expressed the aforesaid view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful. On an apposite understanding of the judgment we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorized absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.

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26. Thus, the unauthorized absence by an employee, as a misconduct, cannot be put into a straight-jacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in Dr. P.L. Singla (supra)."

As per the law laid down in the above judgment, the charge of unauthorized absence has to be examined in the context of the facts and circumstances of the case. In the instant OA, the allegation against the applicant is that he remained absent instead of reporting to his place of posting to which he was transferred and the applicant has submitted the medical certificate from a

private doctor to prove his illness. Clearly, the case has to be decided on the basis of the findings of the authorities in inquiry into the charges as per the rules and no conclusion can be drawn about the alleged misconduct without referring to the said inquiry.

15. The respondents' counsel has relied on the judgment in the case of S.C. Saxena (supra), in which the dispute pertained to the initiation of the disciplinary proceeding against the appellant-employee for his failure to comply the transfer order on the pretext of his illness. He continued to submit the leave applications with medical certificate from doctors who were not authorized under the service rules. He was served a charge-sheet for which his defence was that he was sick. In the inquiry, it was observed that appellant failed to appear in Dr. Ram Manohar Lohiya Hospital, New Delhi for medical examination as directed by the authorities, on the ground that his condition was serious, where as he was fit enough to go to his doctor for treatment. Finally, such certificate was produced in which it was stated that the applicant was fit to join duty anywhere in India. Hence, the OA filed by him in the Tribunal challenging the penalty was dismissed and the writ petition before Hon'ble High Court was also dismissed. Thereafter, the appellant had approached Hon'ble Apex Court in the cited case in appeal which was dismissed with the following observations as under:-

“6.....In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming that there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar.....”

16. In the present OA, the transfer order of the applicant has not been disputed. The charge memo issued to the applicant related to such transfer and the orders passed by the authorities in the disciplinary proceeding against the applicant have to be examined with reference to the material on record and the provisions of law. In the case of S.C. Saxena (supra), the concerned employee had been asked by the authorities to appear in Dr. Ram Manohar Lohiya Hospital, New Delhi for medical examination, which was initially avoided by the appellant-employee in the cited case and subsequent examination showed that he was fit to work anywhere in India. In the instant OA, there is nothing on record to show that similar direction was issued by the authorities asking the applicant to appear for medical examination to assess the seriousness of his plea of illness. Hence, the facts and circumstances of the

S.C. Saxena case are different from those of the present OA and hence, the cited judgment will be of no assistance for the respondents' case.

17. It is the settled position of law that there is limited scope for this Tribunal to interfere in a disciplinary proceeding in the judicial review. It is not open to this Tribunal to reassess the evidence on record. The Tribunal can, however, interfere in the matter if there is violation of the provisions of the Rules, 1968 by the authorities, or if the findings are based on no evidence, or the punishment is shockingly disproportionate to the alleged misconduct against the applicant.

18. The Applicant has taken the plea that after the RA passed the order dated 3.11.2016 (A/13) with the conclusion that the findings of the I.O. are extraneous to the charges and the inquiry report was not as per the rule 9(25) of the Rules, 1968, it was necessary to conduct fresh inquiry by the IO and his modified report should have been dealt afresh by the DA whose earlier punishment order would be treated as set aside by the RA. Perusal of the provisions of the rule 25 of the Rules, 1968 reveals that the Revisionary Authority has the power to confirm, modify or set aside the order; or to remit the case to the authority which made the order or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances. The RA vide his order dated 3.11.2016 (A/13) has reached the following conclusion as under:-

"5. After going through the case file, I have reached the conclusion that findings are extraneous to charges and the inquiry report has not been drawn in accordance with the Rule-9(25) of RS D&A Rules 1968 by the Inquiry Officer. Hence, the case is remitted back to DA to get the Inquiry Report made as per Rule-9(25) and to resubmit the case for taking a final decision by the RA."

19. From the order dated 3.11.2016, it appears that the RA did not take a final decision on the revision petition dated 22.7.2015 (A/11) of the applicant, which was under his consideration and he directed the DA to get the inquiry report revised as per the rule 9(25) of the Rules, 1968 and to place the matter before him for a decision. Hence, the RA did not pass the final order till the inquiry report is re-written as per the rule 9(25). Further, the direction of the RA was not for conducting the inquiry afresh as averred by the applicant.

20. The modified or re-written report dated 13.12.2016 was sent to the applicant vide letter dated 14.2.2017 (Annexure-A/15) for submission of his representation on the said report to the RA for consideration of the RA. No provision of the rule has been referred to in the order or in the Counter. It appears that the procedure adopted by the authorities in this matter as discussed above, is not in accordance with the Rules, 1968 in which the rule

10 provides that the representation of the applicant on the inquiry report will be considered by the DA (and not the RA) before passing the punishment order on which the appeal can be filed by the applicant. In this case, submission of his representation on the re-written inquiry report directly to the RA deprives the applicant of the opportunity of appeal. There is no provision in the rules under which the representation of the charged officer on the re-written inquiry report can be submitted to the RA directly. Hence, we are inclined to agree with the applicant's contentions that he was not allowed reasonable opportunity and that the order dated 29.8.2017 (A/17) of the RA violated the provisions of the Rules, 1968.

21. The RA has concluded in his order dated 3.11.2016 (A/13) that the findings of the authorities were extraneous to the charge. It has not been explained by the respondents how that conclusion of the RA has been taken care in the revised inquiry report dated 13.12.2016. It is seen from the first report of the IO at Annexure-A/5 that the statements of three witnesses were recorded in the inquiry. But in the revised report dated 13.12.2016 (A/14), there is no discussion of the evidence of the witnesses who were examined in the inquiry. In the charge memo also no witness was listed for proving the charge against the applicant. Hence, the conclusion of the IO appears to have been arrived at in his report dated 13.12.2016 (A/14) without any discussion of the oral evidence taken in the inquiry as referred to in para 3 of the earlier report dated 29.9.2014 (Annexure-A/5).

22. In view of the discussions above, it is clear that the action of the respondents in this matter was not in accordance with the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 and hence, in the interest of justice, the OA is allowed with the following directions to the authorities:-

- (i) *The impugned punishment orders dated 24.2.2015 (Annexure-A/8) of the disciplinary authority, the order dated 28.5.2015 (Annexure-A/10) of the Appellate Authority and the order dated 29.8.2007 (Annexure-A/17) are quashed.*
- (ii) *The matter is remitted to the Disciplinary Authority (respondent no. 4) to reconsider the matter based on the inquiry report dated 13.12.2016 and the representation dated 23.2.2017 (Annexure-A/16) of the applicant on the inquiry report dated 13.12.2016 and pass an appropriate order in accordance with the provisions of the rule 10 of the Railway Servants (Discipline and Appeal) Rules, 1968.*
- (iii) *The Disciplinary Authority, while passing his order under the sub para (ii) above, will also record his decision how the*

period of absence of the applicant from duty from 24.7.2013 to 13.3.2014 will be treated alongwith the reasons for such decision.

- (iv) *Above directions will be complied by the Disciplinary Authority within 3 (three) months from the date of the receipt of a copy of this order.*

23. The OA is allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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