

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(13)

O.A. No.2743/91

10.02.1993

Shri Ashok Kumar ...Applicant

Vs.

General Manager, Northern Rly. ...Respondents
& Ors.

CORAM :

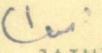
Hon'ble Shri P.C. Jain, Member (A)
Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ...Shri B.S. Mainee

For the Respondents ...Shri N.K. Aggarwal

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?


(J.P. SHARMA)
MEMBER (J)


(P.C. JAIN)
MEMBER (A)

(14)

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For the Applicant ...Shri B.S. Maine

For the Respondents ...Shri N.K. Aggarwal

JUDGMENT

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

The applicant was serving as a Foreman under Loco Foreman, Northern Railway, Saharanpur when he was arrested in a criminal case on 7.2.1985 under Section 398/401 IPC. He was subsequently put under suspension w.e.f. 7.2.1985 as Head Quarters at Saharanpur. He was issued a notice to appear before the investigating officer of the criminal case, but he was not found at his residence nor available second time when called upon a summon issued by the respondents. The respondents have taken him as unauthorisedly absent from duty and a departmental enquiry was initiated against him. He was served with a chargesheet in October, 1986 along with article of charge that he remained unauthorisedly absent from duty from 7.12.1985 till date and thereby committed breach of Rule 3(1)(i) of the Railway Servants Conduct Rules, 1966. Shri R.S. Mishra, JD II, Saharanpur was appointed as Enquiry Officer and he issued a notice to the applicant to participate in the enquiry. The applicant did not file any reply to the

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charges levelled against him nor he turned up in the enquiry proceedings. So the Enquiry Officer was constrained to take ex parte proceedings against the applicant. The Enquiry Officer gave the finding that the article of charge against the applicant stands proved that he was unauthorisedly absent from duty from 7.12.1985. The Disciplinary Authority agreeing with the finding of the Enquiry Officer, passed the punishment order dt.8/19.5.1987 imposing the penalty of removal from service and the same was sent to the applicant along with the report of the Enquiry Officer. The applicant preferred an appeal on 4.7.1987 (Annexure A5) to Senior DME, Saharanpur (This fact is denied by the respondents). The applicant further alleged that the appeal of the applicant was not disposed of. Thereafter, in the criminal case the applicant was acquitted by the order dt.28.10.1989. The applicant, therefore, again filed an appeal on 13.5.1990 against the punishment order dt.8/19.5.1987 and the Union (URMU) took up the matter of the applicant. The applicant was informed by APO, Ambala Cantt. by the Memo dt.27.2.1991 that "He has already removed from service on unauthorised absence and time barred case. There is no relevancy with the criminal case and the period of unauthorised absence."

In the present application filed on 18.11.1991 under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the order of removal from service dt.8/19.5.1987. The applicant has prayed for the following reliefs :-

(i) quash the impugned orders (Annexures A1 and A2)

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- (ii) direct the respondents to reinstate the applicant in service with all consequential benefits.
- (iii) direct the respondents to pay salary and allowances to the applicant from the date of his removal from service till date of reinstatement.
- (iv) direct the respondents to treat the suspension period as duty and pay the difference between full salary and allowances and the subsistence allowance paid.
- (v) any other or further relief as deemed fit and proper under the circumstances of the case.

Respondent No.3 contested the application and in the reply stated that the application is barred by time. It is further stated that the applicant was removed from service not because of his criminal case, but because of his unauthorised long absence. The applicant was called on 11.10.1985 to attend CBI enquiry at Dehradun on 14.10.1985 vide Memo (Annexure R1), but the applicant did not attend as was informed by SP CBI on 16.10.1985. The applicant was asked again to attend the enquiry vide respondents' letter (Annexure R2). The applicant never turned up and was marked absent from 7.12.1985 (Annexure R3). He was, therefore, issued the chargesheet as already referred to in the earlier part of the judgement. The applicant was proceeded against in the departmental enquiry and inspite of the notices issued by the Enquiry Officer, he did not attend the proceedings on 16.2.1987 as well as on 23.2.1987 and lastly on 7.3.1987.

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when he was advised that if he did not appear, ex parte action will be taken against him. The applicant was given due opportunity to defend his case, but the applicant himself did not participate in the enquiry nor cooperated with the Enquiry Officer. Thus according to the respondents, the applicant has no case.

In the rejoinder, the applicant has reiterated the points raised in the OA. It is stated that the applicant never absented himself and was at his Head Quarters at Saharanpur.

