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Central Administrative Tribunal, Allahabad.

Registration T.A.No.882 of 1986 (Civil Appeal No.695 of 1982)

Union of India ... Applicant

Vs.

Ram Balak ... Respondent.

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

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

This transferred application is a civil appeal against the judgment and decree dated 28.9.1981 passed by the XI Munsif Kanpur in suit no.229 of 1980 and has been received by transfer from the Court of IV Additional District Judge, Kanpur City under Section 29 of the Administrative Tribunals Act, XIII of 1985.

2. The respondent Ram Balak (hereinafter referred to as the plaintiff) while employed as Safaiwala under the Asstt. Personnel Officer D.S.Office, Allahabad was served with a charge sheet dated 6.3.1976 for unauthorised absence. It is alleged that the plaintiff submitted his statement of defence and one V.P.Tripathi was also appointed as his Defence Assistant but the inquiry officer did not hold the inquiry in accordance with rules. The copies of the necessary documents relied upon by the prosecution were not supplied to the plaintiff and he was not allowed to produce his evidence in defence and his Defence Assistant was also not intimated ~~at~~ the date of hearing and as such, he could not appear on the date fixed to defend the plaintiff. It is further alleged that without recording any evidence, the inquiry officer gave an ex-parte finding against the plaintiff which was wrongly accepted by the disciplinary authority and by way of punishment, he was removed from service by order dated 14.1.1977 by the A.P.O. He accordingly filed the present suit for a declaration that the order dated 14.1.1977 removing him from service is illegal and ultra-vires and against the principles of natural justice.

3. The suit was contested by the applicant (hereinafter referred to as the defendant) and it was pleaded in the written statement filed on its behalf that the plaintiff was given full opportunity to defend himself. He was not entitled to get the copies of the documents relied upon in the charge sheet but was entitled to inspect them. The plaintiff himself did not produce any evidence in his defence and despite giving full opportunity and information, his Defence Assistant did not turn up on the date of hearing. The plaintiff even did not file his statement of defence and his allegation to the contrary is incorrect. The inquiry officer, therefore, had no option but to conclude the inquiry ex-parte and after ~~trusting~~^{seeing &} the report of the inquiry officer, the disciplinary authority had passed the impugned order of removing the plaintiff from service after full application of his mind. There has been no violation of the principles of natural justice or the rules in conducting the inquiry against the plaintiff. The impugned order is, therefore, not bad in law and the plaintiff is not entitled to any relief.

4. The plaintiff reiterated the grounds taken by him in the plaint by filing a replication and alleged that he had withdrawn from the inquiry as he was being compelled to give a statement and sign the same in the absence of his defence assistant and in fact, he was not given adequate opportunity to defend himself and the order passed against him is bad in law.

5. The Court below framed the necessary issues in the case and held that as in the memorandum of charge sheet the disciplinary authority had expressed his mind about the guilt of the plaintiff, the inquiry officer had become prejudiced in conducting the inquiry against the plaintiff. The trial Court further found that adequate opportunity was given to the Defence

Assistant of the plaintiff to appear and conducting the case of the plaintiff but he did not appear and the allegation of the plaintiff to the contrary was not found correct. The trial Court further held that the inquiry officer should have fixed another date for holding the inquiry ex-parte and should not have concluded the inquiry on the date fixed for hearing and this was held to be contrary to law. It was further held that the inquiry officer did not apply his mind to examine the grounds of absence of the plaintiff and his report on the point is not a speaking one and as the representation given by the plaintiff was not considered by the punishing authority, the order of his removal was bad in law. The order of removal of the plaintiff was accordingly held to be illegal and the plaintiff was treated to be in service. Aggrieved by the findings recorded against it, the defendants preferred this appeal and it has been contended before us that the view taken by the trial Court is not correct and the plaintiff was given adequate opportunity to defend himself and that ^{the} inquiry was held in accordance with law. The appeal was contested on behalf of the plaintiff and it was contended that the inquiry officer did not record any evidence and wrongly placed his reliance on the report of the Head Trains Examiner regarding the absence of the plaintiff and the plaintiff was, therefore, held guilty of charge without any lawful evidence against him and there ^{is} no force in this appeal.

