

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
Registration T.A.No. 534 of 1986

J.C.Pradhan

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Applicant

Vs.

Union of India & Others....

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

This is a transferred case under Section 29 of the Administrative Tribunals Act, 1985. Against the removal order dated 13.4.82 and the appellate order dated 18.8.82 by which the appeal against the said removal order was dismissed the applicant filed a Civil Suit in the court of Civil Judge, Farrukhabad which by operation of law has been transferred to this Tribunal. The applicant who was a railway employee was posted as Senior Clerk in A.E.N. Office at Fatehgarh in the Month of September, 1977. Vide order dated 23.9.1980 the applicant was transferred to Izatnagar. The applicant made a representation against the same on the ground that it was passed in the middle of the session and would affect the education of his children. The said transfer order was modified and the applicant was posted at the office of A.E.N. Kasganj vide order dated 12.12.1980. As per the allegation of the applicant he became ill meanwhile and he resumed his duty on 1.1.1981 in the office of A.E.N. at Fatehgarh in order to comply with the said transfer order and was arranging to hand over charge in order to join at Kasganj. The Senior Divisional Personal Officer had issued another transfer order on 3.1.1981 and posted the applicant in his office at Izatnagar in supersession of the order of the Divisional Railway Manager, N.E. Railway, Izatnagar. According to the applicant

this frequent transfer order caused great disturbance to him and he was gain ill and remained under the treatment of A.D.M.O. Fatehgarh from 27.1.1981. As per his allegation ^{over} he said doctor was prevailed by the Divisional Personal Officer who declared the applicant fit. During this period a chargesheet was issued to the applicant. An Inquiry Officer was appointed and an inquiry against him proceeded. According to the applicant he was not afforded any opportunity to show cause against the chargesheet levelled against him. The inquiry was conducted during the illness of the applicant and he was deprived of showing cause against the charges levelled against him. As a result of the report of the Inquiry Officer which was submitted behind the back of the applicant the Divisional Personal Officer vide order dated 12.4.82 passed an order of removal from service. The applicant filed an appeal before the Divisional Railway Manager who also rejected the same on 18.8.1982. The applicant after giving a notice under Section 80 of Civil Procedure Code filed a Civil Suit.

2. The respondents filed a written Statement and according to them the applicant did not join his duty at Kasganj and as the work was suffering another man was posted in the office of Assistant Engineer, Kasganj. The applicant reported to be ill and he was under the treatment of Railway Doctor, Fatehgarh. The Railway doctor declared him fit on 4.2.1981, but still he did not report for duty at Izatnagar and remained absent from duty without any sufficient cause. As the applicant absented himself unauthorisedly since 5.2.81 and that is why a chargesheet was issued to him on 10.9.81 which was received by his wife on 14.9.81. The memorandum and a copy of the nomination of the Inquiry Officer was also delivered

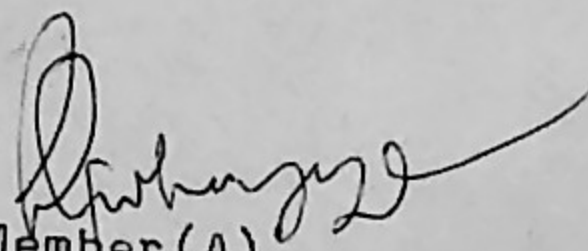
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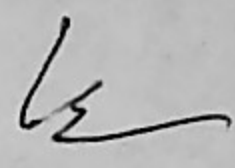
to him personally and the Inquiry Officer started making inquiry, and he gave an ex-parte report against the applicant. After the report of Inquiry Officer a show-cause notice was served and he was heard personally and thereafter he was removed from service. According to the respondents the applicant did not attend the inquiry proceeding and the certificate submitted by the applicant from a private doctor was also incorrect and it was also submitted at a very late stage hence the genuineness of the same could not be verified. The charge against the applicant was that after being declared fit on 4.2.1981 he did not report for duty and did not maintain devotion to duty and violated Rule 3(1)(ii) of Railway Service Conduct Rules, 1966. A chargesheet was sent to the applicant under the registered cover and from the endorsement it appears that the same was received by the wife of the applicant, and the administration satisfied itself that in fact the same was received by the wife of the applicant. From the Inquiry Officer's report it appears that the first date of inquiry was fixed on 27.2.1982 and the applicant was informed on 6.1.1982 through post office under registered cover and was asked to nominate his defence counsel to assist him in the inquiry. But he did not attend the inquiry and nor nominated his defence counsel and no acknowledgement too was received by the Postal Department. The next date was fixed on 15.3.1982. The intimation of this inquiry was again sent to the applicant through post office on 20.2.82 advising him to nominate names of two defence counsel in order of preference. One copy of this notice was sent through Welfare Inspector and one copy was sent for pasting on the Notice Board. The copy sent through post was acknowledged by the applicant on 23.2.82 and the copy sent through also Welfare Inspector was acknowledged by him. While acknowledging the notice for inquiry sent through Welfare

Inspector intimated that he was sick. It was found that the applicant was sick under Private doctor of Maseni on 5.2.1981 who recommended that period of one month is necessary for restoration of his health. This PMC has been issued by the doctor on 16.9.81 and the applicant forwarded this PMC to this office under postal certificate with one application dated 16.9.81 informing that he is not well and required complete rest further for a period of one month. The records further reveals that the applicant was informed on 30.9.81 through AEN/FGR that the PMC sent by him is not acceptable and he should have reported sick with the Railway Doctor. The record available in his 'P' case reveal that no further PMC was received in DRM office from the applicant. It was on the basis of these facts the Inquiry Officer concluded that the absence of the applicant was unauthorised, and he should have reported to duty after being declared fit. He should have reported sick with the Railway Doctor ^{with} and not any other doctor. From the fact it appears that of course the inquiry was held in the absence of the applicant and the applicant submitted certificate of private doctor though at a late stage. Under the Railway Rules the certificate of Railway doctor is admissible but the certificate of private doctor could not have been rejected altogether. Even then when the certificate was received it was open for the department to give an opportunity to the applicant for hearing but no such opportunity was given. We are of the view that it was a case in which full opportunity to defend himself was not given to the applicant. Accordingly the inquiry proceedings are vitiated because the applicant was not given reasonable opportunity to defend himself. As such this application deserves to be allowed and the removal order dated 12.4.82 is quashed. However it

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will be open for the respondents to continue with the inquiry proceedings and the applicant shall cooperate with the same. In case the applicant shall cooperate with the inquiry proceedings and after conclusion of the inquiry the punishment order is maintained, the applicant can make representation against the same. However, if removal order ~~is~~ not maintained and some minor punishment is given to the applicant, he will not be entitled to any salary for the period during which he had not worked. though he will be entitled for other benefits. There will be no order as to costs.


Member (A)


Vice-Chairman.

27th March, 1992, Alld.

(sph)