

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 754 of 2016

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

L.Laxman Dora, aged about 35 years, S/o A.Lokanadham, at Sector-B. Sai Nagar, Bandamunda, Sundergarh.

.....Applicant

VERSUS

1. Union of India represented through its General Manager, South Central Railway, Rail Nilayam, Secunderabad, Telengana State.
2. Divisional Railway Manager, Vijaywada Division, South Central Railway, Vijaywada, Andhra Pradesh.
3. Senior Divisional Personnel Officer, O/o Divisional Railway Manager, Vijaywada Division, South Central Railway, Vijaywada, Andhra Pradesh-520001.
4. Senior Divisional Operating Manager, O/o Divisional Railway Manager, Vijaywada Division, South Central Railway, Vijaywada, Andhra Pradesh-520001.
5. Divisional Operating Manager, O/o Divisional Railway Manager, Vijaywada Division, South Central Railway, Vijaywada, Andhra Pradesh-520001.
6. Assistant Operation manager, O/o Divisional Railway Manager, Vijaywada Division, South Central Railway, Vijaywada, Andhra Pradesh-520001.

.....Respondents

For the applicant : Mr.D.P.Dhalsamanta, Advocate

For the respondents: Mr.D.K.Bhera, Advocate

Heard & reserved on : 17.3.2020

Order on : 28.05.2020

O R D E R

Per Mr.Swarup Kumar Mishra, Member (J)

The applicant has filed the present OA seeking the following reliefs :

- “8.1 That the order of removal vide (A/9), order of appellate authority dated 19.1.2016 (A/11) and the order of revisional authority dated 3.5.2016 (A/13) be quashed.
- 8.2 That direction/order be issued to the respondents to reinstate the applicant forthwith, with all consequential benefits.

8.3 Any other orders/direction as may be deemed fit and proper to give complete relief to the applicant.

2. The brief case of the applicant is that he joined as substitute Assistant Point Man (APM) under the respondents on 2.9.2009 and was regularized on 1.7.2011. He performed his duty up to 24.8.2014. On 25.8.2014 he suddenly fell ill and left the office and came to his native place at Rourkela. He submitted an application to the station superintendent along with medical certificate for grant of leave. But while on medical leave the applicant was served with an inquiry report vide memo dated 2.9.2015 (Annexure A/4), by which he came to know that he was charge sheeted on 23.12.2014. The applicant submitted a representation dated 16.9.2015 (Annexure A/5) that he has already sent the sick certificate and he has not received the charge sheet. The applicant was stated to be sick from 25.8.2014 to 29.10.2015. He was sent for medical examination and was found fit by the Railway hospital on 3.11.2015 (Annexure A/8). He went to submit his fitness certificate to respondent No.6 but he was handed over the order of removal from service w.e.f. 10.11.2015 (Annexure A/9). The applicant preferred an appeal on 2.12.2015 (Annexure A/10) before respondent No.5 who vide order dated 19.1.2016 (Annexure A/11) confirmed the order of removal imposed by the Disciplinary Authority. The applicant, being advised, submitted a revision petition on 25.2.2016 (Annexure A/12). Vide order dated 3.5.2016 (Annexure A/13) respondent No.4 has confirmed the order of disciplinary authority as well as of the appellate authority. Hence the applicant approached this Tribunal filing the present OA.

3. The respondents in their Counter have averred that the applicant was posted to Bayyavaram (BVM) on 1.7.2011 as substitutes against regular vacancies of YPC and the applicant joined on 26.7.2011. The applicant was issued minor penalty charge sheet for his unauthorized absence of 30 days intermittently from 27.7.2011 to 20.6.2012 and imposed with a penalty of withholding of annual increment for six months vide order dated

31.10.2013. In the present case he was absent for 118 days and continued for 325 days more (total 443 days) which was not covered under Railway medical leave rules. It is stated in the reply that the applicant has neither reported to the nearest medical unit nor produced medical certificate within 48 hours of becoming sick. Therefore it is clear that the applicant absented himself without proper sanction and did not make any attempts to inform the administration about his sickness. He has also not submitted any sick certificate from the Railway doctor and in absence of such sick certificate his period of leave will be treated as unauthorized absence as per rules. The respondents thereafter initiated major penalty proceedings against the applicant and made several efforts to serve the charge sheet on him. Since the applicant was not available in his address the notice could not be served on him and the respondents exhibited the same in the Notice Board. Finally as the applicant did not turn up, the enquiry officer conducted the proceedings *ex parte* and submitted the report by concluding that the charges framed against the applicant were proved. In the meanwhile, after one year of his absence, the applicant sent a medical certificate dated 25.8.2014 which reached the respondents on 27.8.2015. The respondents sent the enquiry report to the applicant's native address on 2.9.2015 and the applicant submitted his final representation on 21.9.2015. The disciplinary authority after going through the final representation, enquiry report and proceedings decided to impose the penalty of removal on the applicant w.e.f. 10.11.2015. It is stated by the respondents that all efforts were made to serve charge sheet on the applicant and hence there is no violation of principles of natural justice in conducting *ex parte* proceedings against him. The respondents have therefore prayed for dismissal of the present OA.

