

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 26th day of March, 2001

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Original Application No. 794 of 1997

Smt. Bhanu Mati Devi W/o Late Ambika

R/o 136, Sadiyapur, Allahabad

.....Applicant

Counsel for the applicant :- Sri K.C. sinha  
Sri R.C. Sinha

V E R S U S

1. Union of India through the General Manager,  
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,  
Allahabad.
3. Divisional Operating Superintendent ( now  
designated as Divisional Operating Manager), Allahabad.
4. Senior Divisional Officer, Northern Railway,  
Allahabad.

.....Respondents

Counsel for the respondents:- Sri A.K. Pandey

O R D E R (Oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman)

By this application, <sup>applicant</sup> Ambika (died <sup>prematurely</sup> ~~prematurely~~) challenged the order dt. 07.06.94 by which, his representation for adjustment of leave/period of absence <sup>to the</sup> ~~which~~ has been rejected.





2. Facts in short giving rise to this dispute are that the applicant Ambika was serving as A.S.M. at Ahraura Road, Allahabad Division. He was sent for training in safty camp at Kanpur and he reported there on 17.10.84 and <sup>was</sup> spared on 23.10.84 after noon. The applicant however, overstayed and did not join the duty. On 26.10.84 he sent information about his illness. On 15.11.84 he reported for duty to Station Superintendent and produced a private medical certifikante for the period of 26.10.84 to 14.11.84. However, he was not allowed to join the duties, until he gave certificate from railway doctor on 16.11.84. He was allowed to join duty from 17.11.84.

3. For the aforesaid absence from duty, applicant was served a memo of charge for his absence from 24.10.84 to 16.11.84. The enquiry officer submitted his report that charge has been proved. Disciplinary authority by order dt. 17.07.85 awarded punishment of removal from service. The order was challenged in appeal which was rejected on 07.10.85. However, the revision filed by the applicant was partly allowed by the order dt. 15.11.86. The order is being reproduced below :-

" I have gone through the case and D.A.R proceedings. The charges have been proved and punishment correctly inflicted.

However, purely as a <sup>mercy</sup> case and with the hope that staff will modify his approach, the punishment of removal may be reduced to reduction as A.S.M Gr. 330-560 for a period of three years. This will have effect on seniority and future increments."

This order was challenged before this Tribunal in O.A No. 22/88. The O.A was disposed of by the following direction :-



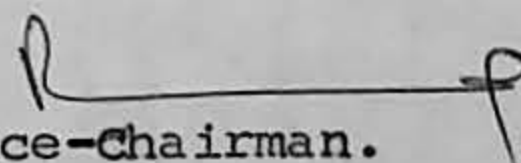


" We do not find any such flaw in the enquiry proceedings <sup>on</sup> in the punishment so passed which may call for our interference. However, as has been contended by the learned counsel, that in view of the Railway Board's circular, the period could have been treated to be leave on duty and the applicant would have been paid salary and emoluments for the same. For this, the applicant even now can approach the Railway Authorities and in case, the authorities are satisfied that his contention is correct, there appears to be no reason why his rank has been reduced. The application is disposed of with the above observations. Parties to bear their own costs."

In pursuance of the aforesaid order, applicant filed his representation on 12.11.92. The applicant specifically prayed that the private medical certificate period may be converted in to leave period and may be adjusted against his leave account. This representation has been rejected by the impugned order dt. 07.06.94. The respondents have considered the case of the applicant for his absence <sup>for then</sup> ~~with absenting~~ period 17.07.85 to 08.07.87 during which the order of removal was awarded and he could not join <sup>in</sup> duty. In my opinion, the respondent No. 2 could not properly appreciate the facts of the case and order of this Tribunal and prayer made by the applicant in his representation. The observation of this Tribunal as well as the prayer of the applicant made through the representation dated 12.11.92 was confined <sup>to</sup> the private medical certificate period, which has not been considered by the respondent No.2. So far as the period of absence, after the order of removal was passed, is concerned it can not be treated the period of absence as he could not work on the post on account of order of removal. It was subsequently set-aside by the revisionary <sup>author</sup> authority. There was not <sup>a</sup> dispute about that period. The revisionary <sup>author</sup> authority did not pass any

order with respect to this period. The applicant, in pursuance of the revisionary order joined for which he was called upon by order dt. 15.11.96 (annexure - 3). Applicant shall be deemed to be in the service for this period. In my opinion, the impugned order dt. 07.06.94 suffers from <sup>an</sup> manifest illegality and is liable to be set-aside.

4. The O.A is accordingly allowed. The order dated 07.06.94 (annexure- 7) is quashed. The representation of the applicant now shall stand restored to the original number before respondent No. 2 and shall be considered and decided by the reasoned order in the light of observation made above. During pendency of the O.A applicant attained the age of superannuation and also died, the monetary benefits for which he may be ultimately found entitled, <sup>shall</sup> be paid to his wife Smt. Bhanu Mati Devi, who has been substituted in this O.A. <sup>She shall</sup> receive the amount for and on behalf of all the heirs and legal representative of late Anandilal.
5. There will be no order as to costs.

  
Vice-Chairman.

/Anand/