

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(5)

OA NO. 486/99

New Delhi, this the 1st day of November, 2000

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Sh. Akshaya Kumar,
S/o Sh. U.S.Malik,
working as Junior Engineer,
Planning/Mech, Baroda House,
Northern Railway,
New Delhi.

R/o 16 A/802, Vasundhra,
Sahibabad, (Ghaziabad). Applicant
(By Advocate: Sh. K.K.Patel)

Vs.

1. Union of India,
through the General Manager,
Baroda House, Northern Railway,
New Delhi.
2. Chief Workshop Engineer,
Northern Railway,
(Headquarter) Baroda House,
New Delhi.
3. Chief Works Manager,
Jaigadhri Workshop,
Northern Railway,
Jaigadhri.
(By Advocate: Sh. R.L.Dhawan)

ORDER (ORAL)
By Mr. Justice V.Rajagopala Reddy,

The applicant who was a Railway servant as chargeman-B was issued a chargesheet in which it was alleged that he was unauthorisedly absent and absconding from duty w.e.f. 22.4.96. As the applicant pleaded not guilty, an enquiry was held in which the applicant was found guilty of the charge. He was removed from service. The revisional authority, however, reduced the punishment lowering it to one stage in the scale of Rs.1400-2600 on a permanent basis in its order dated 12.2.98, which is impugned in this case. Learned counsel for the applicant Sh. K.K.Patel submits that as he

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was found genuinely sick by the Revisional Authority. It should have been held that he was not wilfully absent from duty. not possible to establish the misconduct. It is also contended that the applicant had produced the medical certificates from private registered doctor to establish that he was suffering from Tuberculosis and he could not attend the office. He continued on leave. It is permissible under the rules to produce the certificate from private registered medical practitioner in respect of his sickness. Learned counsel for applicant also contends that the enquiry is not in accordance with the rules as the enquiry report was not supplied before passing the final order. Learned counsel for respondents, however, contends that in spite of intimation, the applicant has not joined service and in view of his absence from duty w.e.f. 23.4.96 he was rightly held as unauthorisedly absence, on the basis of evidence on record and that the enquiry has been held in conformity with the rules and there is no warrant to interfere with the impugned order.

2. We have given careful consideration to the contentions raised. The allegation against the applicant was that he was unauthorisedly absent from 23.4.96 without taking prior permission. From a perusal of the enquiry officer's report it is clear that the applicant in spite of several opportunities did not participate in the enquiry and the enquiry was therefore held ex parte. It is stated that though the enquiry officer's report has been sent to the applicant and the applicant having received the same had not cared to make any representation against the same. The disciplinary authority accepting the findings of the enquiry officer found that the applicant was not interested in continuing in service and that he was unauthorisedly absent without any sanction of leave or

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prior intimation. The perusal of the records also show that the applicant had received the enquiry officer's report. The contention of the learned counsel in this regard is, therefore, wholly baseless. No breach of the rules of enquiry is brought to our notice. The enquiry officer on the basis of the evidence on record found that no prior approval has been taken by the applicant nor any valid leave application was made by him in accordance with the leave rules. The applicant filed the medical certificate from Gaba Hospital, Yamuna Nagar. This certificate does not show that the applicant was suffering from Tuberculosis. The Hospital does not appear to be a T.B. Hospital where the applicant is expected to be examined. No certificate has been filed from any Tuberculosis Hospital. It is clear from the proceedings that after receipt of the leave application alongwith the medical certificate, the respondents as a part of its investigation wrote a letter to Dr. B.S.Gaba of the Gaba Hospital but it was not responded to. It is also clear from the record that the Railway Hospital itself is situated in Yamuna Nagar where the Gaba Hospital is located and the applicant could have got the certificate endorsed by the Railway Hospital as per the rules. No such attempt was made by the applicant. It is, therefore, clear from the above facts that the applicant's application for leave was rightly rejected. Learned counsel contends that as such the sickness has been found true by the revisional authority it could not be held that he was wilfully absent. No doubt it could be said that the applicant was sick but there is no reason for not taking the permission from the authorities in making a valid application for leave in accordance with the rules or obtaining leave. The medical certificate filed by the applicant and the evidence led during

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the enquiry would not support the case of the applicant that he was unable to move from the hospital to apply leave or take permission from the competent authority.

3. It cannot therefore be held that the applicant's absence was not wilful. We are not persuaded to interfere with the impugned order as the enquiry officer has considered the entire evidence on record and rightly concluded that the applicant was guilty of the charge. The OA, therefore, fails and is accordingly dismissed. No costs.

(GOVINDAN S. TAMPI)

Member (A)

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(V.RAJAGOPALA REDDY)

Vice Chairman (J)

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