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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO.1049/89

New Delhi this 25th Day of March 1994

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. B.K. Singh, Member (A)

Shri D.D. Gera,
Son of Shri Narain Das Gera
Resident of A-64, Hans Apartments,
Road No. 57, C.B.D.,
Delhi Shahdara.

... Applicant

(By Advocate Shri S.K. Sawhney)

Versus

1. Union of India through
General Manager,
Northern Railway,
New Delhi.

2. Senior Divisional Personnel Officer,
Northern Railway,
Divisional Rail Manager,
Chelmsford Road,
New Delhi.

3. The Chief Yard Master,
Northern Railway,
Tughlakabad.

... Respondents

(By Advocate Shri Shyam Moorjani)

O R D E R

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant was working as Assistant Station Master and he remained absent from duty with effect from 20.3.1981 in an unauthorised manner. While he was posted at Tughlakabad Railway Station. A memo of chargesheet was served on 25.8.1981 but the applicant did not submit any defence statement. The area officer Tughlakabad was appointed as enquiry officer who had submitted his report to the disciplinary authority in June 1984. The disciplinary authority by the order dated 26.6.1984 imposed the punishment of removal from service with

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effect from that date. The applicant attained the age of 58 years on 30.9.1988. Before that on 14.9.1988 he reported to the Chief Yard Master that he has been declared medically fit and be allowed to join duty as he was sick from 20.3.1981. This representation of the applicant was returned to him with the remarks that he has been removed from service by the order dated 26.6.1984. On 20.9.1988 the applicant applied for a copy of the order of removal from service dated 26.6.1984 alongwith the enquiry officer's report. He has taken the stand that the order of imposition of penalty was not conveyed to him as required under Rule 12 of the DAR 1968. The applicant filed the appeal on 24.1.1989 and the appeal was rejected by the impugned memo dated 24/25.1.1989 on the ground that the appeal was not preferred within time. The applicant filed the present original application on 15.5.1989 in which he has prayed that the order of removal from service dated 26.4.1984 (26.6.1984) as well as the order passed by the appellate authority dated 27.4.89 and 25/26.1.1989 be quashed and set aside and the applicant be ordered to be treated in service and entitled to wages from 14.9.1988 when he reported for duty after sickness.

2. The respondents contested the application and stated that the applicant absented himself in an unauthorised manner with effect from 20.3.1981. He did not thereafter join the duties so the disciplinary authority, Sr. Divisional Safety Officer, appointed Shri G. Singh as enquiry officer. The applicant

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was served with registered letter (AD) to join the proceedings dated 26.2.1982, 2.4.1982, 4.5.1982 and 1.6.1982. The applicant did not join the enquiry proceedings. He did not submit any defence statement. The applicant also earlier remained absent from the service which shows that he was not interested in performing the duty and again remained absent in an unauthorised manner with effect from 20.3.1981. He has not even informed the reasons for absenting from duty. The applicant, therefore, is not entitled to any relief. Removal orders were duty communicated to the applicant through proper channel. The applicant has also filed the rejoinder reiterating the same facts again.

3. We have heard the learned counsel at length and perused the record. The learned counsel for the applicant assailed the order of removal on the ground that the applicant was ill and the enquiry proceedings were held in his absence. He has also argued that the applicant has informed the respondent No. 3, Chief Yard Master, about his sickness. We have also summoned the departmental enquiry file and we find that the enquiry officer has time and again issued notices to the applicant to join the enquiry proceedings. The Area Officer, Northern Railway, Tughlakabad informed the Divisional Personnel Officer by the letter dated 27.4.1981 that the applicant is continuing absent from duty with effect from 20.3.1981, on the basis of which the memo of chargesheet dated 18.8.1981 was served on the applicant. The Area Officer, Northern Railway,

