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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 948/99

NEW DELHI, THIS THE 8th DAY OF JULY, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE-CHAIRMAN (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

D.S.Malik
Assistant Electrical Foreman
Quarter No.203, B-2
Western Railway
Railway Colony
Tuglakabad, New Delhi - 44.

...Applicant

(By Advocate Shri K.K.Patel)

V E R S U S

1. UNION OF INDIA : Through

The General Manager
Western Railway
Church Gate, Mumbai.

2. Divisional Railway Manager

Western Railway
Kota Division
DRM Office, Kota.

3. Senior Divisional Electrical Engineer

Electrical Loco Shed
Western Railway
Kota Division, TRS Kota

...Respondents

(By Advocate Smt. Meera Chibber)

O R D E R (ORAL)

This OA challenges order No. E/TKD/308/95/105 dated 1-4-1997 passed by Senior D.E.E., TRS, Kota removing the applicant from service and that No. E/TKD/308/95/105 dated 26-9-1997 passed by ADRM, Kota, the appellate authority confirming the same.

3. The applicant working as Assistant Electrical Foreman, Tughalakabad, New Delhi-44 was transferred in January 1990 from Electrical Locoshed, Baroda to Tughalakabad as Chargeman. His request for joining Railway Electrification Project of Delhi to Ambala was not granted due to shortage of experienced

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Supervisors. In 1993 he became Junior Engineer Gr.I, when he was also given residential accommodation on out of turn basis. During the relevant period, some fight had taken place between two of the important office bearers of Railway Employee Union, i.e. Anil Kumar Saxena and Avtar Singh which resulted in considerable bad blood in the organisation as these two persons were forcing other employees to act according to their will. The Administration did not do anything to check the above. As he did not belong to either of the groups, the applicant had to face their ire and subsequently when a new Officer Shri Sunil Mathur, who was of the same caste as Anil Kumar Saxena joined at Loco Shed, Tughlakabad, he wanted to have the applicant transferred out. He was then posted to Ambala which was got stayed by the Tribunal. The said order was subsequently cancelled. Thereafter on 2.9.1993 he was physically attacked. His complaint against the same was not heeded to. He was transferred to Kota. In between his ailing son passed away. From 16.10.1993 he was on leave due to illness and continued to be away from duty but had duly informed his seniors about his illness. On 7.3.1997, Tribunal dismissed his OA No. 969/99 against the transfer to Kota. When he went to join at Kota, on 7.3.1997, vi he was directed to Sr. D.E.E. from whom he knew about the charge sheet issued to him on 9.2.95, for unauthorised absence from duty and unauthorised occupation of the quarters as well as the order of the disciplinary authority removing him from service. In fact he had not received the charge sheet, though the respondents had been informed about his permanent address. The respondents had conducted

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ex-parte proceedings, wherein the enquiry officer in his report dated 23.7.1996 held that he had unauthorisedly absented him^{self} from 16.10.1993, was not available at the Railway quarters allotted to him and that he had also not vacated the quarters. This finding was recorded though he had intimated the respondents about his permanent residence. Still his removal from service was ordered by the Disciplinary authority. Though he made a detailed appeal pointing out the legal and procedural infirmities in the Disciplinary Authority's order, the appellate authority rejected it on 26.9.1997 without considering the same and without grant of hearing. The applicant's revision petition filed on 26.10.1997 has not been disposed of. Hence this application.

4. The main grounds raised by the applicant are that:

- i) the orders are illegal, arbitrary and beyond the competence of the authority who issued the orders;
- ii) provision in the Railway Servants (Discipline and Appeal) Rules, 1968 relating to imposition of Major penalty have not been followed.
- iii) the enquiry was held ex parte;
- iv) Disciplinary Authority's order dated 1.4.1997 was non speaking and
- v) the decision had been taken without putting the applicant or notice, without supplying him the copy of the enquiry report, without grant of hearing and considering this grounds of appeal.

5. On behalf of the respondents, it is pointed out that the applicant has come up with a totally mis-conceived application and has made baseless allegations. While there were union

rivalries, the respondents have not permitted the same into enter the realms of administration in postings, transfers; and disciplinary matters as alleged. He had challenged his transfer from Tughlakabad to Kota, but the same has been upheld by the Tribunal and the same cannot be agitated once again. While the death of his child was an unfortunate affair, it did not justify his absconding from duty. He was transferred to Kota on administrative grounds and not on punishment. He had absconded from duty w.e.f. 16.10.1993, following his transfer to Kota and he had not applied for any leave. Neither did he join at Kota nor did he vacate his quarters, which he should have on his transfer. Hence proceedings were initiated against him for major penalty for unauthorised absence from duty and unauthorised occupation of the quarters. The Charge sheet sent twice to his known address was returned undelivered with the remarks that the house was locked and none was available. The same was therefore served by affixation ^{at his address}. After holding the enquiry, related report was also sent to his known address and as it was returned undelivered, it was also served by affixation. No reply was received, whereafter the Disciplinary Authority passed his orders on 4.1.1997 which also had to be served by affixation at his Tughlakabad address as well as by placing a copy on the Notice Board. The applicant had indicated that the inter union rivalry had been used by the respondents to transfer him, which lie has been nalked by the Tribunal's order upholding the validity of the transfer order. The applicant had never communicated his change in address and never participated in the

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proceedings. Therefore it does not behove him to question the proceedings and their results later. Lack of competence on the part of the disciplinary authority as well as allegation of malafides as alleged by the applicant are baseless and did not deserve acceptance.

