

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
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O.A. NO. 217/90

Date of Decision : 27.11.92

Shri Harish Kumar Mishra
vs.

...Applicant

Union of India & Another

...Respondents

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Hon'ble Shri P.C. Jain, Member (A)

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

For the Applicant

...Shri S.K. Sawhney

For the Respondents

...Shri B.K. Aggarwal

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant was working as Trains Clerk, Kurukshetra having been given appointment on compassionate ground in Delhi Division, Northern Railway on 24.7.1986. He was proceeded in departmental enquiry under Railway Servants(Discipline and Appeal) Rules, 1968, hereinafter referred to as Rules, and served with SF 5 dt.15.12.1987 with memo of charges relating to unauthorised absence from duty w.e.f. 1.7.1986. After the departmental enquiry, a penalty under Rule 6 of removal from service was imposed by the Disciplinary Authority by the order dt. 30.9.1988 and the appeal against the same was dismissed by ADRM on behalf of DRM by the order dt. 8.2.1989.

2. The applicant has prayed for quashing of these penalty orders and with the consequential relief of reinstatement in service with all monetary benefits along with the costs.

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3. The case of the applicant is that he had suddenly fallen ill on 1.6.1987 ; after informing orally the Station Superintendent, he went to his home town in Ballabhgarn where there was no Railway hospital and he got him treated in the private Singla Nursing Home. After he recovered from the illness, he reported for duty on 29.10.1987 and the Station Superintendent instead of sending him to Railway medical authority directed him to DOS, Superintendent (M). On his joining report, some endorsement was made. His absence from duty from 1.6.1987 till 28.10.1987 was not regularised and instead he was served with a chargesheet, as aforesaid. The facts are not disputed by the respondents and only it is said that the applicant unauthorisedly absented himself from duty without giving any information to the Station Superintendent and also did not send any leave application nor he submitted medical certificate of illness even of the private doctors. The departmental enquiry was held and he has been held guilty of the charges levelled against him of unauthorised absence from duty from 1.7.1987 till his

date of joining, i.e., 29.10.1987. However, the learned counsel for the respondents, during the course of the arguments stated that it was only by mistake that he was chargesheeted from 1.7.1987 instead of 1.6.1987 and the period from 1.6.1987 to 30.6.1987 was never regularised as leave nor there was any application for leave for this period.

4. The applicant has assailed the departmental enquiry and stated that he has not been given adequate opportunity and that the evidence of the defence witnesses was not properly appreciated ^{by} the Enquiry Officer.

5. We have heard the learned counsel for the parties at length and have gone through the record of the case and also the departmental file has been summoned for perusal. Firstly, it is admitted by the applicant that he did not perform his duty from 1.6.1987 to 28.10.1987 and the reason given by him is that he was suddenly taken ill and left for his home in Ballabgarh where he got himself treated in Singla Nursing Home. In the departmental enquiry, Shri H.S. Sandhu, AOS (AM) examined the Station Superintendent, Kurukshetra Shri A.K. Singhal who had also been cross examined at length. In the statement, the Station Superintendent stated that the

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applicant remained absent for 150 days and he submitted an application on 29.10.1987 wherein he stated about his illness from 1.6.1987 to 28.10.1987. Immediately on the application, he made an endorsement that the employee remained unauthorisedly absent from duty for 150 days. In the cross examination, the witness has denied having received any letter though he has been specifically put a question by the applicant of sending certain letters on various dates in June, July, August, September and October, 1987. The Station Superintendent also stated that he sent three communications to the Divisional Office regarding unauthorised absence from duty of the applicant and he personally brought the matter to the DOS (M) and Senior DOS, New Delhi. On behalf of the applicant, Shri R.D. Roy, Trains Clerk was examined. The defence witness, of course, stated that he noticed some postal letter from his side addressed to Station Superintendent and he also handed over three of such letters to the Station Superintendent within a period of two months. In these letters, the address of Shri H.K. Mishra was mentioned as sender of those letters. Another defence

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witness examined by the applicant is Shri Chander Pal Bhim, ASM, Kurukshetra. He stated that he noticed two post cards addressed to the Station Superintendent on different dates lying in station dak. The applicant also gave his statement and stated that when he was declared fully fit by the doctor, he got one certificate from him and came to join the office of the Station Superintendent, Kurukshetra on 29.10.1987 along with the medical certificate from Singla Nursing Home. He has also submitted a defence note to the Enquiry Officer.

