



**Central Administrative Tribunal
Allahabad Bench, Allahabad**

O.A. No.330/239/2017

Order reserved on : 24.08.2021

Order pronounced on : 14.09.2021

(Through Video Conferencing)

**Hon'ble Mr. Tarun Shridhar, Member (A)
Hon'ble Mrs. Pratima K. Gupta, Member (J)**

Azmat Hussain aged about 58 years,
Son of Late Zahir Hussain, Ex. Helper/C&W/Gonda,
Resident of Mohalla Chaksa Hussain,
Hussainabad, Post Officer Gorakh Nath,
District Gorakhpur-273015.

.... Applicant

(By Advocate: Shri P.K.Mishra for Sh. S.K.Om)

Versus

1. Union of India
Through the General Manager
North East Railway
Gorakhpur-273012.
2. The Additional Divisional Railway Manager
North East Railway
Lucknow-226001.
3. The Senior Divisional Mechanical Engineer
(Carriage & Wagon) North East Railway
Lucknow-226001.
4. The Assistant Divisional Mechanical Engineer
(Carriage & Wagon) North East Railway,
Gonda.
5. The Assistant Divisional Mechanical Engineer
(Carriage & Wagon) North East Railway,
Gorakhpur-273012.

.... Respondents

(By Advocate: Shri Anil Kumar Rai)

ORDER

Hon'ble Mrs. Pratima K. Gupta, Member (J)



The applicant was appointed as Substitute Khalasi under the Senior Section Engineer (C&W), North East Railway, Gonda w.e.f. 26.04.1985. In 1994 after screening, the applicant was posted as Khalasi. According to the applicant, he fell sick on 16.08.2014 and after getting declared as fit on 09.12.2014, he joined his duties. He informed the department that he is suffering from T.B. Thereafter, applicant's wife fell sick and he had to proceed on leave on 16.12.2014 till 03.02.2015. A charge sheet was issued to the applicant on 04.02.2015 for the alleged unauthorised absence. He submitted two replies to the charge sheet. Thereafter, applicant again fell sick and admitted to the hospital on 22.02.2015 and remained under treatment till 06.06.2015 for which he was granted medical leave from 18.02.2015 to 05.06.2015. He was declared medically fit by the Railway Hospital on 06.06.2015, intimation of which was acknowledged by the respondents on 09.06.2015. Despite this, the applicant was not allowed to join duty and respondent No.4 passed the impugned order of removal on 07.07.2015. The applicant preferred an appeal against the order of removal on 04.11.2015. The Appellate Authority (AA) rejected the appeal. The applicant also preferred the revision



petition to DRM Lucknow against the order of punishment and order of AA. The Revision Authority (RA) rejected the revision arbitrarily and illegally without considering the submission made by the applicant. The applicant's services have been terminated under Rule 6 (VII) and (IX) of the Railway Servants (D&A) Rules, 1968. Thereafter, the applicant gave applications on 13.08.2016 and 09.10.2016 to provide the copy of DAR proceedings, copy of statement of PWs during enquiry and copy of enquiry report to enable him to prefer a review before the President of India under Rule 25-A of Railway Servants (D&A) Rules, 1968 which was not replied to. Hence the OA.

2. Feeling aggrieved, applicant filed this OA praying following reliefs:

"A) That the order dated 7-7-2015 passed by Assistant Mechanical Engineer (C&W), N.E. Railway, (Annexure A-1), order dated 9-2-2016 passed by Sr. Divisional Mechanical Engineer (C&W), N.E. Railway, Lucknow (Annexure A-2) and order dated 16-5-2016 passed by Additional Divisional Railway Manager, N.E. Railway, Lucknow (Annexure A-3) be declared illegal and same be quashed and further the respondents be directed to reinstate the applicant on the post held by him and provide all the service benefits attached to the post.

B) That any other and further relief which this Hon'ble Tribunal may deem fit and proper be also awarded to the applicant.

C) Cost of proceeding be awarded to the applicant."

