

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

O.A.211/00098/2016

Dated this Thursday the 11th day of March 2021.

Coram: Dr.Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).

Shri Ajay Manoharrao Waghchoure,
Occ: Office Superintendent,
Personnel Branch, Central Railway,
Nagpur and
R/o Plot No.135, Mecosabagh,
Christian Colony, Kadbi Chowk,
Nagpur - 440 004. .. Applicant.

(By Advocate Shri A.B. Bambal)..

Versus

1. Union of India, through
General Manager,
Central Railway,
Mumbai CST - 400 001.
2. Chief Personnel Officer,
G.M.'s Office, Central Railway,
Mumbai - 400 001.
3. Additional Divisional Railway Manager,
Central Railway, Nagpur Division,
Nagpur - 440 001.
4. Senior Divisional Personnel Officer,
Central Railway, Nagpur Division,
D.R.M.'s Office,
Nagpur - 440 001. .. Respondents.

(By Advocate Ms.Sangeeta Meshram)..

Order reserved on : 20.01.2021

Order delivered on : 11.03.2021

O R D E R

Per : Dr.Bhagwan Sahai, Member (A)

Shri Ajay Manoharrao Waghchoure working as
Office Superintendent (Personnel Branch), Central
Railway, Nagpur filed this O.A. on 18.03.2016
seeking quashing and setting aside of penalty order

of Disciplinary Authority dated 17.05.2013, order of Appellate Authority dated 19.11.2013 and order of the Revisionary Authority dated 19.06.2014. He also seeks direction to the respondents to refund the amount recovered from him in pursuance to the punishment order along with 12% p.a. interest. He also seeks direction to the respondents to sanction the period of his sickness as commuted leave with payment of half pay with 12% interest.

2. The main grounds raised against the order of the respondents in the O.A., rejoinder and during arguments of his counsel on 20.01.2021 are these:

2(a). The charge against the applicant alleged not following of the medical rules and having remained absent from duty from 03.12.2012 to 05.02.2013, and having not reported to Railway doctor in spite of advice by his office, showing negligence and disobedience of rules and not following the instructions of his superiors.

2(b). The applicant contends that he advised the In-charge Divisional Personnel Officer, Nagpur along with certificate of private medical practitioner by his letter dated 04.12.2012 and subsequent fortnightly letters dated 18.12.2012, 05.01.2013, 20.01.2013 and 11.02.2013. After getting fit, he submitted his fitness certificate of 05.02.2013 and then reported to Railway Hospital, Ajni when he was finally declared fit on 08.02.2013.

2(c). His letter dated 04.12.2012 was acknowledged by the respondents and as verbally advised by the authority, there was no propriety to report to Railway doctor since no reasons were mentioned for approaching the Railway doctor and when there is no such provision in rules, therefore, the article of charge issued to him is invalid and this has to be quashed. Similarly the punishment awarded to him also deserves to be set aside;

2(d). In his reply to the charge-memo issued under Rule 11(1)(b) and Rule 11(2), he had sought for holding of inquiry, sought copies of all the documents required. In spite of having followed the procedure, with a biased mind the Disciplinary Authority did not allow inquiry to be conducted into the allegations made against him and thus principles of natural justice were not observed. Therefore, all the orders of Disciplinary Authority, Appellate Authority and Revisionary Authority deserve to be set aside.

2(e). The Respondent No.2 i.e. Chief Personnel Officer, Office of General Manager, Central Railway, Mumbai periodically issues notification/circulars banning for not reporting sick to private doctor or at other Government hospital and restricts to reporting sick only to a Railway doctor, but when he reported sick to the private doctor, there was no ban imposed by Respondent No.2 for not obtaining

medical certificate from a private doctor. The applicant resides at a place more than 2.5 kms away from the Railway hospital. Two other employees Ms.Rajni Menon, Office Superintendent and Shri G.P. Nagardhankar, Chief Office Superintendent who obtained private medical doctors' certificate during December to February, 2012 were allowed such certificates and their period of sickness were passed for payment under leave average pay, but the applicant has been penalized thereby discriminating against him. While the Disciplinary Authority awarded punishment for one year, the Appellate Authority reduced it to six months and the Revisionary Authority further reduced it to three months but without mentioning any cogent reasons.

2(f). In reply to this charge-memo when he requested for copy of medical rules to be provided, the Disciplinary Authority supplied copy of leave rules. The Disciplinary Authority has failed to give opportunity to the applicant to submit explanation. The respondents have not specified which rule the applicant has violated for which charge-sheet was issued. Therefore, the O.A. should be allowed.

2(g). The applicant has also filed M.A.2095/2016 for condoning the delay in filing this O.A. claiming that the delay was of 9 months and half. Justification given for condoning the delay is that

the charge-memo had been issued based on invalid grounds. The applicant never accepted the charges. Since there was no ban for reporting sick to a private medical practitioner, the applicant had obtained the certificate from a private medical practitioner. The applicant was not sitting idle and after appellate order dated 19.06.2014 and on getting proper advice from well wishers, he filed the O.A. Apart from this no other justification has been mentioned as to why he could not approach the Tribunal in time after order of the Appellate Authority dated 19.11.2013. The order of the Revisionary Authority was of 19.06.2014 but the O.A. has been filed on 18.03.2016.