6. We have very carefully examined the contentions raised on behalf of the parties before us. The personal file of the plaintiff is on the record and the plaintiff has also filed the copies of some other documents in support of his case. No oral evidence was produced by the parties in the case. According to the defendant's version the plaintiff did not file any statement of defence before the inquiry officer and the report of the inquiry officer also makes a mention to this effect. The inquiry officer has mentioned in the report that despite the reminder, the plaintiff did not file any statement of defence before him regarding the charges framed against him. The represen-

tation of the plaintiff regarding the charge sheet addressed to the disciplinary authority was filed before the trial Court by him but is not available in the personal file in which other inquiry papers are available. In any case, we will like to read the copy of the representation filed by the plaintiff and marked as Exb.6 by the trial Court. Before this, we will like to point out that according to the charge sheet, the charge against the plaintiff was that for 96 days in 1974, for 106 days in 1975 and for 34 days in 1976 upto 18.2.1976 the plaintiff was unauthorisedly absent from duty. The charge sheet is dated 6.3.1973 and was served on the plaintiff on 18.3.1976. In the representation dated 30.4.1976, Exb.6 aforesaid, the plaintiff has stated that from 5.1.1974 to 25.2.1976, he was suffering from chronic cough on account of which he used to take leave whenever it was necessary and he did not absent himself without taking leave with medical certificate on any occasion and it is not known how he was treated ~~as~~ absent. He further stated that he has got his family and children and be excused mercifully this time. The representation thus shows that the plaintiff did not dispute his absence from duty for the period alleged in the charge sheet but the allegation is that he had sent applications supported with medical certificates on each occasion and he did not absent without any application. The ~~the~~ factum of his absence from duty mentioned in the charge sheet was admitted to the plaintiff and burden to prove that he was not unauthorisedly absent but was on medical leave, was on him. The prosecution ~~was~~^{is}, therefore, nothing to prove against the plaintiff and the entire ~~evidence~~^{burden} to prove that he was on medical leave or had applied for the medical leave was on the plaintiff. The personal file of the plaintiff does not show that he had ever sent any application for medical leave for any period of his absence mentioned in the charge sheet. It seems to be the reason~~s~~ as to why he was avoiding the inquiry as mentioned by the inquiry officer.

7. It further appears from the personal file of the plaintiff that he had filed an appeal against the order of punishment to the Divisional Superintendent and he had given him an opportunity of personal hearing and the appeal was thereafter dismissed. The plaintiff thereafter also filed a review petition but the same was rejected on 23.2.1978. The plaintiff has concealed these facts and as a matter of fact, his suit should have been dismissed on this ground alone as after the confirmation of the order of punishment passed by the disciplinary authority, the suit could not be decreed without ~~examining~~ ^{setting aside &} the orders of appeal and review. We will further like to mention that in his departmental appeal, Exb.A-40, it was ~~not~~ ^{plaintiff} alleged that ~~he~~ ^{he} was not allowed leave as and when applied even for genuine reasons and the action against him should have been taken at the time he had absented and some minor penalty should have been imposed and his absence for 3 ~~years~~ ^{years} ~~years~~ should not have been considered together. It was further stated that matters of some other persons who had absented from duty were hushed up and no action was taken against them. It was also stated by him that it is not prescribed under the rules that a man should not take leave or absent himself without any reasonable cause and as he belongs to a poor Scheduled Caste community and is an illiterate person, the order of his removal from service should be set aside on the ground of hardship. The trend of the allegations made in this appeal shows that the plaintiff remained absent as of right on account of his alleged old or chronic cough disease. We are unable to accept this contention of the plaintiff. No Government servant, howsoever, ~~seriously~~ ^{he} ill ^{can be} may be allowed to absent himself without proper leave and if the plaintiff chose to absent himself even without applying for leave as of right, he did so at his own risk and should suffer the consequences.

