

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 15th day of September, 2000

Original Application No.779 of 1996

District : Lucknow

CORAM :-

Hon'ble Mr. Rafiquddin, J.M.

Hon'ble Mr. M.P. Singh, A.M.

K.S. Kashyap son of Sri Sudhari Singh Kashyam,  
Resident of C/o Shree Narain, 419/52, Hata Suraj Singh,  
Baba Hazara Bagh, Post Office-Chowk, Lucknow.  
(Sri BD Maurya, Advocate) . . . . . Applicant

Versus

1. The Union of India through the Secretary,  
Railway, Government of India, New Delhi.
2. The General Manager  
Diesel Locomotive Works (DLW),  
Varanasi.
3. The Deputy Chief Mechanical Engineer (Engine)  
Diesel and Locomotive Works (DLW)  
(Disciplinary Authority), Varanasi.
4. The Chief Mechanical Engineer (Production) WLW,  
Varanasi.
5. The Chief Personnel Officer (D.L.W.), Varanasi.  
(Sri Amit Sthalekar, Advocate)

. . . Respondents

O R D E R

By Hon'ble Mr. Rafiquddin, J.M.

By means of this OA the applicant has sought quashing of the punishment order dated 29-1-1989 contained in Annexure-A-1 to this OA and also the order dated 11-8-1995 passed by the appellate authority contained in Annexure-A-2 to this OA.

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2. The applicant at the relevant time was working as Senior Chargman (Fitter Trade) in DLW, Varanasi. The applicant absented himself w.e.f. 15-10-1987 from duty onwards. According to the applicant the reason for his absence was that his brother had been kidnapped and he remained busy in his search but could not trace out till date of filing this OA.

3. It appears that <sup>when</sup> the applicant did not intimate about his whereabouts to the respondents, a Memo. dated 31-8-1988 1988 under Rule 9 of R.S.(D&R) Rules, 1968 was issued by the disciplinary authority and was sent at the permanent address of the applicant recorded in his service record at Lucknow through Registered Post twice, but the same was returned back by the postal authorities with the remark that the house of the applicant was not traceable. The respondents thereafter deputed one R.S. Sahni, a staff member, to trace out the applicant on 25-12-1988 and to deliver him the aforesaid memo of charge personally at his home at Lucknow. However, Sri RS Sahni, could not locate the applicant and trace out him or his whereabouts for this purpose. The disciplinary authority waited for return of the applicant to duty till January, 1989 but he was still not traceable and did not report for duty. Consequently, action under the provisions of Sub Rule(ii) of Rule 14 of R.S.(D&A) Rules, 1968 and in terms of Railway Board letter No. E(D&A)/83-RG-647 dated 30-8-1984 was taken. The charge against the applicant for unauthorised absence from duty was proved and he was removed by the impugned order from service. The applicant's date of birth being 12-11-1996, he would have retired from Railway service on attaining the age of superannuation on 13-11-1994. The applicant thereafter preferred an appeal before the competent authority on 17-4-1994 challenging the order of removal from service but the same has also been dismissed.

4. The applicant has challenged the impugned order mainly on the ground that since an ex parte enquiry was not held, therefore, the order of punishment is against the rules and guidelines laid down by the Railway Board and is violative of Article 311 of the Constitution of India. The punishment order as well as the order of appeal has been decided by the same authority. Therefore, the same is illegal.

5. We have heard counsel for both the parties and perused the record carefully.

6. It is the admitted case that the applicant did not turn up on his duty till the expiry of the date of his retirement. According to the respondents, the applicant suddenly appeared on 13-12-1994 and submitted an application stating reason for his absence from duty and asked the respondents to allow him to join duty. Since the applicant had already been removed from service as a result of disciplinary measure and had also reached the age of superannuation, no order was passed on his application. The applicant thereafter submitted another application addressed to the General Manager, DLW, Varanasi requesting that since there is no member in his family, he may be paid retiral benefits. The applicant had not challenged the punishment order. The petition was not maintainable under any provisions of any rules. However, the respondents considered his application sympathetically and he was sanctioned compassionate allowance of Rs.700/- per month in accordance with Rule 65 of Pension Rules. It is also contended that the order under Rule 65 has been passed by the disciplinary authority which is permissible under rule.

7. Learned counsel for the applicant has emphasised

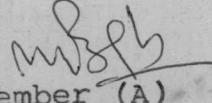
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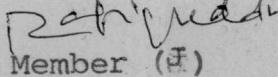
that in the present case illegality has been committed by the disciplinary authority by not holding ex party disciplinary proceedings and the impugned punishment order is liable to be set aside in view of the judgement of the Apex Court rendered in Tulsi Ram Patel's case reported in AIR 1985 SC 1416 and the Railway Board Circular dated 18-4-1990. We, however, find that since the Circular dated 18-4-1990 has been issued by the Railway Board after passing of the impugned order, any instruction contained there in is not applicable in the present case. Similarly the principle laid down in the case of Tulsi Ram Patel does not come in the way of the punishment order. It is noticed from the memo of charge that the only evidence oral as well documentary relied upon by the disciplinary authority was the extract of leave record of the applicant. In other words, there was no other documentary evidence or any other oral evidence to prove the case. It was, therefore, not necessary to record any oral evidence and the conclusion of the disciplinary authority on the basis of service record only. Since admittedly, the applicant was absent during the period, we do not find any infirmity in the conclusion of the disciplinary authority.

8. It is also pertinent to mention here that the ~~applied for~~ <sup>was</sup> has been receiving the amount of compassionate allowance Rs. 700/- per month from the respondents, which was allowed to him under Rule 65 of the Pension Rules. He has no legal right to challenge the legality of the punishment order at this stage.

9. For the reasons stated above, we do not find any merit in the case. The OA is, therefore, dismissed with no order as to costs.

Dube/

  
Member (A)

  
Member (F)