

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

This the 4th day of April 2010

**Original Application No. 1104 of 2005
(U/S 19, Administrative Tribunal Act, 1985)**

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)**

Lakhan Kumar aged about 34 years Son of Shri Jaggoo R/o Pulliya
No.9, Near Police Chowki, Jhansi.

..... **Applicant**

By Adv. : **Shri R.K. Nigam**

VERSUS

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Chief Workshop Manager, North Central Railway, Workshop, Jhansi.

..... **Respondents**

By Adv. : **Shri S.K. Chaturvedi**

O R D E R

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member-Judicial)

1. The applicant, a compassionate appointee, working as Khalasi was charge sheeted for unauthorized absence and was removed from service on 13-06-1999. According to the applicant, he was under

treatment at Gwalior Hospital (D. Nath's Hospital) from 05-02-1996 to 06-11-2001, vide medical certificates at Annexure A-IV. And during this period, according to the applicant he had been sending intimations to the authorities on various dates, 12-02-1996, 07-06-1998, 02-09-1999, 08-05-2000 and 04-07-2001, vide Annexure A-V. 2.

2. Even the Welfare Inspector saw the condition of the applicant. Despite the applicant having given the new address, the authorities had sent communications to the old address, and the communications never reached the applicant. Thus, in pursuance of un-served charge sheet, proceedings ex-parte were conducted without fulfilling the requirements of the principles of natural justice. Inquiry report was not served upon the applicant and the disciplinary authority had imposed penalty of removal from service, vide order dated 13-06-1999 at Annexure A-1. Appeal preferred was also dismissed. Hence this O.A. challenging the penalty and appellate order.

3. Respondents have contested the O.A. and submitted that there was absolutely no intimation either orally or in writing about the so called illness of the applicant from February, 1996 till November, 2001 nor as to the indoor medical treatment alleged to have been taken by the applicant. Nor is the averment of periodical intimation on various dates true as no communication was received from the applicant in this regard. No intimation as to the new address of the applicant was ever made by the applicant to the administration during the relevant period of time. It was as late as on 11-05-2002 that the applicant gave intimation as to his new address. All the

notices were sent to the applicant through Registered Post and on their return un-delivered, a copy of such notice was displayed in the notice board of the working place of the applicant in the presence of two witnesses. Principles of natural justice have been fully complied with at each and every stage and the applicant himself has courted the situation of ex parte inquiry. The inquiry report with covering letter was also sent to the last known address of the applicant which also returned un-delivered. The applicant did appeal against the order of the disciplinary authority, which had been duly considered, but rejected. The applicant, a Railway employee, who could have had his treatment from Railway Hospital chose to have the alleged treatment through private hospital. The certificate issued by the Railway medical authority, vide Annexure A-5 to the OA is only an application by the applicant and not the fitness certificate by the Railway Doctor. The applicant took medical treatment for a short period from 07-11-2001 to 17-11-2001 whereas he stood removed from service as early as on 13-06-1998. No revision application had been received by the respondents. Even then, on the basis of the copy of the order in OA No. 870 of 2004, the Revisional authority, in compliance with the order of the Tribunal dated 21-02-2005 took decision in accordance with law and got it served upon the applicant. All the action taken were in accordance with law.

4. The applicant has filed his rejoinder, reiterating his contentions as contained in the O.A.

5. Counsel for the applicant submitted that this is a case where all the actions taken by the respondents were behind the back of the applicant, since right from issue of charge sheet no notice to the correct address had been given to the applicant. Hence, the applicant submitted that interest of justice would be met if the case is remanded for a fresh trial. In fact he had fairly stated that relief (ii) i.e. issue of writ, order or direction in the nature of Mandamus thereby commanding the Respondents to restore the petitioner to his original position with all consequential benefits is not pressed at this juncture.

6. Counsel for the respondents submitted that this is a case of unauthorized absence from service. The applicant had been virtually absconding since 1996. The so called medical certificate had not been filed at the relevant point of time. The applicant was expected to produce the certificate only from the Railway medical authorities. The communication was sent to the last known address and penalty of removal from service passed on 13-06-1999 against which appeal was filed after years on 26-01-2002. The same too was dismissed. Revision was stated to have been filed and OA filed was disposed of with a direction to decide the revision petition, which was also considered but rejected. For the first time the applicant gave new address on 11-05-2002 by which time his services were terminated.

