

52

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A. No. 699 of 1986.

Bharosey Plaintiff

Vs.

1. Union of India

2. The Divisional Railway
Manager, Central Railway,
Jhansi

Defendants.

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

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

This suit no. 164 of 1983 for a declaration that the impugned order dated 31.8.1982 removing him from service is illegal, ultra-vires and unconstitutional and the plaintiff be deemed to be continuing in service, has been received by transfer from the Additional Munsif II, Jhansi under section 29 of the Administrative Tribunals Act, XIII of 1985.

2. The plaintiff was appointed as YKC on 22.6.1976 in Locoshed, Central Railway, Jhansi. In March, 1978, the plaintiff met with an accident on account of which he remained hospitalised for more than a week and thereafter got treatment as an outdoor patient for a long time. On account of the accident, the plaintiff had sustained a grievous injury in his brain leading to severe and constant headache. On 6.1.1980, the plaintiff developed

(12)

severe mental strain on account of the said injury and on the advice of the eminent mental surgeon Dr. Bishambhar Dayal of Gwalior, he remained under continuous treatment till 17.7.1982 and during this period, the plaintiff was totally unaware of what he was and where he was. As such, he could not apply for leave during the period of his absence. After undergoing a long treatment, the plaintiff returned from mental hospital, Gwalior on 17.7.1982 and after obtaining certificate of fitness from the Railway Doctor, he resumed his duties. On account of his unfortunate absence from duty as above, a charge sheet (Form no.5) for major punishment dated 26.6.1982 was issued by the railway administration and it was received by some stranger in his village. In the said inquiry, the charge of unauthorised absence from 6.1.1982 was framed against him. The plaintiff was, however, found guilty of remaining absent from duty w.e.f.6.1.1980 though the charge framed against him was regarding his absence from duty w.e.f.6.1.1982 and without amending the charge, he was found guilty of unauthorised absence from duty w.e.f.6.1.1980 and was removed from service. The departmental appeal preferred by him was rejected mechanically by the respondent no.2. The plaintiff has challenged the validity of the disciplinary proceedings on the ground that he was not afforded full opportunity of hearing and the relevant docu-

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ments and the material witnesses summoned by him were not allowed to be produced. The plaintiff was mentally sick and his absence from duty was unavoidable. The charge sheet framed against him was served on some stranger and the inquiry held against him was made in utter disregard of the principles of natural justice and the mandatory provisions of law and rules were not observed and he was found guilty and punished for an offence for which no charge was really framed against him.

3. The defendants have contested the suit and in the written statement filed on their behalf, it has been contended that though the plaintiff was hospitalised on getting injury on duty from 30.3.1978 to 5.4.1978, but his other allegations that he had got some grevious injury in the brain and on account of it, he used to get severe headache and mental strain and got his treatment as outdoor patient for long, were denied and it was stated that the plaintiff never complained about any such thing after the incident. The charge sheet for major punishment was served on the plaintiff himself and in his reply, he never desired to produce any evidence- oral or documentary, and his allegation to the contrary that he was not given full opportunity to produce his defence is incorrect. The plaintiff did not remain in Gwalior

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mental hospital. As a matter of fact, he was absent from 6.1.1980 and by clerical mistake in the charge, his absence ^{from} ~~of~~ 6.1.1982 was mentioned, which did not prejudice the plaintiff at all as he himself has admitted his continuous absence from duty w.e.f.6.1.1980. The plaintiff deliberately did not care for his duty and only when the charge sheet was served on him, he took a false plea of mental sickness, which he could not establish. The disciplinary inquiry held against the plaintiff was fully in accordance with law and no law, rules or principles of natural justice have been violated.

4. We have heard the learned counsel for the parties and have also perused the record. One thing is apparent in this case that the concerned authorities of the Central Railway, Jhansi before 25.6.1982 did not take any notice of the continuous unauthorised absence of the plaintiff from duty w.e.f.6.1.1980 and only on 25.6.1982, the Loco Foreman had reported to the Sr.DME(P), Jhansi that four officials were continuously absent from various dates of January and February, 1982. The name of the plaintiff was also mentioned in that report and his absence was reported to be from 6.1.1982. On the basis of this report, the charge framed against the plaintiff was of unauthorised absence from duty w.e.f.6.1.1982 to date. The service of this charge sheet appears to have been made personally on the plaintiff on 3.7.1982 as appears

12
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from the acknowledgement due. In any case, this fact is not material as the plaintiff admittedly got the charge sheet, directly or indirectly, issued to him on 26.6.1982 and in his reply dated 26.7.82, he admitted his continuous absence from duty w.e.f. 6.1.1980. It was stated by him in his reply to the charge sheet that on 6.1.1980, he got a fit and became unconscious and in that state of mind and health, he was shifted to his village by his one neighbour. From his village, his family members took him to Gwalior where he was treated by the retired mental surgeon Dr. Bishambhar Dayal upto 17.7.1982 and on being reported fit for duty on 21.7.1982, he reported on duty. It was further stated by him that his absence from duty w.e.f 6.1.1982 to 21.7.1982 was thus unavoidable and beyond his control. He also prayed for pardon promising not to repeat such thing in future. In this reply, the plaintiff did not make any mention of producing any evidence in his defence.

