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Central Administrative Tribunal, Allahabad.

Registration T.A.No.487 of 1986

Jagdish Kumar Plaintiff
Vs.

1. Union of India
2. Divisional Railway
Manager, Northern Railway
Lucknow Defendant-
respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This suit no.47 of 1981 for declaration and permanent injunction has been received by transfer from the Court of XI Additional Munsif, Varanasi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. It is alleged by the plaintiff that having joined the service as a Diesel Cleaner in the Northern Railway, Mughalsarai on 4.8.1965 after due selection, the plaintiff was holding this post till he was illegally removed from service under illegal order dated 27.6.1969 passed by the Assistant Personnel Officer, Lucknow on the ground of his unauthorised absence. According to the case of the plaintiff, he regularly attended his duties till 7.3.1968 and thereafter, on account of his involvement in a criminal case under Section 302/34 IPC, he was arrested and sent to jail. He was released on bail on 15.4.1969 under the orders of Allahabad High Court. On his

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trial, he was acquitted in appeal by the High Court on 11.8.1975. After his release on bail, the plaintiff had reported on duty with a copy of the bail order but the Divisional Mechanical Engineer (Diesel) Mughalsarai did not permit him to join the duty. One other railway employee, namely, Ram Samujhawan Ram, A.G.M, arrested and involved in the said criminal case with the plaintiff, was however allowed to join his duties by the respondents. As the plaintiff failed to obtain the orders for joining the duty, he filed the present suit after giving a notice under Section 80 Code of Civil Procedure for a declaration that he continues to be in the service of the defendant-respondent no.1 as a Diesel Cleaner unaffected by the illegal and void order dated 27.6.1969 of the termination of his services and for permanent injunction to restrain the defendants from denying him the right of service.

3. The suit has been contested on behalf of the defendant-respondents and in the written statement filed on their behalf, it has been pleaded that initially the plaintiff was engaged as a substitute by the Divisional Mechanical Engineer (Diesel) Mughalsarai on 4.8.1965. He was selected for appointment as a Diesel Cleaner and placed on the panel notified on 21.11.1966. The plaintiff attended the duty from 8 hrs. to

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16 hrs. in Diesel Shed Mughalsarai on 9.3.1968.

His whereabouts were not known thereafter and as such, he was marked as absent on 10.3.1968 and onwards and a report to this effect was made to the Divisional Superintendent now the defendant no.2 on 22.5.1969.

As the plaintiff concealed the fact of his involvement, arrest and detention in connection with the criminal case and he was a temporary employee of less than 3 years service on 10.3.1968, it was not considered advisable to take him on duty in view of his unauthorised absence and in pursuance of Rule 149 of the Indian Railway Establishment Code Vol. I (hereinafter referred to as the Code) ^{and }} after giving a month's notice his services were terminated. The case of Ram Samujhawan Ram, ASM was different than the case of the plaintiff. He had neither absconded from duty nor had concealed the factum of his arrest and detention in the jail and he was an employee of long standing. As such, the case of the plaintiff could not be dealt with at par with that of Ram Samujhawan Ram, ASM.

The services of the plaintiff were thus terminated in accordance with law. He had a right to challenge his termination by filing an appeal under rule 19 of the Railway Servants (Discipline and Appeal) Rules, 1968, which he did not do and as such, his suit in the Civil Court is not maintainable. Certain other legal pleas such as the bar of Section 80CPC ^{and }} provisions of Industrial Disputes Act etc., were also raised.

4. We have heard the learned counsel for the parties and have also carefully perused the record in the light of their submissions. It is not in dispute in this case that the plaintiff having joined his services on 4.8.1965, had not completed 3 years

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by the time he was arrested on 9/10.3.1968. He had, however, completed the services of more than 3 years by 27.6.1969 when the order of termination under Rule 149 of the Code was passed. A copy of the said order is available as paper no.38 on the record and the order ^{states }} shows that the services of the plaintiff shall stand terminated w.e.f. the date of expiry of one month from the date of this notice in pursuance of Rule 149 of the Code. The case of the defendant-respondents is that it was a simple case of termination of service on the ground of unauthorised absence under rule 149 of the Code, which provides that the services of a railway servant, who has not acquired any lien on a permanent post can be terminated on a notice of 14 days.

5. The plaintiff has placed his reliance on Union of India Vs. J.Ahmad (1979 All India Service Law Journal-308), in which it was held that a conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. Gross or habitual negligence in performance of duty constitute misconduct for disciplinary proceedings. Reliance was also placed on Amar Singh Vs. District Magistrate Fatehpur and another (1977 A.L.J-36) in which it was held by a Division Bench of the Allahabad High Court that the Court can always go behind the

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order and find out the immediate or direct cause or the foundation for the order and if a simple order of termination appears to be founded on misconduct then it would amount to punishment. On the basis of this case law, it has been contended that the plaintiff has, in fact, been punished for not reporting his involvement, arrest and detention in jail in connection with the criminal case and it having been ~~so~~^{done}, without affording an opportunity of showing cause, violates the mandatory provisions of Art.311 of the Constitution and his termination is void and illegal.

6. In our opinion, the contentions of both the parties in this case are misplaced. No doubt, the plaintiff had not completed 3 years' service by the time of his arrest on 10.3.1968 but he had completed more than 3 years by 27.6.1969 when the order of termination was passed. The order of termination ~~was~~^{was} passed on 27.6.1969 on giving a month's notice without assigning any cause. The plaintiff was, therefore, treated in service upto 27.6.1969 and by that date, he had completed the services of more than 3 years and he could not be removed from service by following the rule of a temporary railway servant of less than 3 years standing. The letter of the defendant no.2 dated 15.5.1978 in reply to plaintiff's representation

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dated 16.3.1978 also shows that he being a temporary employee with less than 3 years service on 10.3.68, his services were terminated under rule 149 of the Code and the case of Ram Samujhawan Ram, ASM was different one though he was involved in the same case, he had not been absconding nor he had concealed the facts. The railway authorities were thus throughout under the impression that from the date of unauthorised absence of the plaintiff i.e. from 10.3.1968, he was no more in service and by the ^{time of} order of the termination of service, he had not completed 3 years service. Another thing in the mind of the defendants was that by concealing the facts of his arrest and detention in the jail, the plaintiff committed a misconduct and he should have disclosed to the railway authorities about his involvement in the criminal case and his arrest in pursuance thereof. We are, therefore, of the view that in such a case, the defendants should have given the plaintiff an opportunity as to why he concealed these material facts from the superior authorities and did not report about his involvement in the criminal case to the authorities at the earliest. This can be deliberate as well as under compelling circumstances due to his confinement in jail for a long period. We are, therefore, of the view that the services of the plaintiff, after his having completed more than 3 years on the date of

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notice could not be terminated by a simple notice without affording him an opportunity of showing cause against his unauthorised absence and the concealment of the material facts. His termination is, therefore, void and cannot be sustained.

7. We accordingly allow the claim of the plaintiff and hold that the orders of his termination from service is illegal, void and ineffective. He shall, however, be deemed to be under suspension under Rule 5(2)(a) of the Railway Servants (Discipline and Appeal) Rules, 1968 till his suspension is revoked by the competent authority. Regarding his salary for the period of absence, the competent authority shall pass the suitable orders according to relevant rules. This order will not prevent the defendants from proceeding against the plaintiff under the provisions of the Railway Servants (Discipline and Appeal) Rules, 1968 for the alleged misconduct committed by him. The parties shall, however, bear their own costs.

Dhme

5.1.1987
Member (A)

Dated 5.1.1987
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Subramanian
5.1.1987
Member (J)