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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1242 of 1988

Date of Decision: 24.12.93

CORAM

Hon'ble Mr. S.R. Adige, Member (A),

Hon'ble Mr. B.S. Hegde, Member (J)

Shri Anil Khanna
Ex. Senior Clerk,

Security Branch,
Northern Railway,

Panchkaun Road,
New Delhi

By Advocate Shri B.S. Mainee Applicant.

Versus

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Chief Security Commissioner,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

By Advocate Shri K.K. Patel

..... Respondents.

ORDER

Hon'ble Mr. S.R. Adige, Member (A)

In this application, Shri Anil Khanna, Ex. Senior Clerk, Northern Railway, New Delhi has impugned the order dated 23.2.87 (Annexure-A1) removing the applicant from service and the appellate order dated 27.10.87 (Annexure-A2) rejecting the appeal.

2. The applicant's case is that he was appointed as a Junior Clerk on adhoc basis vide notice dated 21.5.76 (Annexure-A3) and was thereafter regularised on 14.4.80 (Annexure-A4). He was granted

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four days' leave on average pay from 7.5.85 to 10.5.85 but he could not resume his duty on 13.5.85 (11th and 12th being Saturday and Sunday) on account of his sickness. As he was not getting any relief from the Railway Doctor whose treatment he was receiving from 3.1.85 to 9.4.85, he put himself under the treatment of a Private Doctor and submitted that Private Doctor's Medical Certificate for the period from 13.5.85 to 7.7.85 which was accepted by the respondents and the said period was regularised as leave due. However, his condition did not improve, and he continued the treatment under the Private Doctor, but the respondent did not accept that Private Doctor's Medical certificate beyond 7.7.85 and directed the applicant to go to the Railway Doctor for treatment. The applicant contends that as he had no faith in the Railway Doctor he continued to receive treatment of his Private Medical Practitioner, and in response to the respondents' letter dated 30.10.85 (Annexure-A5) directing the applicant to get himself treated by the Railway Doctor, he sent a reply on 22.1.86 stating that he did not take the treatment from the Railway Doctor because he could not get any relief from him. Meanwhile, the respondents issued a charge-sheet to the applicant on 16.10.85 for alleged unauthorised absence from duty from 8.7.85 (Annexure-A7). The applicant claims that he gave a reply to the charge-sheet but copy of the same has not been filed. Meanwhile, an Enquiry Officer was nominated who proceeded with the enquiry *ex parte* although the applicant claims to have informed the Enquiry Officer that he was not in a position to attend the enquiry. The applicant states that he was declared fit on 22.12.86 and reported for duty on that date. The respondents sent him to DMO, Delhi for fitness to resume duty, who declared him fit on 20.1.87.

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3. It is alleged that without waiting the applicant's representation, the respondents rushed through the enquiry exparte without permitting the applicant to recover and participate in it, and the Enquiry Officer submitted his report on 7.10.86 (Annexure-A13), on the basis of which the respondents issued a show cause notice dated 1.1.87 (Annexure-A14). The applicant states that he submitted a detailed reply on 22.1.87 (Annexure-A15), but without applying his mind to the same, the Senior Commandant, RPF, New Delhi passed the order on 23.2.87 (Annexure-A1) removing the applicant from service with immediate effect.

4. During arguments, the first ground taken by Shri Mainee, learned counsel for the applicant, was that the order of removal was hit by Article 311 (1) of the Constitution, because it was passed by an authority subordinate to that by which the applicant was appointed, and in this connection Shri Mainee referred to the notice dated 21.5.76 (Annexure-A3), signed by Deputy Chief Security Officer stating that the applicant after having been declared medically fit was temporarily appointed as a Clerk on adhoc basis against an existing vacancy in the Security Officer's Office, Delhi in the revised scale plus usual allowances admissible under the rules from the date he resumed duty in terms of SPO(HQ)'s letter No.220-E/1810(Eiii) dated 17.5.76. Shri Mainee argued that this notice is in fact the appointment letter and not letter No.220-E/1810(Eiii) dated 17.5.76, which reads in its entirety as follows:

"Reg: Appointment as Office Clerk on adhoc basis against Loyal quota.
As a result of suitability adjudged by the Dy.CSO, Shri Anil Khanna s/o Sri O.P. Khanna, S.I/RPF, Baroda House, New Delhi, has qualified for the post of Office Clerk grade Rs.260-400(RS). He may, therefore, be appointed as Office Clerk grade Rs.260-400(RS) on adhoc basis in Security Branch.

This has the approval of Addl.CPO.