In their reply and during arguments of the counsel, the respondents contend that -

2(h). the applicant did not follow the proper medical rules applicable to Railway servants and did not report to Railway doctor for his sickness in spite of such advice to him vide letter dated 20.12.2012. Thus the applicant had been negligent and he disobeyed the rules and instructions of the superiors.

2(i). Vide letter dated 14.03.2013, the Disciplinary Authority supplied copy of medical rules after which the applicant submitted representation on 26.03.2013 denying the charge. But his representation did not have justification and,

therefore, the Disciplinary Authority imposed the penalty vide order dated 17.05.2013 withholding his increment due on 01.07.2013 for one year without effect on future increments of pay. After considering his appeal the Appellate Authority reduced the punishment for withholding of increment for a period of only six months without effect on future increments of pay. The Revisionary Authority further reduced the punishment for withholding of increment for a period of only three months without any effect on future increments of pay. Since the applicant himself was working as Office Superintendent in Personnel Branch and dealt with similar cases as part of his work, he was aware of the medical rules but even then he asked for the copy of the medical rules which was provided to him.

2(j). when a Railway servant is residing within the jurisdiction of a Railway doctor and is unable to attend duty because of sickness, he must produce within 48 hours a sick certificate from the competent Railway doctor in prescribed form;

2(k). the charge-memo issued to the applicant was for imposing minor penalty under Rule 11 of Railway Servants (D&A) Rules, 1968 and when the Disciplinary Authority comes to a conclusion that there is no need for holding any inquiry, it can impose the minor penalty. In the present case the Disciplinary Authority was of the view that it was not necessary

to hold full fledged inquiry by nominating an Inquiry Officer, and therefore, after going through the documents and submissions of the applicant passed the order of punishment. Even if the sickness certificate is issued by a private doctor, he has to mention the nature of illness and the period during which the Railway employee is unable to perform the duty;

2(1). the competent authority may at his discretion accept the certificate and if he doubts the bonafide nature of the certificate, he refers it to the authorized Medical Officer for investigation or advice. The applicant did not attend the Railway hospital for two months even after he was advised to do so by the office by letter dated 20.12.2012. The private doctor in his certificate did not mention severity of sickness of the applicant. In view of these submissions, there is no merit in the O.A. and it should be dismissed.

3. Analysis and conclusions:

We have carefully considered submissions of both sides in this O.A. The facts emerge as under:

3(a). The charge-memo was issued to the applicant on 25.02.2013 under Rule 11 of Railway Servants (D & A) Rules, 1968 alleging that he had not followed the proper medical rules and remained absent from duty from 03.12.2012 to 05.02.2013, and did not report to the Railway doctor even after advice of office by

letter dated 20.12.2012. This showed negligence and disobedience of rules and instructions of his superiors. Thus he failed to maintain absolute devotion to duty and behaved in a manner unbecoming of a Railway servant, thereby contravened Rule 3.1(ii) & (iii) of Railway Service (Conduct) Rules, 1966.

3(b). The Disciplinary Authority after considering the allegations, reply of the applicant and full record of the case, imposed penalty of withholding of increment due on 01.07.2013 for a period of one year without effect on future increment of pay. In his order dated 19.11.2013, after considering the contentions in the appeal and hearing the applicant personally on 22.10.2013, the Appellate Authority reduced the penalty to withholding of one increment for six months without effect on future increments of pay. Since the applicant did not mention exact nature of his illness for appreciation, which prevented him from reporting to at the Railway hospital in spite of being present at Nagpur, and he tried to hide the fact that he was not sick, the Revisionary Authority revised the penalty further for withholding of increment only for a period of three months without effect on future increment of pay.

3(c). These three orders of the respondent authorities clearly concluded that the applicant was

liable for punishment. The case record further shows that the certificate of sickness submitted by the applicant on 03.12.2012 was from one Dr.H.Y. Tirpude. But his certificate of fitness dated 08.02.2013 was from another doctor i.e. Dr.D.H. Vasudeo, Registered Medical Practitioner. Thus he obtained the certificate of sickness from one private practitioner and of fitness from another private practitioner. He has not brought on record any justification to prove that he was residing at a place more than 2.5 kms away from the Railway hospital or a Railway doctor and in spite of specific instructions of the respondents in letter dated 20.12.2012 to report to Railway doctor / hospital, he defied the said instructions.

3(d). In view of these facts, we do not find any merit in the submissions of the applicant against the orders of the respondent authorities. Also the Appellate Authority and the Revisionary Authority have already reduced the minor punishment of withholding of increment for only three months. Since the charge-sheet was issued under Rule 11 of Railway Servants (D&A) Rules, 1968, after considering the submissions of the applicant, the Disciplinary Authority decided not to conduct detailed inquiry and imposed the penalty. We do not find any infirmity in the procedure followed by the respondent authorities.

3(e). In Misc. Application No.2095/2016 submitted by the applicant for condonation of delay in filing this O.A., there is no specific reason submitted by him. He claims that the delay was of only 9 and half months. However, the actual delay in filing the O.A. was much longer. The order of the Appellate Authority was of 19.11.2013. Therefore, within one year of that order, he ought to have filed the O.A. Thus the delay in filing the O.A. is of almost 15 months. Since there is no justification for condoning the delay, we do not find any merit in it.

4. Decision:

The O.A. is dismissed for no justification for delay and absence of merits. No costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
18/12/21