3. Respondents have entered appearance and filed reply disputing certain facts. According to the respondents, the applicant was unauthorizedly absent from 16.08.2014. He was sent notice to report on duty on 20.11.2014 at his last



known residential address by registered post. Thereafter, Senior Section Engineer (C&W) issued a notice on 30.12.2014 to the applicant but he did not report for duty nor has given any response. After getting fitness from Railway Hospital on 13.12.2014, he was sent to the office of Senior CDO, GKP for permission/approval but the applicant did not appear. However, he again went on unauthorised absence till 03.02.2015. It is submitted that the applicant has not mentioned the date of information of leave applied and sent the same by registered post. It is further submitted that on the basis of the sick report and fitness certificate issued by private doctor, no railway employee can be permitted to join duty unless he is declared fit for duty by Railway Doctor. It is denied that the applicant filed reply to the charge sheet.

It is further submitted that the applicant has violated the service rules while absenting himself from duty without leave and information to the superior officer. As per General Rules 1976, no railway servant shall, without the permission of his superior, absent himself from duty of Railway. If any railway servant while on duty desires to absent himself from duty on the ground of illness he shall immediately report the matter to his superior and shall not leave his duty until a competent railway servant has been placed in charge thereof.

He was, therefore, rightly charged for wilful absence. It is further submitted that the information about nomination of



enquiry officer was given to applicant and he was also informed from time to time about the place of time and date of enquiry but he chose not to participate in the enquiry deliberately. It is further submitted that the allegation made in the appeal are false and baseless because every time the enquiry officer has given information about the date, place and time of the enquiry.

It is also submitted that the appeal filed by the applicant was time barred yet it was accepted and he was given proper opportunity. He had failed to produce any explanation or evidence in support of his case so as to prove his innocence. It is submitted that the evidence produced by applicant has been considered by AA and RA and the order passed by them do not suffer from any illegality. The OA is devoid of merits and is liable to be dismissed.

4. The applicant has filed his rejoinder, more or less reiterating his pleas taken in the OA. Relating to the plea taken in the OA, he has placed reliance on following two judgments which are as follows:

- (i) **Life Insurance Corporation of India and another vs. Ram Pal Singh Bisen**, (2010) 4 SCC 172
- (ii) **Syed Amirul Haq vs. State of U.P. and others**, 2016 (2) ADJ 107 (LB) of Allahabad High Court.



5. Applicant has filed written submissions and has relied on the following judgments of Hon'ble High Court of Delhi and this Tribunal.

- (i) **Anjana Devi vs. UOI**, OA No.601/2014 decided by Allahabad Bench of this Tribunal on 15.07.2021
- (ii) **M.P.Rawat vs. Union of India and others**, 2017 Supp (12) ADJ 622 decided by Allahabad High Court.

6. Heard Sh. P.K.Mishra for Sh. S.K.Om, learned counsel for applicant and Sh. Amit Kumar Rai, learned counsel for respondents.

7. Learned counsel for applicant has mainly urged following grounds, Firstly the fact that the applicant was unwell as he was suffering from TB has not been taken into consideration by the respondents. Accordingly, the absence was not wilful and was attributed to ill health. Secondly, the enquiry was held ex parte. Thirdly, the applicant has submitted medical papers for his ill health and applications for extension of leave, which are annexed at Annexure 12 & 13 to the OA. According to the counsel, applicant has sent his medical report to avail leave to the respondents and the same has not been considered by the respondents. Applicant has also submitted the medical papers issued by Northern Railway and two certificates issued by Sanjay Gandhi Postgraduate Institute of Medical Sciences.



7.1 Counsel for respondents controverted the above facts. He argued that it is an admitted case of the applicant that he was on unauthorised absence in light of his confession. (page 59 of the OA) wherein applicant was on unauthorised leave for the reasons beyond his control and he apologised for the same. He further assured that he will not repeat the conduct again. Applicant has sought mercy and has prayed that he may be cleared of all the charges as he was the sole bread earner of the family. Learned counsel for respondents further stated that the case of the applicant is covered under Rule 2.08 of General Rules 1976, which reads as follows:

"Absence from duty-

No railway servant shall, without the permission of his superior absent himself from duty or alter his appointed hours of attendance or exchange duty with any other railway servant or leave his charge of duty unless properly relieved.

