

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 8th day of AUGUST 2005.

Original Application No. 892 of 2001.

Hon'ble Mr. D.R. Tiwari, Member (A)
Hon'ble Mr. K.B.S. Rajan, Member (J)

Hari Narain Meena, Gangman, S/o Sri B.R. Meena,
R/o Quarter No. 72-B, Railway Colony,
MIRZAPUR.

.....Applicant

By Adv: Sri A.K. Srivastava

V E R S U S

1. Union of India, through Secretary,
Ministry of Railways,
NEW DELHI.
2. Divisional Superintending Engineer (1st)
Northern Railway,
ALLAHABAD.
3. Assistant Engineer,
Northern Railway,
MIRZAPUR.

.....Respondents

By Adv: Sri S. Singh

O R D E R

By K.B.S. Rajan, JM

The applicant, appointed as a Gangman, proceeded on sanctioned leave for 14 days from 29-04-1998 but did not report to duty on expiry of leave. He was proceeded against by issue of a charge sheet which reads as under:-

“श्री हरि नारायण मीना पुत्र श्री बोध्या राम पद गैग मैन अधीन वरिं0 खण्ड अभि ट्रैक मिर्जापुर के विरचित आरोपों के अनुच्छेद का विवरण: श्री हरिनरायण मीना दिनांक 13.5.1998 से अब तक लगातार बिना किसी सूचना के अनाधिकृत रूप से अनुपस्थित चल रहे हैं अनाधिकृत रूप से अनुपस्थित होने पर श्री हरि नरायण मीना द्वारा प्रशासन को कोई सूचना नहीं दी गई।

6

इस प्रकार आपने रेलवे सर्विस दण्डवट रूल 3(1), 3 (11), 3 (111) का उलंघन किया ।

अनुबन्ध-!

श्री हरि नरायन मीना पुत्र श्री बोध्या राम अधीन वरिं खण्ड अभिटैक मिर्जापुर के विरुद्ध विरचित आरोपों के अनुच्छेद के समर्थन में अवचार तथा कदाचार के लांछनों का विवरण:-

श्री हरि नरायन मीना पुत्र श्री बोध्या राम दिनांक 13.5.1998 से अब तक तक बिना किसी सूचना के अनुपस्थित चल रहे हैं इस प्रकार रेल सेवा आवरण नियम 3(1), 3 (11), 3 (111) का उलंघन किया ।

प्रलेखों की सूची जिसके द्वारा श्री हरि नरायन मीना पुत्र श्री बोध्या राम अधीन वरिं खण्ड अभिटैक/मिर्जापुर के विरुद्ध विरचित आरोपों के संग्रहित करने का प्रस्ताव है।

श्री हरि नरायन मीना का अवकाश खाता

2. खण्ड अभियन्ता/टैक/कार्य उ०रे० मिर्जापुर का पत्र संख्या ई/अनुपस्थित/98 दिनांक 3.9.98

साक्षियों की सूची:-

कुछ नहीं

अनुबन्ध-!!"

2. The charge sheet though sent by registered post to the residential address of the applicant was returned undelivered with the endorsement, "refused by the addressee. Returned." The Inquiry Officer having been appointed, a communication relating to holding of the inquiry was sent to the applicant again by Registered Post at the residential address of the applicant and that too was returned undelivered with the endorsement, "refused by the addressee. Returned." The Inquiry Officer had furnished his inquiry report, holding that the charges remain proved.

3. The Disciplinary authority had, on the basis of the inquiry report, imposed the penalty of "removal from Railway Service", vide order dated 13-10-1999.

4. The applicant preferred an appeal but the same was rejected by the appellate authority by order dated 20-12-2000.

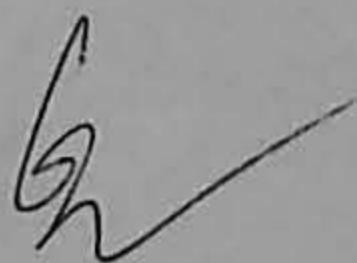
5. The applicant has challenged the abovementioned two orders on various grounds as under:-

"5.I Because prior passing the impugned order dated 13.10.1999 no show cause notice or order has been served to the applicant which may enable to him to participate in enquiry if any.