also posted a notice on the residence of the applicant and also it was displayed at the place of work and despite the notices the applicant had failed to appear before the enquiry officer. The notices were also sent by registered post and were received by the wife of the applicant on his behalf. The enquiry officer's report, in detail, shows that he has taken adequate steps to procure the presence of the applicant in the departmental enquiry but the applicant did not appear. The enquiry officer, therefore, finalised the enquiry. The applicant never informed the respondents No. 3 i.e., the Chief Yard Master nor any other officer about his absence from duty due to illness. There is noting in the official file that the applicant either himself was doing some business or assisting some of his relations in his business. The applicant only to retain the official residence was keeping his association with the railways. The applicant has filed a number of certificates issued by Dr. Gera from time to time to show that he was ill. We have also seen the medical certificates but these are all by the private medical officer and appears to have been casually issued. In any case, the applicant was actually ill and was located at Saria Rohilla, Delhi where railway doctor was easily available. It does not appear to be reasonable that during all these years of his absence from duty he did not contact the railway doctor for his treatment free of costs. He has also not obtained the sick memo from the railway medical officer nor submitted any

application for leave on medical grounds to Respondent No. 3 or to any other officer of the railways. The fact that the applicant continued to be ill for all these four years therefore is not reasonably acceptable nor it can be inferred from the conduct of the applicant.

4. We have gone through the enquiry officer's report and he has held that the charge of the unauthorised absence from duty has been established from 20.3.1981 onwards.

5. The applicant also did not prefer an appeal after the order of removal from service was passed on 26.6.1984 by the disciplinary authority. The contention of the applicant is that he has not been conveyed the order of removal from service and there is a breach of provisions of Rule 12 of D.A.R. 1968. We have gone through the file and we find that there is some noting in the margin of the order of the disciplinary authority. The respondents have also annexed as Annexure R I collectively but the said noting is not ~~eligible~~ ^{readable} but it is not in the original order passed by the disciplinary authority. This order also bears a stamp dated 10.7.1984 wherein in Hindi it is written Jaari Kiya i.e. it has been issued. Against this documentary evidence the contention of the counsel for the applicant cannot be accepted. The respondents have also taken the stand in the reply that the order was despatched through proper channel to the applicant. However, in the departmental enquiry file there is no record to show whether the applicant has actually received the aforesaid order of removal from service or not. But the facts and

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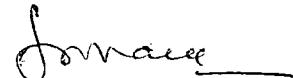
circumstances of the case do go to show that the applicant had knowledge about his removal from service because only 20 days before his reaching the age of 58 years i.e. 14.9.1988 he reported to the Chief Yard Master for joining the duty. Even alongwith this joining letter, the applicant did not attach any fitness certificate of the railway medical officer which in the circumstances of the case was necessary as per the relevant rules. In this connection we have also perused the departmental file which goes to show that the applicant has also absented earlier on various periods in 1977 and continuously from 19.10.1977 to 28.12.1977 and then from 9.1.1978 to 29.4.1978. Again on 9.5.1978 he applied for leave and then joined duties on 22.5.1978. Again he absented from 23.5.1978 till 2.2.1981. When he joined on 3.2.1981 he got a special medical fitness memo from the railway medical officer dated 2.2.1981. It goes to show that the applicant very well knew that he can join the duty after pro-long illness by obtaining the medical certificate from the railway medical officer. Not only this he was also served with a memo of chargesheet dated 9.4.1979. Thus, it cannot be said that the applicant was not aware of the relevant rules. The appellate authority have rightly rejected the appeal of the applicant as it was not preferred in time. Now seeing to the memo of appeal which the applicant has filed on 24.1.1989, we find that the applicant had earlier knowledge ^{of} removal from the service by the impugned order. Though in the appeal he has averred that he learnt about the removal from service

only on 19.9.1988 and that the notice of imposition of penalty was never communicated to him till 30.12.1988 when it was sent to him by the letter dated 27.12.1988. The applicant is occupying a quarter in Daya Basti. This Railway Colony is situated near Sarai Rohilla Railway Station where the applicant was last posted. Thus, there is an ample evidence on record to show that the applicant had knowledge of the order of removal and that was also despatched to him through proper channel as is evident from the stamp of despatch affixed on the order dated 26.6.1984 (R1 collectively).

6. The other grounds taken in the application are that the order of removal was not passed by the competent authority but this fact has not been substantiated by showing that the Sr. D.S.O., New Delhi was not the competent authority in case of the applicant.

7. In view of this fact and circumstances of the case, the application is devoid of merit and is dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

Mittal