

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.990/1999

New Delhi, this 30th day of the November 2000

Hon'ble Mr. Justice V. Rajagopala Reddy, VC(J)
Hon'ble dMr. Govindan S. tampi Member (A)

Rajendar Narain S/O Shri Kailash,
Tracer R/o 4816, Laddo Ghati,
Paharganj New Delhi
.....Applicant.
(By Shri M L Sharma , Advocate)

Vs

Union of India through

1. General Manager, Northern Railway,
Headquarters Officer
Baroda House, New Delhi.
2. The Divisional Rail Manager,
Northern Railway, New Delhi.

.....Respondents.
(By Mrs. Meera Chhibar, Advocate)

O R D E R (ORAL)

Justice V. Rajagopala Reddy:

While the applicant was working as Tracer in the Railways he was alleged to have unauthorisedly absent from 1.1.91 to 18.12.95. As the charge was proved in an enquiry, the applicant was awarded the punishment of Compulsory Retirement by the impugned order dated 26.2.98 which has been affirmed by the Appellate Authority which is under challenge in this OA.

2. Learned counsel for the applicant Shri M L Sharma raises the following contentions:

- i) There is no evidence in support of the charge.

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ii) The documents relied upon by the prosecution were not furnished to the applicant. The enquiry was vitiated on account of non compliance of the rules as well as the principles of natural justice.

iii) The answer given by the applicant to a question put by the Enquiry Officer before the commencement of the enquiry, cannot be relied upon in support of the charge and on that basis, the charge cannot be said to have been proved.

3. Learned counsel for Respondent Smt. Meera Chhibbar contends that as the applicant had admitted the misconduct no other evidence was necessary to hold him guilty of the charge. As the enquiry officer has not relied upon the documents no prejudice was caused to the applicant by their non supply. It is further contended that as the applicant himself admitted that he was absent during the period from 1.1.91 to 18.12.95 without any leave having been sanctioned, the impugned order cannot be held as invalid.

4. We have given careful consideration to the arguments. The contention as to non supply of the documents, has no force. Only one witness was relied upon by the prosecution as is evident from the charge i.e. letter dated 31.1.91 but from the extract of evidence as seen in the records produced by the learned counsel for

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respondent, that the said document was not relied upon by the Enquiry Officer. Though the witnesses who were examined were not cited in the charge and the cited witnesses have not been examined, the applicant was afforded opportunity to cross examine the witnesses that were examined. No grievance can therefore be made on this ground. The enquiry in this case was commenced on 7.11.96 and after finding out the convenience of the parties the enquiry was postponed to 17.4.97 when the Prosecution Witness has been examined. The applicant was examined on 17.3.97 when the applicant answered to the questions put by of the Enquiry Officer, that he was absent unauthorisedly as alleged. It is seen that on 17.3.97 Muni Ram one of the witnesses was examined and subsequently on 17.4.97 another witness for the Prosecution was also examined. It is not in controversy that the applicant had not submitted his written statement to the charge. Neither the defence witness had been examined nor the applicant has examined himself. Hence much reliance cannot be placed upon the admission of the applicant. It is not required under the rules for the Enquiry Officer to examine the charged officer before the Prosecution's, evidence was completed. He was required to be examined generally only after the Defence evidence has been completed. In this case as no defence witness was examined, he could have been examined generally only after the prosecution witnesses examination was complete. Learned counsel for applicant rightly lays stress upon the irregularity committed in the enquiry.

[Signature]

5. However, the case of the applicant himself in the OA is that he proceeded on 3 days sanctioned leave on 28.12.90. Thereafter he became the victim of natural calamity as his son expired and his wife was struck with cancer. Hence applicant himself has got depressed and as a result he remained on medical leave from 1.1.91 to 18.12.95. It is however, stated by him that he used to send only medical certificates and that he joined duty only on 19.12.95 and on that day he submitted the medical certificates in support of his absence. Thus admittedly the applicant's absence from 1.1.91 to 18.12.95 which is the alleged period of absence, he was absent without leave. It is also admitted that leave was not sanctioned. It is stated that if leave was not sanctioned, he should have joined duty. A government servant shall go on leave only after leave sanctioned by the competent authority. It is necessary under the leave rules that the department should intimate that his leave was not sanctioned and that he should join service. If his leave was not sanctioned he can keep away from duty only to his peril. Thus it is clear from the averments that the applicant was admittedly absent for a period of nearly 5 years without leave. In view of the foregoing, the applicant was rightly found guilty of the misconduct. Hence we do not find any warrant to interfere with the impugned orders. In this view of the matter the OA is dismissed. No costs.

(Govindan S. Tammi)
Member (A)

(V. Rajagopala Reddy)
VC(J)

Patwal/