

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2646/99
M.A.No.2853/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

(A)

New Delhi, this the 13th day of July, 2000

V.S.Tyagi
s/o Late Shri B.S.Tyagi
Chief Pharmacist/ANVR
r/o 10/12, Rly. Colony,
Sewa Nagar
New Delhi.

... Applicant

(By Shri S.S.Tiwari, Advocate)

Vs.

1. Union of India through
General Manager,
Northern Railway
Baroda House
New Delhi.
2. Sr. D.M.O. Chast Clinic
Delhi Division Hospital
S.P. Mukherjee Marg, Delhi.
3. D.M.O., Northern Railway
Health Unit
Anand Vihar
Delhi - 110 092.
4. Dr. A.K.Sanger
Sr. D.M.O.
Northern Railway
Delhi Division Hospital
S.P.Mukherjee Marg
Delhi.
5. Dr. Deepali Gupta
Sr. D.M.O.
presently posted at
Delhi Division Hospital
S.P.Mukherjee Marg
Delhi.

... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant was a Chief Pharmacist working at Anand Vihar Dispensary of Northern Railway. He challenges the charge sheet issued to him on 8.5.1998/18.05.1998, in this OA. The charge sheet reads as under:

CDD

"Shri V.S.Tyagi while working as Chief Pharmacist at Anand Vihar Health Unit was transferred from Anand Vihar Health Unit to work under CMS/Delhi Hospital, vide Sr. DPO/NDLS notice No.730E/876/P-3 dated 10.6.1997. In pursuance of the said notice the said Shri V.S.Tyagi was spared by Sr. DMO/Anand Vihar w.e.f. 11.6.1997 AN vide her letter No.2/ANVR/Staff/97 dated 11.6.1997. Shri Tyagi has, however, failed to report for duty under CMS/Delhi Hospital and has absented himself unauthorisedly w.e.f. 12.6.1997. The said Shri V.S.Tyagi also failed to intimate the reasons of his unauthorised absence to the administration, till date.

15

Shri V.S.Tyagi has thereby, failed to maintain devotion to duty and has acted in a manner unbecoming of railway servant. Thus he has contravened Rule 3(I)(ii) and (iii) of Railway Service Conduce Rules 1966."

2. The only allegation made against the applicant is that though he was transferred from Anand Vihar Health Unit to CMS/Delhi Hospital by order dated 10.6.1997, he failed to report for duty at the transferred place, till date and thus absented unauthorisedly without intimating any reasons for his absence.

3. After the OA was filed, the Tribunal had passed the orders on 7.1.2000 and directed the respondents that no final order in the enquiry would be passed. It is now stated by the learned counsel for the applicant that the enquiry has been completed and the enquiry officer has submitted his report but in view of the orders of the Court the disciplinary authority has not passed the final order.

4. The learned counsel for the applicant, Shri S.S.Tiwari advanced the following arguments:

- a) The applicant was not served with the charge sheet and hence there can be no enquiry against him.

CAB

b) The same authority having agreed to re-transfer him, in the conciliation proceedings before the Regional Labour Commissioner, cannot issue the charge sheet as it would amount to judging his own cause.

16

c) Since the transfer order has now been cancelled, as evident from the order dated 27.10.1999 issued by the Labour Ministry, the charge against the applicant does not survive.

5. The learned counsel for the respondents raised a preliminary objection as to the limitation. Learned counsel also submits that the charge has been served on 21.5.1998 but he has refused to receive the same. He also submits that the transfer order has neither been withdrawn nor cancelled.

6. We have given careful consideration to the arguments and contentions raised by the learned counsel for the applicant and the respondents.

7. Regarding the first contention as regards the service of the charge sheet on the applicant, it is true that if the charge sheet has not been served upon the applicant there can be no enquiry. But in the counter affidavit filed by the respondents, this allegation was denied and it was averred that the same has been served on 21.5.1998. In Annexure-R1 filed along with the counter, the report given by the

COA

Special Messenger who was assigned the work of service of charge sheet on the applicant, it was stated that the applicant had refused to receive the charge sheet. There upon the charge sheet was affixed on the door of the Railway quarter of the applicant and two signatures of witnesses were also taken by the Special Messenger.

17

8. The learned counsel for the applicant, however, submits that the signature of two witnesses taken by the Special Messenger are the employees working directly under the CMS/Delhi Hospital, hence they are not independent witnesses. In our view, these witnesses appear to be working in the CMS Division, that does not mean that they are directly working under the CMS. In view of the report made by the Special Messenger it cannot be said that the charge sheet has not been issued on him. The refusal to receive the charge sheet is deemed to be served in the eye of law. Hence, there is no force in this contention.