5. In his rejoinder the applicant says that he was on leave and had always tried to inform the Department and has also produced adequate medical certificates which shows that he was unwell, that being the case. It was not proper for the Department to take a view that he was absent and ^{to} go ahead with Departmental proceedings. The order was totally improper, incorrect and deserved to be set aside, is his plea.

6. Heard both Shri K K Patel and Smt. Meera Chhibber, learned Counsel appearing for the applicant and the respondents, who strenuously and fervently urged and canvassed their respective pleas.

7. We have carefully considered the matter. The main point on which the applicant seeks the intervention of the Tribunal is that the Departmental proceedings and the appellate proceedings were conducted at his back without an opportunity being given to him to defend his case. It is found that the applicant has been proceeded for unauthorised absence as well as unauthorised occupation of quarters, even after transfer, for which major penalty chargesheet was sent to his last known address. The same had been

returned as undelivered and consequently was affixed at his house in the presence of two witnesses. The enquiry was thereafter held ex-parte. The enquiry report holding the charges as proved also had to be affixed at his address, as it was returned undelivered. Service of the Disciplinary Authority's order dated 4.1.1997, removing him from service also was done likewise. The appellate authority in his order upheld the decision of the disciplinary. In the circumstances of the case, there cannot be any successful challenge to the orders of the disciplinary and appellate authorities as the applicant had made himself scarce from the quarters allotted to him and the respondents had to seek other methods for having the chargesheet, the enquiry report and the disciplinary authority's order served. The applicant, had in his rejoinder submitted the photocopies of certain receipts, which are issued from different places and which do not appear to be genuine. It would give the impression that all of them have been sent on the same date. He has also produced copies of a few medical certificates for varying, and at times overlapping, periods, describing various ailments. One certificate given by Medical Supdt. of upgraded PHC, Meerut speaks about lumbago, depression and jaundice between 30.10.94 to 16.4.97, another bunch of certificates with no dates from one Ayurveda doctor at Rohtak speak of Malaria fever from 20.10.93 to 20.11.93, Typhoid fever from 21.11.93 to 21.1.94 while ; b) 'Dysentery' from 22.3.94 to 24.8.94, from 23.3.94 to 23.6.94 and Liver disorder from 24.6.94 to 24.8.94, ^{axe} shown by another Ayurveda physician, and sciatica pain with lumbago, depression from 25.8.94 to 30.10.94 is given as the reason by

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the first doctor again. All these appear to have been obtained on the same date and are highly improbable. None of these appear to have been received by the respondents, obviously as they had not been sent. The only material fact that emerges from the whole matrix is that the applicant had absconded on receipt of the transfer order to Kota on 14.10.93 and had not ^{surfaced} till March 1997. Though he had left his allotted quarters, he neither reported at Kota till 1997 nor vacated his quarters. His absconding from duty was following his transfer to Kota, the validity of the same has been upheld by the Tribunal while dismissing on 7.3.77 applicant's OA No. 969/96 dated 7.3.1997, with the following observations:

" I have carefully considered the rival submissions. The law on the subject of transfer has been stated on a very firm basis by the Apex Court. This court cannot sit as a court of appeal against an order of transfer. The place of posting and the reasons for giving a particular posting are administrative decisions which are taken in the exigencies of service. The record shows that there were repeated complaints by a large number of members of the workforce from the work shed about the behaviour and activities of the applicant vis-a-vis other workers. This has been considered by senior officers and supervisors and they felt that in the interests of amicable industrial relations and harmonious working among workmen, the applicant should not be retained. This decision has to be respected because even after the Minister's order, the superior officers had again tried to stick to the transfer orders. The decision of the Railway Administration cannot be faulted because it is an administrative decision in the interests of a proper work culture. Therefore, the transfer has to be upheld.

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The applicant has nowhere stated that there are no medical facilities for treatment of his son at Kota. It is worth mentioning that there are also special training centres for mentally retarded children. This court would direct the applicant to respect and obey the transfer order and if he finds that the facilities at Kota are either inadequate or non-existent, he may approach the respondents

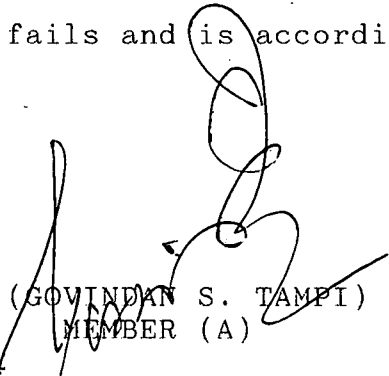
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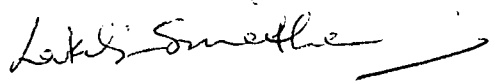
with a certificate from a recognised medical authority that such facilities are not available at Kota to treat his child and also a suggestion from them as to the possible place other than Delhi where such facilities are available in the Western Railways. The respondents will consider such a representation and dispose of it most sympathetically.

The OA is dismissed with the above observations."

It is obvious therefore the applicant has chosen to assail the action of the respondents, taken after due consideration, faultless procedure and correct application of law and instructions which he had avoided to participate in. That being the case, allowing this application as alleged grounds of violation principles of natural justice and procedure, would be flying in the face of law, procedure, facts and propriety. It would also encourage abuse of the process of law. This cannot be permitted. Applicant cannot successfully assail the decision taken either by the disciplinary authority or appellate authority. Those orders being legal, proper and correct have to sustained.

8. In the circumstances of the case, we are convinced that the applicant cannot successfully assail the decisions taken either by the disciplinary authority or appellate authority. The application fails and is accordingly dismissed. No costs.


(GOVINDAN S. TAMPI)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
MEMBER, (J)

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