The Enquiry Officer has scrutinised the evidence and held that the delinquent has admitted that he did not send any communication to DRM office during his long absence. He also admitted that he failed to obtain G-92 from Kurukshetra or from any other Railway office when he fell sick. He also admitted that he could not produce any acknowledgement of any of the letters from Station Superintendent, Kurukshetra. The Enquiry Officer held that the applicant had failed to send interim medical certificates from any doctor. He did not approach the Railway dispensary, though it is situated near his residence. The Enquiry Officer held that the charges framed against the applicant are established.

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6. The learned counsel for the applicant has referred to paras 1472 and 1474 of the Indian Railway Establishment Manual, quoted below :-

"1472. A railway servant residing beyond the jurisdiction of a railway doctor either of the home line or of a foreign line must, if he requires leave on medical certificate, submit without delay a sick certificate from his medical attendant. Such certificate should be as nearly as possible in Form No.56 of Appendix 9 and should state the nature of the illness and the period for which the railway servant is likely to be unable to perform his duties. The competent authority may, at its discretion accept the certificate or refer the case to the District Medical Officer for advice or investigation and then deal with it as circumstances may require.

1474. When a railway servant, having reported sick, is under the treatment of a doctor other than a railway doctor, he must intimate this fact and his address without delay to the competent authority who may, at his discretion, instruct a railway doctor to examine him and report on his fitness or otherwise for duty."

The learned counsel for the respondents argued that Rule 1474 is not attracted in the present case. When he joined, he was referred to the Railway doctor as the competent authority was not satisfied about the illness of the applicant and the genuineness of the medical certificate of the private doctor. The aforesaid quoted paras also do not apply in the present case as argued by the learned counsel for the respondents.

7. The learned counsel for the applicant also argued that the Appellate Authority has not passed a speaking order. The order of the Appellate Authority dt. 3.2.1989 only mentions that the applicant was absent from duty over four months. The substance of the order communicated to the applicant is given in Annexure A10, which is reproduced below :-

"I have gone through the appeal of Shri Harish Mehta, ex TND/KKD. The employee was absent from duty over four months. He resorted to unauthorised absence from duty when he had less than 3 years of service. He has correctly been removed from service. The appeal is regretted."

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8. A perusal of the above appellate order goes to show that the Appellate Authority did not at all consider all the points raised in the appeal. In the memo of appeal submitted by the applicant (Annexure A9) he has taken a number of grounds and also stated that the penalty imposed by the authority is too severe. He also stated that he is a fresh entrant, who had no knowledge of the departmental rules. He further stated that he deserves sympathetic attitude of the department as the absence from duty was not deliberate and wilful. He also stated that he assures for best and sincere service in future. The order passed by the Appellate Authority did not touch any of these points nor gave any opportunity of personal hearing to the applicant. Though the applicant did not specifically call for the same, but in view of the decision of the Hon'ble Supreme Court in the case of Ram Chander Vs. UOI & Ors., reported in 1986 (2) SLJ p-250, ^{wherein} it has been held that "After the constitutional change brought about, it seems that the only stage at which now a civil servant can exercise this valuable right is by enforcing his remedy by way of departmental appeal or revision or by way of judicial review. In Tulsi Ram Patel's

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case, the majority decision has pointed out that even after the 42nd Amendment, the enquiry required by Article 311(2) would be the same except that it would not be necessary to give a civil servant any opportunity to make representation with respect to the penalty proposed to be imposed on him. In such a case a civil servant who has been dismissed or removed or reduced in rank by applying to his case one of the clauses of the second proviso to Article 311(2) or the analogous service rules has two remedies available to him. These remedies are, (i) the appropriate departmental appeal provided for in the relevant service rules and (ii) if he ~~is~~ still dissatisfied, invoking the court's power in judicial review. Ultimately, it has been held, "An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final order that may be passed on his appeal. Consideration of fair play and justice also require that such a personal hearing should be given."

9. In view of the above facts, it is not necessary to deal on the aspects of the findings of the Disciplinary Authority as the matter is being remanded to the Appellate Authority to consider various points taken by the applicant

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in his appeal (Annexure A9) and also the quantum of punishment imposed on the applicant.

10. The application, is therefore, partly allowed and the order of the Appellate Authority is set aside and the matter is remanded to the Appellate Authority to consider the various points raised in the memo of appeal filed by the applicant and decide the same by ~~speaking~~ passing a ^{after} reasoned order/giving a personal hearing to the applicant. The decision of appeal shall govern the ultimate fate of the punishment imposed on the applicant by the Disciplinary Authority. In the circumstances, the parties shall bear their own costs.

J. P. Sharma
(J. P. SHARMA) 25.11.92
MEMBER (J)

(C. G. Jain)
(P. C. JAIN) 27.11.92
MEMBER (A)