

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1440/96

New Delhi, this 27th day of January, 2000

Hon'ble Shri Justice Ashok Agarwal, Chairman  
Hon'ble Smt. Shanta Shastry, Member(A)

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Het Ram  
3276, Mahindra Park  
Shakurbasti, Delhi-34 .. Applicant

(By Shri H.C. Sharma, Advocate)

versus

Union of India, through

1. Asstt. Mechanical Engineer  
N/Rly, Diesel Shed  
Shakurbasti, Delhi
2. Dvl. Mechanical Engineer(Diesel)  
Shakurbasti, Delhi
3. Asstt. Chemist & Mettallurgist  
N/Rly, Diesel Shed  
Shakurbasti, Delhi
4. Dy. Chief Mechanical Engineer  
N/Rly, Shakurbasti, Delhi
5. Divisional Railway Manager  
New Delhi
6. General Manager  
N/Rly, Baroda House, New Delhi
7. Chairman  
Rail Bhavan, New Delhi .. Respondents  
(By Shri B.S. Jain, Advocate)

ORDER(oral)

Hon'ble Smt. Shanta Shastry

The applicant was working as Lab. Assistant with the respondents. He went on leave from 13.6.90 to 16.6.90 which was sanctioned. From 17.6.90 onwards, he remained absent on the ground that his wife had undergone Tubectomy operation and developed some complications. Thereafter he applied for leave from 17.6.90 to 28.6.90. He remained absent beyond that period. Disciplinary proceedings were conducted against him for unauthorised absence and finally vide order dated 3.1.94, the disciplinary authority imposed

the penalty of removal from service. He appealed against the order. This appel was rejected on 9.4.96. Applicant aggrieved by the same has approached this Tribunal seeking to set aside the impugned order dated 3.1.94 and 9.4.96 and to reinstate him in service with full benefits. (9)

2. The main grievance of the applicant is that he had to proceed on leave due to domestic difficulties and he had duly applied for leave from 17.6.90 to 28.6.90. Further, he had been reverted as Lab. Khalasi while he was on sanctioned leave and he did not receive the reversion order also. The authority had proceeded against him in the capacity of Lab. Khalasi while he had gone on leave in the capacity of Lab. Assistant. He had obtained a stay from this Tribunal against his reversion but it was not honoured. Enquiry was conducted against him for unauthorised absence ex-parte. The enquiry report was also not made available to him.

3. Responents have submitted that the applicant was put to officiate locally and temporarily as Lab. Assistant purely on ad hoc basis liable to be reverted at any time. On the advice of the higher authority that local officiating was banned, the applicant was reverted from the post of Lab. Assistant to his substantantive post of Lab. Khalasi vide letter dated 14.6.90. According to the respondents, the reversion order could not be got served on the applicant and therefore a copy of the same was pasted on the Notice Board on 15.6.90 in the presence of the shed employees. The applicant remained unauthorisedly absent from 17.6.90. His leave application was rejected and he was asked to report for duty vide letter dated 13.7.90 but he failed to do so.

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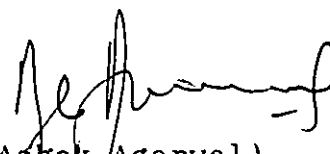
4. We have gone through the order dated 3.1.94 of the disciplinary authority which elaborately explains the unauthorised absence of the applicant. It is seen from this order that the applicant was given several opportunities to participate in the enquiry proceedings and to join duty but the applicant evaded attending the enquiry nor did he join his duty. The Enquiry Officer had issued several notices to the applicant and sent them through Regd. Post AD regarding fixation of date of enquiry. Only one letter of 31.1.91 was acknowledged by the applicant. However, it was received back undelivered with the remarks that the applicant was not available inspite of going to his residence repeatedly. It is not that the applicant was not in the know of the enquiry. There was a letter from the applicant asking for documents. Respondents have stated that these documents were not really relevant to the enquiry. There was further correspondence between the applicant and the respondents and yet the applicant neither joined his duty nor attended the enquiry. After making several efforts, the Enquiry Officer had to conduct the enquiry ex-parte. We find ample evidence that the authorities did make all possible efforts to reach the applicant so that he could attend the enquiry. However, the applicant did not care to be present. He did not join duty even till the date of issue of the impugned order by the disciplinary authority. The learned counsel for the applicant has tried to rely on the judgement of the Hyderabad Bench of this Tribunal dated 26.7.94 in OA No.541/92 wherein it was held that mere absence from duty though not authorised by grant of leave cannot be treated as misconduct. In our view this cannot be made applicable to the applicant as it is very clear from the order of the

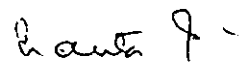
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disciplinary authority that the applicant willfully remained absent and evaded the enquiry and did not join duty.

5. Learned counsel for the respondents has also raised objection regarding limitation in that the order of the disciplinary authority is dated 3.1.94 and the applicant has filed the OA on 27.5.96. It is beyond one year from the date of the order. Applicant has also filed his appeal that too after the permissible period of 45 days.

6. In the facts and circumstances of the case, we find no merit in this application. The OA is therefore dismissed on merits as well as on limitation. No costs.

  
(Ashok Agarwal)  
Chairman

  
(Smt. Shanta Shastri)  
Member(A)

/gtv/