(1) If any railway servant while on duty desires to absent himself from duty on the ground of illness, he shall immediately report the matter to his superior and shall not leave his duty until a competent railway servant has been placed in charge thereof."

8. In view of the submissions made by the learned counsel for the parties and on perusal of the record, it emerges that the applicant proceeded on unauthorised leave, for which he was proceeded departmentally. The enquiry officer has sent notices on 03.03.2015, 24.03.2015, 11.04.2015 and 06.05.2015 but he refused to accept the notices and the same



were returned back. It is clear from the finding of the enquiry officer to the effect that the applicant did not even receive the enquiry report sent to him on 06.02.2015, which was also returned with remark 'refused'. The applicant did not submit his defence statement and the enquiry officer was forced to conclude the enquiry by stating that several opportunities were given to the applicant to participate in the enquiry but he remained absent every time. He even refused to accept the notices sent by registered post which makes it clear that he accepts both the charges levelled against him. On bare perusal of the enquiry proceedings, the proceedings were not ex-parte as the enquiry officer has tried every possible method to procure the presence of the applicant in the enquiry. Enquiry report was sent to the applicant through registered post and the same was also refused to receive by the applicant, the applicant has chosen not to file any defence statement. In the present petition, there is no answer by the applicant that may have come forward for his complacent attitude. Further there is no document on record to support his claim that he was suffering from TB. It is also borne out from record that during the period of unauthorised absence the applicant was issued two notices to join duties to which also the applicant chose not to respond.

9. The disciplinary authority has also relied on his assertion on the said facts. As far as the judgments relied upon by the



learned counsel for the applicant wherein in the case of **LIC of India** (supra), the issue involved is of parallel enquiry where criminal proceedings have taken place in parallel to the departmental proceedings. However, the facts of the present case are quite different. As regards the judgment in the case of **Syed Amirul Haq**, it was held that medical records were not summoned and verified by the enquiry officer. Relevant paragraphs of the judgment are as under:

"17. The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

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22. Thus it is a settled position of law since long that in a Departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct."

11. In the case of **Anjana Devi** (supra), husband of the applicant (the railway employee) was also charge-sheeted on account of unauthorised absence. Thereafter, he unfortunately died while in service and the widow of the



deceased applied for compassionate appointment by filing OA No.601/2014. This Tribunal held as under:

"12. Hence, we are inclined to conclude that the award of punishment of removal from service is disproportionate with respect to the offence of mere absence of duty in the context of later death of the concerned employee on account of the plea of illness taken in the first instance. Hence the punishment of removal from service is excessive and fails the test of proportionality. The respondents are directed to consider any other punishment less harsh than removal from service. With this conclusion we take leave of this issue."

12. As regards the case of **M.P. Rawat** (supra), the facts of the case are altogether different to the facts of the present case as the issue involved therein was misappropriation of Government money. Hence, the judgment is distinguishable on facts.

13. In view of the above, it is clear that the above cited judgements do not come to the rescue of the applicant. It may not be out of place to mention here that the medical papers filed by the applicant along with the OA, show that the applicant was an OPD patient. He was suffering from UTI. Medicine prescribed to him was very basic. In fact in one of the medical certificates dated 28.02.2015 he has not even visited the hospital and some proxy has gone in his place. These relied upon documents do not support the reason explained in the OA for the absence.



14. The Hon'ble Supreme Court in the case of **UOI and others vs. P.Gunasekaran**, (2015) 2 SCC 610 has held as under:

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

Under [Article 226/227](#) of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;



(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

15. In view of the above discussion, it is clear that none of the above grounds as stipulated in the case of **P. Gunasekaran** (supra) is attracted and hence does not warrant interference in the above matter. OA is dismissed. No order as to costs.

Hon'ble Shri Tarun Shridhar, Member (Administrative) has consented to this order through email.

(Pratima K. Gupta)
Member (J)

(Tarun Shridhar)
Member (A)

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