

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No. 185/87

Date of decision: 16-07-1993 (9)

Shri Duli Chand

...Applicant

VERSUS

Union of India & Another

...Respondents

CO-RAM:

THE HON'BLE MR. J.P.SHARMA, MEMBER (J).

THE HON'BLE MR. S.R.ADIGE, MEMBER (A).

For the applicant ... Shri B.S. Maine, Counsel.

For the respondents ... Shri R.L. Dhawan, Counsel.

JUDGMENT

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

In this application, Shri Duli Chand, Head Reservation Clerk, Northern Railway, Meerut has assailed the Order dated 20-3-87 passed by the Divisional Commercial Superintendent, Northern Railway, imposing the penalty of reversion of the applicant from the post of Head Reservation Clerk grade Rs.425-640 to the post of Reservation Clerk grade Rs.330-560 for a period of two years without cumulative effect, for wilful and unauthorised absence from duty for the period 17-2-85 to 25-10-85.

2. The applicant was proceeded against in a departmental inquiry, wherein it was held that the charge of unauthorised and wilful absence from duty for the said period was substantiated, except for a period of six days which has been recommended to be treated as on duty. It is in this background that the impugned order of penalty was passed.

3. According to the applicant, he performed his duties on 16-2-85 from 6 A.M. to 2 P.M. and was thereafter directed by the Station Superintendent to the Area Superintendent's Office. He went to the Area Superintendent's Office but he was not allowed to meet him. On 17-2-85, when he reported for duty, he was not allowed to perform the same and rude behaviour of the concerned officials led to his becoming seriously ill. He went under the treatment of a private doctor, and this treatment continued till 10-10-85. During this period, he informed the respondents regularly. According to him, on 10-10-85, he came to join duties and made over the private doctor's certificates in the Office of D.R.M. However, immediately thereafter, he again fell ill and was placed under the treatment of the authorised medical attendant, Railways, Shahadara, Delhi on 11-10-85 and remained under his treatment upto 24-10-85. On 25-10-85, he again reported for duty in the D.R.M.'s office and was allowed to join on 28-10-85, but the departmental inquiry against him was started, soon after, for unauthorised absence from duty from 16-2-85 to 28-10-85.

4. The applicant has assailed the inquiry report on various grounds including,

- i) The inquiry officer instead of examining the witnesses in support of the charges, asked the applicant to give his statement, and after recording the statement of the applicant, he recorded the evidence of witnesses in support of the charges which was illegal and against the established principles of jurisprudence and natural justice;
- ii) After examining the witnesses in support of the charges, the Enquiry Officer cross-examined the applicant in continuation of the statement of the applicant;
- iii) That the documents relied upon during inquiry were not produced and those documents which had been produced,

were not shown to the applicant, and

iv) That there was no evidence to substantiate the allegation of unauthorised absence on the part of the applicant.

5. The respondents have challenged the application in their counter affidavit, and have pointed out that on the date the petition was filed, no order imposing any penalty has been filed. It has been stated that the present petition was a preemptive attempt on the applicant's part which had no basis for consideration in law. It has also been stated that the departmental remedies had not been exhausted, even against the alleged impugned order which is said to have been passed in January, 1987. The allegation that the manner in which the departmental proceedings were conducted was violative of the principles of natural justice etc., has been strenuously denied. It has been stated that the applicant was guilty of deliberately disobeying the orders of the Area Superintendent, Delhi, and it has been wondered as to how the applicant on the one hand reported for duty on 17-2-85 and at the same time claimed to be sick from 17-2-85, onward. It has been stated that the applicant did not join duty on 10-10-85 and did not furnish M.C. for the period 16-2-85 to 25-10-85 on 10-10-85, as claimed. It has been stated that the applicant was living with the jurisdiction of the Railway dispensary, but he failed to get himself treated there. Instead, he claims to have got himself treated by some private medical practitioners, whose certificates the respondents are not bound to accept as the same are not valid, legal or admissible.

6. We have heard Shri B.S. Mainee, learned counsel for the applicant and Shri R.L. Dhawan, learned counsel for the respondents.

7. It is true that the present O.A. is dated 9-2-87.

while the impugned order is dated 19/20-3-87 and to that extent the application was preemptive in nature. It is also true that the applicant has not exhausted the departmental remedies available to him, in as much as the applicant does not appear to have filed any appeal against the impugned order. However, as this is a very old case, we are proposing to finally dispose it of on the basis of the arguments advanced and the materials on record, without directing the applicant to first exhaust the departmental remedies available to him.

8. The applicant does not deny that he was absent from duty from 17.2.85 to 25.10.85. He has, however, tried to explain this absence on the ground that he fell sick and went under the treatment of certain private medical practitioners. The applicant was living within the jurisdiction of the Railway dispensary and indeed if he was sick, he has not explained why he failed to obtain a medical certificate from the Medical Officer Incharge of the Railway dispensary, or the authorised medical attendant. The respondents have averred that they are not bound to accept medical certificates issued by private medical practitioners and the applicant has not pointed out any specific rule to rebut successfully this averment. Under the circumstances we see no reason to hold that the applicant's absence from duty was authorised.

9. In the result, the impugned penalty warrants no interference, and this application is accordingly dismissed. No costs.

Arif Ali
(S.R.ADIGE)
MEMBER(A)

Domar
(6.7.91)
(J.P.SHARMA)
MEMBER(J)