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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2567/2004

New Delhi this the 19th day of July, 2007

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mrs. Neena Ranjan, Member (A)

Shri Ashok Kumar,
S/o Shri Makhan Lal,
Ex. Blacksmith,
Under Senior Section Engineer (C&W),
Northern Railway,
Kanpur.

Presently R/o 102-C, Vijay Nagar,
Ghaziabad.

... Applicant.

(By Advocate Shri B.S. Mainee)

Versus

Union of India

Through :

1. The General Manager,
North Central Railway,
Allahabad.
2. The Divisional Railway Manager,
North Central Railway,
Allahabad.
3. The Senior Section Engineer (C&W),
North Central Railway,
Kanpur.

... Respondents.

(By Advocate Shri Rajender Khatter)

ORDER

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)

The impugned order dated 13.6.2003^{is} issued to the applicant, who is described as Ex. Trainee Blacksmith. He was previously employed under the Assistant Divisional Mechanical Engineer, North Central Railway, Kanpur. The order, in effect, cancels a show cause notice issued to him alleging unauthorized absence on his part from



27.5.2002 onwards. However, the background and the impact of the order ensured that it imposed civil consequences upon the applicant. Therefore, it is under challenge.

2. The order, inter alia, very well indicated that it was really superfluous to issue the show cause notice since the employee had already been removed from service by an order of the competent authority dated 21.07.1998. Even an appeal filed from the order stood rejected as early as on 26/30.11.1998. It further revealed that the officer, who issued the memo, was unaware of the removal orders and the applicant's name continued to be on the rolls. Thus, the stand gatherable is that as disciplinary proceedings were sought to be initiated against a person, who was already out of service, the administration was backing out of the proposal, the earlier memo having been issued on a mistake of fact.

3. Applicant has also produced Annexure A-5 being a reply to the above impugned order, and he points out that the proceedings are misconceived. He had no information, according to him, about the order removing him from service, on 27.01.1998, or the rejection of the appeal. He challenged the wisdom of issuing such an order and as a final measure requested that he may rather be issued an order of compulsory retirement in the place of a removal order, considering his long service and the possibility of otherwise being forced to go empty handed. In the application, the relief sought is for quashing the impugned orders and for directing reinstatement with consequential benefits.

4. According to the applicant, in the year 1998, of course, the respondents had passed orders removing him from service without

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holding an inquiry. He had filed an appeal, as a result of which he was reinstated in or about the month of August, 1999 under the Senior Section Engineer (C&W), North Central Railway, Kanpur. He had put in service running to years thereafter but fell ill and on the direction of his superior went over to the Divisional Medical Officer, Loco Hospital, Kanpur. From there, the applicant had been referred to the Divisional Railway Hospital, Allahabad where he was operated upon, which resulted in loss of one eye. In due course, he had been referred to State Institute of Ophthalmology and while undergoing such treatment, a charge sheet was issued alleging unauthorized absence. There was, therefore, a complete mix-up of facts. However, he has admitted that on 21.7.1998 he was removed from service for unauthorized absence, but, according to him, without intimation to him. He had filed an appeal on 30.11.1998 and got reinstated. It was while working so that the charge memo has been issued on 11.7.2001. This is the circumstance for his claim that the impugned proceedings were on a mistake of fact. The order, he says, ignores his reinstatement, and he is a railway employee having all rights and privileges. Without the authority of law, he has been forced to keep away from work. Mr. Mainee, appearing for the applicant submits that after reinstatement for years together, the applicant was getting salary and the plea that there was mistake on their side cannot be countenanced. Now that the charge memo had been withdrawn and the proceedings closed, nothing stood in the way of his attending to work formally. The Tribunal's intervention is solicited in this background.

5. In the reply filed by the Senior Divisional Mechanical Engineer, dated 9.12.2004, an attempt has been made to explain the situation.

