

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

DATED: THE 26 TH DAY OF JUNE , 1999

CORAM : HON'BLE MR. R.K.AHOOJA, A.M.  
HON'BLE MR. S.L.JAIN, J.M.

ORIGINAL APPLICATION NO. 2450 OF 1995

R.K. Rastogi  
S/o Shri Hari Dev Rastogi  
Ex. Assistant Station Master,  
Northern Railway,  
Railway Station,  
Aghwanpur, Moradabad.

RESIDENTIAL ADDRESS

R.K. Rastogi, C/o A.K.Rastogi,  
155-A, Jawahar Gali,  
Delhi Shahdra,  
Delhi.

Applicant

C/A Shri G.D. Bhandari, Adv.

Versus

1. Union of India through  
The General Manager,  
Northern Railway Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, DRM Office,  
Moradabad.

Respondent

C/R Shri B.S.Jain, Advocate.

ORDER

BY HON'BLE MR. S.L.JAIN, J.M.

The applicant has claimed the relief to set aside

J.S.J.

(13)

and quash the penalty order dated 15.5.95, Annexure-A3, rejection of appeal vide order dated 17.7.95 - Annexure-A, rejection of review application vide order dated 17.11.95 Annexure-A5 and order/direction to the respondents to reinstate him on the post of A.S.M. with all consequential benefits from the date of dismissal to the date of reinstatement along with interest at the rate of 13 1/2 per annum with cost.

2. On 9.12.93, the station master wanted to resume the duties by the applicant on the post of A.S.M. which the applicant was not competent to comply because non competent of picking up of duties processed.

3. He submitted representation Annexure-A3 and <sup>Drawn</sup> the attention to the recommendation of Chief Medical Superintendent of Divisional Hospital, Mura certificate dated 6.8.91, Annexure-A6. His health deteriorated and he had to seek medical assistance from a private local doctor at Aghwampur station. The certificate was handed over to the Station Master with an application informing him about his aggravated physical condition. He remained under medical treatment from 10.12.93 to 3.2.94 and on being declared fit he reported to the Station Master and handed over the originals of the P.M.C. issued during this period from time to time along with photo copies through his elder brothers and also send under U.P.C. to the Divisional Office. On 4.2.94 he was directed to D.M.O of Mura for medical treatment and remained on the sick list receiving medical treatment. He was treated by the authorised railway Divisional Medical Officer, Mura. This case was again referred to central hospital, New Delhi and lastly D.M.O. Mura issued the fitness certificate

J.L.D.

(14)

on 25.3.94 and after picking up the duties of A.S.M. for 3 days, resume the charge of the post of A.S.M. independently and has been working their up to 15.5.95 when he was dismissed from service.

4. The respondents served a major penalty charge sheet dated 15.2.94 Annexure-A11 through registered post while he was under the treatment of authorised Railway doctor, his wife sent a sick intimation to D.R.M. and D.O.M. about him being under treatment of Railway Doctor.

5. Firstly Shri D.K.Sharma later on D.R. Misra and thereafter V.P.Sharma was nominated as an enquiry officer, G.S.Bhatia and Fakir Aslam were examined as prosecution witnesses, during cross examination relevant questions were disallowed. He was also examined and submitted his defence in brief. During the course of enquiry additional documents were asked for on 25.10.95 which were not supplied. Enquiry was conducted, report was submitted and he was punished as stated above. Appeal against the same was dismissed vide order dated 17.7.95, the review also met the same fate on 17.11.95 vide Annexure A-5. Hence he has challenged the disciplinary proceedings on ground of non supply of the relevant documents, disallowing cross examination of prosecution witnesses and the order passed by the disciplinary authority which ~~is~~ is not on appointing authority, hence void.

6. The ~~charge~~ <sup>official</sup> was asked to perform independent duty of A.S.M. but he left the station unauthorised and refused to perform his legitimate duties in disregard to administration on 11-TI MIS 199/TG2 dated 10.11.93 and remained on unauthorised absence from duties from 9.12.93 till date.

S. 901

(15)

7. Shri S. H. Fakhry Alam who was the station master at the relevant time was examined as P.W.1, in answer to question no.1 admits that on the instruction of T. I. Shri G. S. Bhatia, first reported the matter against the charged official to senior DOM/MB. He further admitted that as per his instructions he wrote that the applicant continued working safety cell of his own.

8. In answer to question no.6 he stated that C.O. has not asked for sick memo hence it was not issued. In answer to question 9 and 10 he admits that letter dated 2.12.77 was received by him which he forwarded to Shri G. S. Bhatia and the charged officer showed his inability to perform the duty of A.S.M. as he was sick.

9. Shri G.S.Bhatia in answer to question no.1, admits that A. S.M. who appeared with P.M.C. were ~~not~~ the absent for their unauthorised absence. He also admits that on the recommendation of medical authority, the C.O. was utilised in safety cell. In answer to question no.10 he admits that he could not be utilised to perform the duties of A.S.M. unless he was declared fit by CMS/MB.

10. G. S. Bhatia P.W.2 admits in answer to question no.6 that a railway man cannot be utilised to perform his duty in a category for which he has not been declared medically fit by the authorised medical attendant. He further admitted in answer to question no.6 that applicant was under treatment in railway hospital when he met with an accident, he was deputed to do light duty for 3 months. He categorically admits that whether the applicant was posted in light duty or under what arrangement, he was utilised in safety cell was not intimated to him. He

JN/

pleads his ignorance about sending the C.O. for medical examination even after three months but admits in answer to question no. 10 that he ought to have been sent for medical examination before utilising him as A.S.M.

11. In answer to question no. 12 he admits that in his presence C.O. was not asked to perform independent duty to which he refused.

12. In answer to question no. 5 recorded on 10.1.95, he felt that the main cause of his refusal was the prestige issue against senior D.O.M. for which ever according to his answer to question no. 6 did not report the same.

13. Question no. 14 was as under:-

"C.O. was sick from 3.12.93 to 25.3.94 and he remained under the treatment of specialist (Medical) as well as Railway doctors and in support of the sickness he had submitted sick certificates for the period of his absence. Do you want to say that C.O. was not sick and was fit to perform duties of A.S.M?"

The said question which was irrelevant to the enquiry was disallowed by the enquiry officer hence it can be said with certainty that the applicant was not afforded reasonable and proper opportunity for defending his case.

14. In answer to question no. 18 he stated that the applicant could have approached himself for medical certificate.

15. The medical certificates regarding his absence were submitted and if the authorities were not satisfied they must have asked the applicant to appear before the

(17)

the medical officer of their department.

16. It is not a case of willful unauthorised absence and refusal to perform duties but a case of sickness and on the said ground refused to perform the duties.

17. In the result the order passed by the disciplinary authority, appellate authority and reviewing authority are quashed. The applicant is reinstated in service with all consequential benefits along with costs amounting to Rs. 650/- ( Rs. 500/- legal practitioner's fee and Rs. 150/- other expenses ) to be paid within 3 months from the date of receipt of the order.

PLB  
JUDICIAL MEMBER

AKS  
ADMINISTRATIVE MEMBER