

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 01st day of Feb 2006.

Original Application No. 766 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Smt. Suneeta Kumari, D/o Hari Nath Patel,
R/o Bhaikhari Pur, Post Office D.L.W.,
VARANASI.

.....Applicant

By Adv: Sri A.K. Yadav

V E R S U S

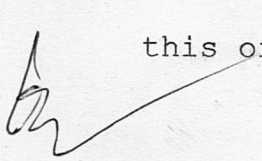
1. Union of India through General Manager (P),
Diesel Locomotive Works, Varanasi,
Distt: Varanasi.
2. General Manager (Karmik), D.L.W.
VARANASI.
3. General Manager (Yantrik), D.L.W.,
VARANASI.
4. Chief Personnel Officer,
O/O General Manager (P), D.L.W.,
VARANASI.
5. Alok Kumar, Dy. Chief Personnel Officer (HQ),
(Then C.P.O.), D.L.W.
VARANASI.

.....Respondents

By Adv: Sri D.C. Saxena

O R D E R

Vide order dated 29.10.2003 in OA 1282 of 2003 the respondent No. 2, The General Manager (P), DLW. Varanasi was directed to decide the representation of the applicant relating to regularisation of her absence. In pursuance thereof the respondents have passed the impugned order dated 23.03.2004. It is this order that is under challenge.



2. Briefly, the facts of the case are that the applicant was appointed as Class IV employee (Bungalow Peon) on 19.10.2000. She was issued with necessary identity card etc. However, the applicant fell ill and she could not join duty for a substantial period. On her recovery from illness when she reported, she was not permitted to join. The reason given by the respondents in their impugned order include that the applicant was attached with GM (P)'s office in October 2002 but she never joined at office at all. Her representation dated 27.08.2003, was not found in records, As such, she was asked to submit necessary proof. In February 2004, she has filed a representation. As per the records, she was paid wages only upto October 2002 as thereafter, she did not attend the office, since provision exists under Note 4 of para 530 IREC Vol I for removal from service of any individual who, after the expiry of maximum period of extra ordinary leave granted to him/her does not resume duty, invoking the same her services were terminated.

3. The grievance of the applicant is that her representation has not been disposed of by the General Manager (P) and as such it is not strictly in accordance with the direction of the Tribunal. Various other grounds have also been raised in her

OA.

4. Respondents have contested the OA and contended that action taken by them is in order.

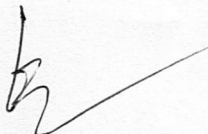
5. Written submissions were filed. The applicant has relied upon the decisions of the Apex Court in the case of **Bhagwan Lal Arya Vs. Commissioner of Police 2004 (2) UPLBEC 1294** and also decision of the Apex Court in the case of **K.V.S and others Vs. S.C. Sharma, 2005 (2) UPLBEC 1289**.

6. The respondents have referred to the following decisions:-

- a. Order dated 5.5.2005 in OA 304 of 2001 of this Bench, **Pannal Lal Chakorborty Vs. Union of India**.
- b. Order dated 27.10.2005 in OA 21 of 1998 of this Bench, **Gaya Prasad Vs. Union of India & Ors.**
- c. **Dr. Anil Bajaj Vs. P.G.I. Medical Education and Research 2002 SCC (L&S) 289**.
- d. **Vivekanand Sethi Vs. Chairman J&K Bank Ltd., 2005 SCC (L&S) 689**
- e. **Central Bank of India Vs. K. Banerjee, AIR 1968 SC 266**
- f. **Union of India Vs. Gajendra Singh, AIR 1962 SC 1329**
- g. **Secretary Minor Irrigation and Rural Engineering Services Vs. S.R. Arya 2002 SCC (L&S) 755**
- h. **UP State Bridge Corporation Ltd. Vs. UP Rajya Setu Nigam Karmachari Sangh, 2004 SCC (L&S) 637**
- i. **Divisional Manager Plantation Division A&N Islands Vs. Munnu Barrick, 2005 SCC (L&S) 200**.

7. The case has been considered. First as to the objection that the representation was not disposed of by the General Manager (P); though in the earlier order the direction was to the effect that the General Manager shall dispose of the

representation, the same did not mean that any competent authority cannot dispose it of. The impugned order has been issued by Deputy Chief Personnel Officer, Varanasi, and he has rejected the representation. In their counter affidavit to paragraph 4.23 of the OA where the applicant has contended that it is only the General Manager (P) who should decide the case, the respondents have stated that the representation has been decided by the competent authority and impugned order has been communicated through the Deputy CPO with the approval of CPO/GM (P). The reference ~~is~~ however, ^{do} not show that the case was dealt~~d~~ with by GM (P) at all. The averment in para 4.23 has, thus, no basis. When this Tribunal passes an order directing a particular respondents to do an act, ~~no~~ other than that respondents should comply with the orders. Had the Tribunal wanted that the representation should be disposed of by the CPO, it could have issued direction accordingly since CPO was also one of the respondents. Again there is a purpose behind the direction that the ~~r~~epresentation should be disposed of at the General Manager's level. The General Manager has got certain powers to relax any conditions in deserving cases. As such the respondents are not correct in contending that the representation has been disposed of by the competent authority.

 Now on merit.

8. The authorities have invoked Rule 530 of IREC which reads as under: -

As per note 4 under para 530 IREC, Vol I (1995 Edition) quote

"Where a temporary railway servant fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him/her or where he/she is granted a lesser amount of extraordinary leave (EOL) then the maximum amount admissible, and remains absent from duty for period which, together with the period of extraordinary leave granted, exceeds the limit up to which he/she could have been granted such leave under Sub-rule (1) above, he/she shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be removed from service after following the procedure laid down in the Disciplinary and Appeal Rules for railway servants."

9. The authorities while invoking the aforesaid provisions have totally omitted to observe that removal from service cannot but be after following the D & A Rules for the Railway servants. No-where the respondents could show that these rules have been followed, nor have they stated that in respect of the applicant these Rules do not apply. If Rule 530 is to be invoked it should be invoked in the manner provided for or else should not be invoked.

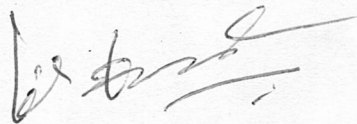
10. The authorities relied upon by the applicant have been considered. Both the cases relied upon by the applicant relates to employees who have been confirmed, whereas in the case of the applicant she is yet to be confirmed. At the same time in respect of the applicant though the D&A Rules may not be applicable, at least she should have been issued with a show cause notice, but this has not been done.

11. As regards the reliance placed by the respondents, ~~None~~ of them could be applied to the

case of the applicant. The abandonment of service as followed in the case of Vivekanand case (supra) is not applicable in this case, as in the other case there existed a bipartite agreement.

12. In view of the above the OA is allowed. Impugned order dated 23.03.2004^{as well as order dated 5-4-04} is quashed and set-aside. The General Manager (P), DLW, Varanasi, is directed to consider the case of the applicant in accordance with rules after giving an opportunity to the applicant to present her case and also after taking into account the medical certificate furnished by the applicant. In case the General Manager decides to re-instate the applicant into service, he shall also decide in accordance with rules the regularisation of absence of the applicant. It is hoped that the General Manager (P) may use his discretion, if any, judiciously for relaxation of any rules, if so warranted.

13. As this is a second round of litigation the General Manager (P) shall decide this issue within a period of two months from the date of communication of this order. No cost.



Member (J)

/pc/

Corrected
vid order
dated 23/2/06