5. The copies of relevant documents of the inquiry of the inquiry file of the plaintiff have been filed by him on the record. We had also retained the original inquiry file brought by the defendants on the date of hearing for our perusal. In none of the two records, there is any application of the plaintiff for summoning any witness or document in support of his defence case. There is one application dated Aug.1982 in the inquiry file given

120

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by the plaintiff to the effect that on account of his being mentally upset, he could not follow the office procedure and his family members being illiterate, they too could not advise the railway administration about his sickness. In the end of this application, it was stated by him that since his absence from duty ~~on account of sickness, it was on record, that~~ he did not wish to appear in the inquiry. Despite this application, the plaintiff was given information from time to time about the proceedings of the disciplinary inquiry. Not only this, he was also given one ARE (Assisting Railway Employee) to watch his interest during the disciplinary proceedings and his statement was recorded by the inquiry officer in the presence of the said ARE. The statement of the plaintiff recorded on 24.8.1982 shows that he was fully satisfied about the facilities afforded to him to defend his case during the course of inquiry. The question no.3 put by the inquiry officer to the plaintiff was regarding his absence from 6.1.1982 as mentioned in the charge sheet. In reply to this, the plaintiff had stated that he had fallen sick from 6.1.1980 and his family members had shifted him to Gwalior for treatment. Since he was suffering from some mental trouble and was getting his treatment at Gwalior, he could not apply for leave nor his family members could inform the railway administration about it. The plaintiff thus repeatedly admitted his continuous absence from duty w.e.f.6.1.1980 despite a different date of the

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commencement of his absence mentioned in the charge sheet.

6. It appears from the record of inquiry and the documents filed by the plaintiff that the plaintiff was never admitted as an indoor patient in the mental hospital, Gwalior, but ~~the plaintiff~~ under wrong advice, ^{the wrongly} and contrary to the facts mentioned in paragraph 6 of the plaint that "the plaintiff having been undergone the said treatment for a long while as such, returned from Mental Hospital, Gwalior from 17.7.1982". In fact, he never remained in the mental hospital for a single day. The poor plaintiff therefore, could hardly produce any evidence in his defence before the inquiry officer. As rightly contended on behalf of the defendants, the plaintiff was deliberately absent from duty and only when he was served with a charge sheet, by way of an excuse, he took ^{the} wrong plea of mental sickness and getting treatment at Gwalior. The plaintiff could have enough documentary and oral evidence in case he had actually remained at Gwalior in connection with his mental treatment for a period of more than 2 years. No such evidence has been produced ^{even} before us by him as in fact, none could exist, as in the opinion of the defendants, he was never so sick.

7. Thus, despite a mistake in the charge regarding the date of the commencement of the illness of the plaintiff, we feel that it is an admitted case of the plaintiff that he was continuously absent from duty w.e.f.6.1.1980 till the date he was served

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with the charge sheet. In such a case, the mistake in date could hardly prejudice the plaintiff. At the most, it could be a factor in awarding the punishment but when the plaintiff himself admits his absence from 6.1.1980, we do not feel that there has been any prejudice to the plaintiff on account of the glaring mistake regarding the date in the charge sheet due to the gross and culpable indifference of the defendants in this respect.

8. The record of the inquiry further shows that after his punishment, the ^{plaintiff} preferred an appeal to the DRM which was rejected. The plaintiff however, again made a mercy petition on 5.10.1982 but that too was dismissed on 16.10.1982 by passing a speaking order by the DME (P). In this mercy petition too, the plaintiff did not say a single word about any irregularity committed in the disciplinary proceedings nor prayed for giving him any opportunity for producing evidence to establish his defence case. We have thus made our own satisfaction that on account of the mistake in date, no prejudice was caused to the plaintiff and the contentions raised on behalf of the plaintiff to the contrary before us, are merely after thought and untenable.

9. We may also like to point out that the order dated 4.10.1982 passed by the appellate authority rejecting the appeal of the plaintiff in this case did not comply with the requirements

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of rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 and the appellate authority simply noted that it had gone through the appeal and found nothing to mitigate the charges already proved and the appeal was rejected. As a matter of fact, the appellate authority should have seen whether the procedure laid down under the rules ~~were~~ complied with, whether the findings of the disciplinary authority were warranted by evidence on record and whether the penalty imposed was adequate, inadequate or severe. However on this ground as well, we will not like to interfere with the orders passed in this case because on his own showing, the plaintiff is guilty of utter disregard of his official duties, lack of devotion and negligence. He being a railway servant, did not care to attend his duties for more than 2 years and as such, he deserves no sympathy under the law.

10. The suit of the plaintiff is accordingly dismissed. We, however, direct the parties to bear their own costs.

Done

5.1.1987
Member (A)

Subharya
5.1.1987
Member (J)

Dated 5.1.1987
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