PA/CSO

SPO(HQ)"

5. We find it difficult to accept this contention of Shri Mainee. Normally a copy of the appointment is addressed to the appointee, but it is clear that no copy of the notice dated 21.5.76 was endorsed to the applicant. It further appears that the applicant joined his post in terms of letter dated 17.5.76, the subject of which itself is 'appointment as Officer Clerk on adhoc basis against loyal quota'. Shri Mainee contended that this letter dated 17.5.76 is an internal communication and cannot be treated as the applicant's appointment letter. However, we note that the applicant himself in his appeal dated 24.3.87 made to the DIG., RPF, Northern Railway against the order of punishment has stated that he was appointed by the SPO(HQ) vide order dated 17.5.76 and the plea that he was appointed by notice dated 21.5.76 is being raised for the first time before us. Under the circumstances, the applicant must be treated to have been appointed by letter dated 17.5.76 signed by SPO(HQ) and the notice dated 21.5.76 merely reiterates the contents of the letter dated 17.5.76. That being the position and as the Senior Commandant, RPF, New Delhi who signed the removal order dated 23.2.87 is admittedly not inferior in rank or status to the SPO(HQ) who issued the order dated 17.5.76 appointing the applicant, this ground taken by Shri Mainee fails.

6. The second ground taken is that Rule 9(12) of the Railway Servants(Discipline & Appeal) Rules, 1963 has not been followed, which reads as follows:-

"The inquiring authority shall, if the railway servant fails to appear within the specified time or refuses or omits to plead, require the 'Presenting Officer', he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the railway servant may for the purpose of preparing his defence give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery of production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in sub-rule(6) Note-The Railway servant shall indicate the

relevance of the documents required by him to be discovered or produced by the railway Administration."

7. On a perusal of relevant departmental proceedings' record, produced for our inspection by Shri K.K.Patel, we find that it is true that the Enquiry Officer did not order adjourning the case, after the Presenting Officer had concluded, to enable the applicant to prepare his defence, but in our view this does not vitiate the proceedings. Shri Mainee has relied upon two rulings reported in ATR 1989 page 54 and ATR 1987(1) page 19) in support of his contention that failure to pass the formal order adjourning the case, renders the entire departmental proceedings illegal. However, we are unable to accept this view because the objective of this provision is to afford the railway servant an opportunity to indicate any document other than those listed in sub-rule (6), which he requires in his defence to reply to the charges but in the instant case, the two charges against the applicant; viz.

- i) unauthorised absence from duty from 8.7.85;
- ii) disobedience of the orders of the superior Officers in failing to report sick with the Railway Doctor, have not been denied by the applicant.

8. The applicant has not denied that he was absent from duty from 8.7.85 onwards. His defence is that he was unwell, and furnished P.M.Cs in support of the same. The respondents having reasons to suspect the bonafides of these P.M.Cs, directed the applicant to get himself medically examined by a railway doctor, but the applicant instead of abiding by these directions advanced the preposterous plea that he had no faith in the railway doctors. In fact, this assertion of the applicant contradicts his own statement in writing

dated 10.4.85 that after taking the treatment of a railway doctor, he found himself fit for duty. During arguments, Shri Mainee made the astonishing preposition that if the respondents had doubts about the bonafides of P.M.Cs, they should have sent the railway doctor to treat the applicant at his residence. Suffice to say that Rule 1474 of the Indian Railway Establishment Manual nowhere prescribes this.

9. It is also pertinent to mention that the applicant did not submit even the P.M.Cs on due dates or soon thereafter. Four P.M.Cs were submitted on 1.2.86, 1.5.86, 1.8.86 and 22.12.86, and that too only on 22.12.86. When strong doubts arose about the genuineness of these P.M.Cs and they were endorsed to the railway doctor for his countersignature, ^{the} countersigned them only for 20.1.86 and not for the entire period (July, 1985 to January, 1986).

10. In view of the ^{Applicant's} total non-co-operation in the departmental enquiry, of which he had full notice, the respondents were compelled to proceed exparte and the order of the disciplinary authority is a detailed and reasoned one. Full opportunity was given to the applicant to participate in the same, but he did not avail of that opportunity.

11. Shri Mainee has also contended that the appellate order was not reasoned one, and no personal hearing was given to the applicant. A perusal of the appellate order makes it clear that the main points taken by the applicant have been discussed, and Shri mainee has not furnished any ruling to show that it is mandatory to give personal hearing

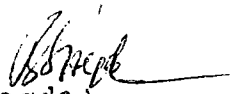
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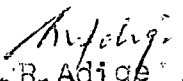
in each and every case.

11. No doubt, the applicant joined duty on 21.1.87, but his period of absence from duty from 8.7.85 to 20.1.87 can only be described as unauthorised, in the absence of any certificate from the railway Doctor, that the applicant was in fact so unwell during this entire period as to enable him to attend his normal duties. In so far as the penalty of removal is concerned, the Hon'ble Supreme Court in 'U.O.I Vs. Perma Nanda' (AIR 1989 SC 1185) had held that the Tribunal has no jurisdiction to interfere with the quantum of punishment imposed as a result of disciplinary case.

12. Under the circumstances, the impugned order warrants no interference and this application is dismissed.

13. No costs.


(B.S. Hegde.)
MEMBER (J)


(S.R. Adige.)
MEMBER (A).

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