7. The counsel referred to the decision in the case of *Bank of Baroda v. Anita Nandrajog*, (2009) 9 SCC 462, wherein the Apex court has held as under:-

13. *The behaviour of the respondent remaining absent without leave for such long periods was clearly regrettable and unfortunate. We are fortified by the view we are taking by the decision of this Court in Syndicate Bank v. Staff Assn. as well as the decision in Punjab & Sind Bank v. Sakattar Singh. No establishment can function if it allows its employees to behave in such a manner. We, therefore, uphold the order of the appellant Bank dated 25-8-1989 terminating the service of the respondent as a voluntary cessation of her job, and we set aside the award of the Tribunal dated 5-6-1996 and the impugned judgment of the High Court dated 22-9-2003. Appeal allowed. No order as to costs.*

8. The counsel for the respondents has also submitted that the applicant has not challenged the Revision order.

9. We have heard the counsel for the parties and perused the documents. The respondents have in para 13 stated as under:-

"It is pertinent to mention here that in the present case, the charge sheet as well as other information were sent to the applicant by registered post and on return of such registered post as undelivered the same were fixed at the working place of the applicant in the presence of two witnesses."

*The above words are to be taken as true, as there is always a presumption of bona fide action in favour of the administration unless otherwise proved (see **Mazdoor Sangh v. Usha Breco Ltd.**, (2008) 5 SCC 554: **Ajit Kumar Nag v. Indian Oil Corp. Ltd and E.P. Royappa v. State of T.N.***

10. However, in the absence of the original disciplinary records, we are not in a position to ascertain whether the inquiry officer had actually found the charge proved through documentary/other evidence and whether the applicant at that point of time was also given an opportunity to explain circumstances that appeared against him. Rule 9(21) of the Disciplinary rules mandate the respondents to provide for an opportunity to explain his case. Failure to follow the same would be fatal to the inquiry. In this regard, the Apex court in

the case of **Moni Shankar v. Union of India,(2008) 3 SCC 484**, as held -

20. The enquiry officer had put the following questions to the appellant:

"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?"

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.)

11. The above law laid down by the Apex Court clearly holds that when the mandatory question is not asked, the inquiry gets vitiated. Even in ex parte inquiry, notice should go immediately after the prosecution closes its witness and the applicant had to let in his witness. The order appended to the Disciplinary Proceedings, inter alia also provide for as under:-

However, the record of day to day proceedings of the inquiry and notices of hearing should be sent to the delinquent regularly, this enables him to join proceedings at any stage.

12. It is not exactly known from the pleadings whether the inquiry authority did comply with this mandatory requirement.

13. Hence, interest of justice would be adequately met if this OA is disposed of with a direction to the Disciplinary Authority -

- (a) to go through the disciplinary proceedings records to find out whether, after the prosecution had closed its case (or after the inquiry officer had perused the prosecution case), due notice to the applicant (who was set ex-parte) was ever sent to the address/displayed in the notice Board in the applicant's working place for his projecting defence case ;
- (b) and whether the inquiry officer fulfilled the requirement of Rule 9(21) of the Railway Servants (disciplinary and Appellate) Rules.
- (c) If the same had been complied with no further action is required.
- (d) Instead, if the notice to the applicant was not sent, then the inquiry shall proceed from that stage. In that event, the disciplinary authority's order and the appellate authority's orders shall be deemed to have been quashed. The inquiry officer (who may have to be appointed now) would take the thread from that part of closure of prosecution evidence and proceed further. No new documents or witnesses from the prosecution side be permitted to be let in. The applicant shall be asked the mandatory question as per Rule 9(21) of the Rules by the inquiry authority in case he does not enter the witness box and then the inquiry report shall be furnished by the inquiry officer and further action to be taken thereof. Decision of the Disciplinary authority would be after fresh inquiry report is furnished.

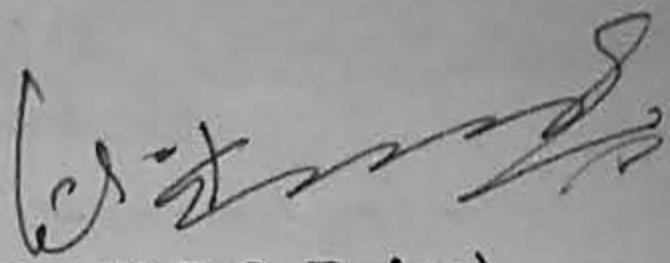
14. With the above direction, the OA is disposed of. Time calendared for compliance with this order is two months in case of © above, two months from the date of communication of this order and in case of (d) above, eight months from the date of communication of this order. In case of (d), the respondents also shall pass suitable

[Signature]

order in regard to the reinstatement of the applicant in accordance with the relevant rules.

15. No cost.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Sushil