From 19.10.1994 onwards, employee had been keeping away from

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work unauthorizedly on number of occasions at frequent intervals. He unauthorizedly absented from 16.12.1994 for a long period and a charge sheet was issued. An inquiry had been directed to be held. However, the employee did not cooperate in spite of notices and since the same were not received, they were published on Notice Board. It was only after this formality that he had been removed from service, on 21.7.1998. An appeal filed had been rejected by order dated 26.11.1998. However, it so happened that there was an order of re-deployment during the pendency of departmental inquiry, and the applicant was listed as a person to be so deployed. By mistake, orders of removal had not been forwarded to the Controlling Officer, and taking advantage of the situation possibly, applicant had joined and worked misguiding the administration. But the mistake was noted in June, 2003 and, therefore, corrective orders have been issued although in the meanwhile fresh proceedings also had been initiated yet for another unauthorized absence. The termination order issued had full operation, and the appeal too had been rejected. It is submitted by the counsel that when the orders competently passed had not been reviewed suo moto or set aside by a court of law, legal position was that the employee remained as an outsider to the organization. That he worked, drew salary and had been subjected to disciplinary proceedings were insufficient for him to make a plea that the removal orders had been withdrawn, tacitly. The officer, who engaged the applicant, had done so in good faith and oblivious about the earlier proceedings but he was not competent to sit in judgment over the orders passed by the competent authority severing his relations with the Administration, which have been upheld by the appellate authority as well. In fact, the engagement was of no

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consequence but made by a mistake. The mistake committed had been, according to the learned counsel, corrected and the impugned order was, therefore, unassailable.

6. We do find merit in the contentions as raised by the Administration, although the facts appear to be stranger than fiction. The applicant was beneficiary of oversight alone. When the applicant admits that his services had been dispensed with and it was also subjected to unsuccessful challenge, he is disabled from canvassing for a position that he is entitled to be considered as continuing in service. His plea that appellate authority has set aside the removal order is only self serving statement, and such a piece of document has not been made available obviously because such a document is not in existence. After absconding in 1994 he had made appearance in 1998 by filing an appeal and, therefore, cannot blame the administration for holding an inquiry ex parte. He too had corresponding duty as a responsible employee to disclose his whereabouts. Such conduct is not expected from a Railway servant and we are sure that an attempt is made to capitalize a situation obviously without bona fides.

7. Nevertheless, we are of the opinion that the Railway Administration ought to have been more careful in the matter, as their explanation for entertaining the applicant in service, notwithstanding the order of removal, ~~is~~ to put it mildly, is absurdly strange.

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8. Taking notice of the totality of the facts, but taking a lenient approach to the issue, we feel that if the applicant is really interested to pursue his career, a further opportunity should be given to him on strict terms. We are not unmindful of the decisions of the Hon'ble

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Supreme Court that vis-a-vis legal rights, sympathy has no role (**State of Bihar & Ors. Vs. Amrendra Kumar Mishra** (AISLJ 2007 (2) 214).

None the less administrative lapses, may at times operate, to the advantage of an individual, as highlighted by the Supreme Court in **Bhagwan Shukla Vs. Union of India & Ors.** (AISLJ 1995 (2) 30).

9. We find that the applicant is not guilty of an offence involving moral turpitude. He has by now a lesson of his life. He has suffered certain amount of physical disability and appears to have only little education. If the applicant makes an application for his reinstatement, to the Divisional Railway Manager, North Central Railway, Allahabad within one month from the date of receipt of a copy of this order notwithstanding the earlier proceedings whatever, the said officer should dispassionately examine his case and advise the applicant of his decision within two months from the date of receipt of the application. Even if the reinstatement is granted, it should be ensured that the period from 16.12.1994 (commencement of initial unauthorized absence) upto the date, on which the Divisional Railway Manager passes the order, consequent to this direction, shall not be reckoned as service for any purpose. This course, we hope will be just and fair for the default and lapses of both the sides.

10. With this observation and direction, the application is disposed of. No costs.

(Mrs. Neena Ranjan)
Member (A)

(M. Ramachandran)
Vice-Chairman (J)

'SRD'