5.II. Because before passing the impugned order dated 13.10.1999, the applicant was not afforded an opportunity of hearing and as such the order dated 13.10.1999 is violative of the principle of natural justice.

5.III. Because the respondents allegation of applicant unauthorized absence since 13.5.1998 is incorrect and false in view of the facts that the applicant had submitted the application for sanction of leave for period in questions of the relevant time supported by the medical certificates of his wife but the respondent authority had failed to pass suitable order thereon of sanction although the sufficient leave was due on full pay is leave account of the applicant.

5.IV. Because the mere allegations of no receipts for non availability of the applicant's application for leave for the period in question cannot be sufficient

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ground for imposing "Major Penalty" of dismissal of the applicant."

6. Respondents have contested the OA. Their main contention is contained in para 6 of the counter, which is as under:-

"That the order of removal dated 13.10.1999 has been passed by the respondent strictly in accordance with law after holding the enquiry and after affording sufficient opportunity to the applicant. As such there is no illegality in the order of removal. As a matter of fact the applicant is a habitual offender and he absented from duty continuously for a long period of time without taking the required permission from the appropriate authority. The applicant remained absent without information to and sanction of the appropriate authority w.e.f. 1`3.05.1998 until the date of chargesheet. The respondents had already sanctioned leave to the applicant for the period of 29.4.1998 to 12.5.1998 but subsequently the applicant remained absent from duty w.e.f. 13.5.1998 till the date of chargesheet. For this period he neither informed to the respondents nor did he take their permission for the leave."

7. The respondents have furnished the original of the Disciplinary proceedings at the time of hearing. Certain curious facts have been noticed in the said records and the same are as under:-

- (a) There is no documentary evidence to the effect that the copy of the inquiry report had been dispatched/made available to the applicant.
- (b) The I.O's report is cryptic and does not reflect the basis on which the charge remained proved.

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- (c) The IO's report is dated 31-10-1999 while the order of removal from service is dated 13-10-1999!
- (d) On 4th Oct, 1999 the applicant was advised to join duty. This order was served upon him along with the removal order dated 13-10-1999 only in March, 2000.
- (e) The fact that the applicant had sent communications for extension of leave had been duly admitted.
- (f) The appellate authority had taken into account the conduct of the applicant by calling for the leave record of the applicant right from the beginning of the career of the applicant. The habitual absence of the applicant has also been referred to in the counter. However, there is no charge about the habitual absence. Thus extraneous circumstances have been taken into account and the decision is behind the back of the applicant.

8. In view of the above mentioned grave legal lacunae in conducting the disciplinary proceedings, we have no hesitation to hold that the entire inquiry has been vitiated and as such, the order dated 13-10-1999 as well as order dated 20-12-2000 are liable to be quashed and set aside, which we order accordingly.

9. In the result, the OA is allowed. The respondents are directed to reinstate the applicant



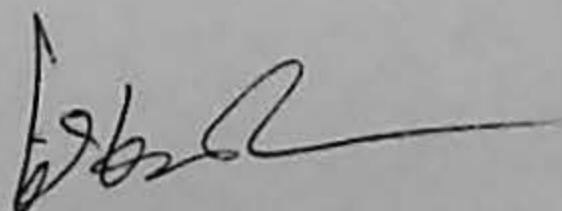
forthwith (within one month from the date of communication of this order).

10. The respondents are further treat the period from the date of removal till reinstatement of the applicant as on duty and work out the pay and allowance due to the applicant with all annual increments due and pay the same to the applicant within a period of six months from the date of receipt of this order.

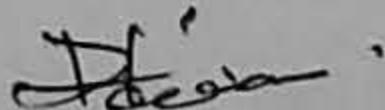
11. The applicant is also entitled to the benefit of maintaining his seniority and promotion, if any one junior to the applicant had been promoted.

12. The period of absence from 13th May 1998 till the date of order of penalty i.e. 13-10-1999 shall be treated as leave for which the applicant shall apply for and if adequate leave were not available, the same shall be treated as Extra ordinary leave.

13. Under the circumstances, there would be no order as to costs.



Member (J)



Member (A)

/pc/