9. Learned counsel for the applicant places reliance upon a judgement in Bata Shoe Co. Pvt. Ltd. Vs. D.N.Ganguly & Ors. 1961 3 SCR p.323. This judgement pertains to the workmen of Bata Shoe Co. and the method of service of notice upon the workmen.

10. The learned counsel for the respondents draws our attention to Rule 26 of the Railway Servants ((Disciplinary & Appeal) Rules, 1968 wherein it has clearly been stated that every order, notice and other process issued under this rule should be served in



person on the railway servant or communicated to him by registered post. In the present case, when the registered post has been returned and served, the applicant was served in person. The service of the notice is, therefore, in accordance with the rules.

18

11. In support of the next contention the learned counsel draws our attention to the conciliation proceedings with regard to threat of a strike. In the proceedings dated 13.11.1997 it was stated that an attempt was made by the respondents for allowing the applicant to be posted at Anand Vihar Dispensary from where he has been transferred to CMS/Delhi Hospital. It was stated that the applicant is a General Secretary of the Union and protected employee. It appears that the CMO has agreed to consider the matter favourably within two days. In the proceedings dated 30.12.1997 (Annexure A-15), the issue relating to resumption of duties at Anand Vihar, has again been discussed with the Chief Staff Surgeon-II, Delhi Division, Northern Railway and a request was made for re-posting of the applicant at Anand Vihar.

12. The learned counsel relying upon these proceedings, submits that when Chief Medical Officer was a party to these proceedings and he has agreed to re-transfer the applicant, it was not permissible to him to issue the charge. It is contended that this action of the respondents would amount to the judging by the officer in his own cause.

CSA

13. The charge against the applicant is that he had refused to join service on his transfer and remained absent till the date of issuance of the charge, thus the essence of the charge against the applicant was that he has not complied with the order of transfer. The question therefore is, when an employee has been transferred, is it not his duty to join service in accordance with the order of transfer within the period prescribed for joining the office and whether failure of the same would invite the charge of misconduct? It is true in the conciliatory proceedings which were pending against the applicant and the other employees on one side and the employer on the other side, the dispute was as regards threatened strike. In those proceedings a demand was made for transfer of the applicant. That may not be a ground for declining to join in the transferred place. The mere participation of the employer in the conciliatory proceedings and tentative assurance cannot be said that he was judging his own cause in issuing the charge-sheet. The applicant was transferred on 10.6.1997 and the charge-sheet had been issued on 11.6.1998, i.e for a period of full one year the applicant had declined to comply with the transfer order. In the circumstances, it cannot be said that the charge is illegal.

14. The third contention also in our view is not sustainable. It is true in the proceedings dated 27.9.1999/7.1.2000 the Government of India have declined to refer the dispute as regards transfer of the applicant to Anand Vihar Health Unit, for adjudication on the ground that the management had by



letter of July 1999 contended that the applicant was now working as Chief Pharmacist, Anand Vihar Health Unit, hence the dispute stood settled. The learned counsel for the applicant therefore, contends that as the order of transfer has been withdrawn and the applicant has now been reposted at Anand Vihar, the Charge will not survive.

20

15. Learned counsel for the respondents drawn our attention to the letter dated 2.1.1998 written by Chief Medical Superintendent to the Regional Labour Commissioner, K.G. Marg, New Delhi stating that it has been decided that the applicant having been transferred to Delhi Main Hospital along with the post, it would not be justified to report him at the Anand Vihar Dispensary in the interest of Administration. Learned counsel for the respondents also produced a letter dated 5.6.2000 written by Sr. D.P.O. to the General Manager, Northern Railway wherein it was stated that the view taken by the Labour Commissioner that the applicant was presently working as Chief Pharmacist at Anand Vihar is not correct. It is also stated that the applicant had approached the divisional authority to allow him to join duty at Anand Vihar, but he was not allowed to join duty as he was already under transfer order to Delhi.

16. In view of the above proceedings, it appears that there is a dispute as regards whether the applicant has been reposted at Anand Vihar or not. No order of reposting was however placed before us by the learned counsel for the applicant. But, in our view,

[Signature]

this controversy has no relevance at all for the purpose of deciding this case as the charge against the applicant was that he had declined to join on transfer, he has not complied with the order of transfer dated 10.6.1997. Even assuming that there is subsequent order of cancellation of the transfer order, it would not efface the charge against the applicant. He would still be liable for the charge of not joining duty in accordance with the transfer order. (21)

17. In the circumstances, we do not see any ground for quashing the charge. The OA is devoid of merits and is accordingly dismissed. No costs.

18. This order however should not in any way prejudice the case on merits of the enquiry. The disciplinary authority is directed to proceed with the enquiry and pass a final order within two months from the date of receipt of this order.

Shanta Shastry

(Smt. Shanta Shastry)
Member(A)

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice Chairman((J)

dbc