

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Dated : This the 5th day of July 2002

Original Application no. 1076 of 1996.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K.K. Srivastava, Member (A)

Mahendra Narain Dubey,
S/o late S.N. Dubey,
R/o 806/593 Krishna Nagar,
Kydganj Allahabad, Fitter-3 Under Coaching
Depot Officer Chunar Northern Railway,
Distt. Mirzapur.

... Applicant

By Adv : Sri R Nath

Versus

1. Senior Divisional Mechanical Engineer,
Northern Railway, Allahabad.
2. Divisional Mechanical Engineer,
Northern Railway, Allahabad.
3. Divisional Railway Manager,
Northern Railway, Allahabad.
4. Union of India, through General Manager, Northern Railway,
Baroda House, New Delhi.
5. Ram Niranjana Dubey, S/o M.P. Dubey,
R/o New Sohbat Bagh, Sheopuri Marg,
Allahabad, Now Senior Accounts Officer (Pension & Legal),
Finance Advisor and Chief Accounts Officer, N. Rly.,
Baroda House, New Delhi.

... Respondents

By Adv : Sri A Tripathi & Sri R.P. Srivastava

ORDER

Hon'ble Maj Gen K.K. Srivastava, AM.

By this OA, filed under section 19 of the A.T. Act,

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1985, the applicant has challenged the appellate order dated 22.6.1996 rejecting the appeal of the applicant and 22.4.1996, by which the Disciplinary Authority after conclusion of Disciplinary Proceedings, terminated the services of the applicant and has prayed that these orders be quashed and the applicant be permitted to continue in service.

2. The facts, in short, giving rise to this OA are that the applicant was in the employment of Northern Railway and has completed 23 years of service. The applicant was initially appointed in Class IV category and in the year 1984, he was promoted in class III category as Fitter. While posted at Chunar Railway Station, applicant was issued a charge sheet dated 31.3.1993, wherein it was alleged that the applicant was unauthorisedly absent since 5.10.1988 without any sanctioned leave. Another allegation against the applicant was that the applicant directly made correspondence with the Hon'ble Railway Minister for getting duties. Further allegation against him was that on 18.8.1992 the applicant was directed by Assistant ^{Mechanical} Engineer, Allahabad to move an application for joining but he did not move such an application for joining.

3. Applicant denied the charges levelled against him vide his letter dated 7.4.1993. Pursuant to charge sheet, Enquiry Officer (in short IO) was appointed and applicant submitted his reply on 5.7.1993 before the IO. Further case of the applicant is that the IO conducted the enquiry strictly behind his back and the disciplinary authority did not serve the copy of the enquiry report,

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before passing the order of punishment on him. Applicant further submitted that before holding the applicant guilty of charges, IO did not examine the relevant records, of the officer of Coaching Depot, where there was ample evidence to prove that he was on medical leave. Applicant also alleges malafides against respondent no. 5, who is his brother-in-law that he was harassing the applicant and due to his harassing attitude, applicant could not join his duties.

4. Counsel for the respondents on the other hand contested the claim of the applicant and submitted that the applicant was given all the due opportunities but the applicant did not respond, and he remained unauthorisedly absent. He further submitted that the charges against the applicant were proved ^{before} ~~by~~ the IO, and the applicant was supplied with the copy of the Enquiry Report and the IO examined, all the relevant records. Enquiry report was also accepted by the Disciplinary authority and as such the present application lacks merits and is liable to be dismissed. Learned counsel for the respondents also produced the entire Disciplinary file before us.

5. We have heard learned counsel for the parties at length and perused the relevant record.

6. According to applicant's own case he was absent from duty since 5.10.1988 till 31.3.1993 (date of charge sheet) i.e for about 4 years and 5 months. Although the applicant has ^{stated} ~~stated~~ that he had given the medical certificate of his illness as well as of his wife, but in the entire OA, not a word has been mentioned that what

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was the nature of illness, which prevented him to join his duties for more than 4 years and the possibility of it being ⁱⁿ ^{an} afterthought cannot be ruled out. This conduct of the applicant, itself shows that applicant is very casual and is not interested in performing any duty.

7. Counsel for the applicant also submitted that the IO did not consider the relevant material and he conducted the enquiry ⁱⁿ ^{behind} strictly behind the back of the applicant and the copy of the enquiry report was also not supplied to him, before the order dated 22.4.1996. From the perusal of disciplinary file of the applicant's case, it transpires that IO has given repeated reminders, intimating the applicant regarding next date, but the applicant out of his own sweet will, opted not to appear before the IO for enquiry. We also find that before passing the order dated 22.4.1996, applicant was given a show cause notice and ⁱⁿ ^{along with} ~~it~~ ⁱⁿ it applicant was also supplied ^{with} ~~with~~ the enquiry report. From the disciplinary file of the applicant we also find that before issuing the charge sheet, Asstt. Mechanical Engineer, N. Rly., Allahabad, directed the applicant to make an application for joining, but the applicant did not avail even that opportunity and ultimately, respondents were left with no option, but to terminate the services of the applicant.

8. Counsel for the applicant further submitted that respondent no. 5 was having ⁱⁿ ^{malafide} intentions with the applicant and due to his harassing attitude, applicant could not join his duties and he was forced to ⁱⁿ ^{abandon} his services. He also submitted before us that order of termination has ⁱⁿ ^{been} ^{passed} at ⁱⁿ ^{instance} of respondent

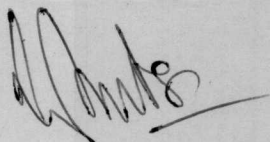
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no. 5 . This argument of the applicant also lacks merits, inasmuch as on the one hand applicant submitted that due to ill health of applicant and his wife, he could not join and on the other hand he alleges malafides against respondent no. 5 for not joining the duties. Moreover, according to applicant himself, respondent no. 5 is brother-in-law of the applicant and the real motive appears to be some family dispute and the applicant cannot take shelter of this plea for not joining his duties ^{for him} ~~after~~ such a long time. However, from the perusal of the record also, we do not find any material, which could suggest that the order dated 22.4.1998 has been passed on ⁱⁿ ~~his~~ instigation ^{by} ~~of~~ Respondent No 5.

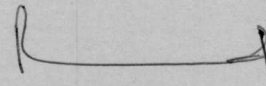
9. Applicant had filed an appeal against the order order 22.4.1996 which was also rightly rejected by the appellate authority vide its order dated 22.6.1996.

10. For the above the present OA lacks merit and is liable to be dismissed. The OA is dismissed accordingly.

11. There shall be no order as to costs.



Member (A)



Vice-Chairman

Dated : 05/07/2002

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