We have heard the learned counsel for the parties at length. As regards the point of limitation, the learned counsel for the applicant argued that the applicant has preferred an appeal on 4.7.1987 (Annexure A5). This appeal appears to have been forwarded by Loco Foreman to Senior DME, New Delhi. The respondents in their counter in paras 4.14 and 4.15 only stated that it is a matter of record. However, in paras 4.18 and 4.19 of the counter, it is stated that no appeal has been received by the respondents. Thus the averment in the counter itself appears to be contradictory. When the appeal was duly forwarded by the Loco Foreman to Senior DME and the genuineness of the document at Annexure A5 is not disputed in the counter, then it cannot be said that the applicant did not prefer an appeal against the penalty imposed by the Disciplinary Authority by the impugned order

dt.8/19.5.1987. Further, in the subsequent appeal filed by the applicant on 13.5.1990 (Annexure A6), there is a mention of the fact that the applicant also preferred an appeal on 4.7.1987 and no decision has so far been taken on the appeal. There is an endorsement on this appeal addressed to Senior Divisional Mechanical Engineer, Ambala cantt. by the Loco Foreman forwarding the same to Senior DME, Ambala for further disposal with No.4/IER dt.17.6.1990. The reply dt.27.3.1991 (Annexure A2) does not mention anything about the appeal dt.4.7.1987 (Annexure A5), while it deals with the subject of appeal by Shri Ashok Kumar. It also refers to item No.7 of PNM meeting of URMU held on 11.12.1990 at DRM level. Therefore, on the facts and in the circumstances of this case, it will not be proper to hold that the present application of the applicant is barred by limitation.

The next question that arises in this case is whether the applicant has committed any misconduct or not. The applicant admittedly was under suspension after his arrest in the criminal case w.e.f. 7.2.1985. It is said that the applicant was asked to attend the CBI enquiry on 7.12.1985, but he did not report. He was again summoned to attend the enquiry, but he did not report the second time also. It was the duty of the investigating agency to procure his presence as after arrest he was on bail from the criminal court. The applicant was not asked to attend to his duties of the post nor the order of suspension was revoked. In such a situation,

it cannot be said that the applicant absented himself from duty and thereby committed any misconduct as defined in Section 3(1) (i) of Railway Servants (Conduct) Rules, 1966. The circular of the Railway Board No.E(D&A) 83.RG-6-17 dt.31.5.1983 is to the effect that a suspended railway employee cannot be required to mark his attendance. It is not the case of the respondents that the applicant has changed his Headquarter during the period of suspension. The only article of charge against the applicant has been that he has been unauthorisedly absent from duty from 7.12.1985 till date. In fact the applicant was suspended and there was no question of his being present on duty during this period. The matter was considered by Andhra Pradesh High court in Zonal Manager, FCI Vs. K.Siddiqui. Their Lordships of the Andhra Pradesh High Court considered the matter and held, "We fail to understand how when an employee is debarred temporarily from service, he should be compelled to attend the office and mark his attendance." We are, therefore, supported in the view that the applicant could not have been compelled to attend the office on the summons of respondent No.3 and it was the duty of the investigation officer of the criminal case to procure his attendance for enquiry, which was entrusted to CBI.

In view of the above facts and circumstances, we are of the considered view that the applicant could not have been

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chargesheeted or punished for the alleged unauthorised absence. However, on the facts and in the circumstances of this case, we do not find adequate justification for directing payment of full wages instead of subsistence allowance for the period of removal till his acquittal in the criminal case on 28.10.1989. The application is, therefore, partly allowed and disposed of with the following directions:-

- (i) Impugned order of penalty dt.8/19.5.1987 and the order of the Appellate Authority dt.27.2.1991 (Annexure A2) are hereby quashed and set aside. The applicant shall be deemed to have continued under suspension upto 28.10.1989 and accordingly.
- (ii) The competent authority shall consider the judgement in the circumstances of the case for the period from 29.10.1989 till the date of this judgement and for a further period till the order is passed by it, pass an appropriate order in accordance with the Rules.
- (iii) These directions be complied with expeditiously, preferably within three months from the date of receipt of a copy of this judgement. No costs.

J. P. Sharma
(J.P. SHARMA) 10/2/93
MEMBER (J)

C. C. Jain
(P.C. JAIN) 10/2/93
MEMBER (J)