4. Learned counsel for the respondents has relied upon the judgments of Hon'ble Apex Court in Jagdish Singh -vs- Natthu Singh [(1992) 1 SCC 647], State of M.P. -vs- Hiralal & Ors. [(1996) 7 SCC 523] and V.Raja Kumari -vs- P.Subbarama Naidu & Anr. [(2004) 8 SCC 74] in support of his argument that when a notice is

sent by registered post and is returned with a postal endorsement 'refused' or 'not available in the house' or 'house locked' or 'shop closed' or 'addressee not in station', etc. due service has to be presumed.

5. Heard both the learned counsels and perused the pleadings and documents on record.

6. It is submitted by learned counsel for the applicant that the charge memo dated 23.12.2014 (Annexure R/5) was not served upon him and therefore the applicant had no opportunity to defend his case in the departmental proceeding started against him. Infact the said proceeding was done ex parte. On the other hand learned counsel for the respondents submitted that the applicant did not prefer to appear before the authorities instead of sending due notice to him, which was sent by registered post. The learned counsel for the respondents relied upon the Xerox copy of the acknowledgement receipt vide Annexure R/8 to show that the applicant was duly intimated by sending notice through registered post in this regard. On verification of the pleadings and the materials on record, it is seen that infact there is no endorsement or material to show that the applicant had refused to receive any such letter sent to him by registered post. On the other hand the averment made in para 9 at page 4 of the Counter shows that the cover of registered post with A/D was returned back by Postal authorities with remark "addressee left without intimation". There is no material to show that the Postal Authorities had waited for reasonable period, may be for at least seven days to again make attempt to serve the said registered letter on the applicant in the given address. There is no averment or materials on record from the side of the respondents to show that any further attempt was made by the respondents to issue the notice along with the charge memo in question on the applicant by a special messenger or by sending the same in the permanent address of the applicant, as shown in the Service Book. In this regard learned counsel for the applicant had drawn the attention of this Tribunal to the fact that the applicant in his memorandum of appeal vide Annexure R/9 had

specifically mentioned that due to non-allotment of Railway shelter at BVM he was compelled in the circumstances to reside in one private house, the details of which has been mentioned in para B(b) of Annexure R/9. It is the specific case of the applicant that he could not attend office and was on leave due to medical ground for his own treatment and as his condition became serious, he was shifted by his parents to his native place. It is the consistent plea of the applicant that he was not present at the place of his posting and had gone to the native place during the relevant period. Therefore it was reasonably expected from the respondents that they should have made sincere effort to serve notice on him, by sending the same in his permanent address or in the address to which he had shifted as was known to the authorities. Besides that, when the enquiry had proceeded *ex parte* against the applicant and has resulted in his removal, therefore in the circumstances taking into consideration the gravity of the matter, it was expected from the respondents that they could have also chosen to publish the notice in the newspaper, which is normally circulated in the area in which the applicant was residing. But the respondents have not come up with any material or pleadings to show that any sincere effort has been made by them to that effect. In this regard learned counsel for the applicant has relied on Railway Board circular, wherein it has been held that in normal course, if notice could not be served on the government employee, then paper circulation should be made to enable him to know that the authorities are going to proceed against him. In the background and circumstances the attempts made by the authorities to paste the notice in the Notice Board in presence of two witnesses, cannot be said to be sufficient and this Tribunals finds that no due service of the notice has been made on the applicant. Therefore the applicant was deprived of his right to defend himself in the enquiry proceeding and this aspect has not also been considered in proper perspective by the Appellate Authority as well as the Revisionary Authority. Therefore the principle of *audi alterem partem* having not been followed in this case, this Tribunal finds that there has been

manifest injustice caused to the applicant causing serious prejudice to himself. Hence the said ground alone is sufficient to set aside the punishment order dated vide Annexure A/9 imposed on the applicant by the disciplinary authority, the order of the Appellate Authority dated 19.1.2016 (Annexure A/11 and the order of revisional authority dated 3.5.2016 (Annexure A/13).

7. In view of the above discussions and findings, it is necessary in the interest of justice to remand the matter back to the Disciplinary Authority to proceed in accordance with law so that enquiry can be made in accordance with law. Accordingly the matter is remanded back to the Disciplinary Authority who will complete the disciplinary proceedings by passing a fresh order in accordance with law within six months from the date of receipt of the copy of this order.

8. The OA is accordingly disposed of. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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