8. In his petition for review, Exb.A-45, it was alleged by him that he had tendered apology for his absence in the hope that it will be considered sympathetically but on account of the personal narrow-mindedness of the Divisional Personnel Officer (for short DPO), he was not forgiven. He further stated that in case the addressee i.e. the D.P.O. to whom the review petition was addressed, on account of his narrow-mindedness was unable to consider the review petition sympathetically, he should have sent the same to the Divisional Superintendent and General Manager for necessary action as such laws were made in the emergency period and his case was considered mercilessly and on the failure of the authorities to consider his case sympathetically, he threatened to commit suicide. We have quoted these representations of the plaintiff with a view to show the nature of his defence as well as the working of his mind. So far as his defence is concerned, virtually it was nil. In the first representation, he had come ^{with} ~~the~~ the allegation that he had applied for medical leave for each absence but he did not know why his leave was not granted. He could not pursue this line of defence knowing fully well that there was no record of his sending any application or medical certificate for leave. As a matter of fact, the railway administration has got its own medical department and the plaintiff could be properly treated there and could also get their necessary certificate for medical leave but he does not seem to have availed the facilities of the Railway Medical Department. Except tendering the apology, the plaintiff has, therefore, no case and that is why, he had no defence to produce and knowing it fully well, neither his defence assistant turned up on the date fixed for hearing in his case nor the plaintiff himself produced any evidence though he was present on the date the case was concluded, ~~ex-parte~~.

9. The learned counsel for the plaintiff has placed his reliance on a decision of this Bench in Ashok Kumar Vs. State of U.P. (1987(3) A.T.C.-581) in which we had held that the fact finding report of the District Magistrate could not be read as an evidence against the delinquent unless he was given an opportunity of cross-examination and the contention made before us is that as in the present case, the plaintiff was held guilty on the report of the Head Train Examiner without calling him in witness box and without giving an opportunity to cross-examine him to the plaintiff the enquiry officer has committed an irregularity in relying on such report of the Head Train Examiner. We are, however, unable to accept this contention of the learned counsel for the plaintiff as the aforesaid ruling has no application to the facts of the present case. Though the initial reply of unauthorised absence of the plaintiff was made by the Head Train Examiner, the inquiry officer did not hold the plaintiff guilty on that report alone but had examined his leave record and after an examination of the relevant record, came to the conclusion that the plaintiff remained absent for 96 days in 1974 without giving any information whatsoever. In 16 spells, he remained similarly absent for 106 days and obtained 15 days casual leave, 13 days leave on average pay and 23 days leave on half pay in 1975. After excluding this leave period, the plaintiff was absent unauthorisedly without any prior information, In 1976 for 34 days from 9.1.76 to 18.2.1976 within a short period of 49 days and also obtained two days casual leave during this period. The inquiry officer had, thus, examined the relevant record of the plaintiff about his absence and leave and it is not correct to say that he merely acted on the report of the Head Train Examiner.

10. Reliance was further placed on behalf of the plaintiff on Rabi Banerjee Vs. Union of India (1977(2) A.T.C.-744) in which it was held that if the disciplinary authority did not spare the departmental defence assistant of the delinquent on the date of hearing, the inquiry vitiates for violation of principles

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natural justice. We have already considered this aspect of the case above and are of the view that the poor defence assistant could do nothing in the case of the plaintiff due to the peculiar circumstances stated above and no prejudice has been caused to the plaintiff on this ground. In any case, the trial Court has held that full opportunity was given to the defence assistant of the plaintiff to appear on the date fixed to conduct the case of the plaintiff and we see no reason to disagree with the same. We further find that due intimation of the date fixed was given by the inquiry officer to the superior officer of the defence assistant of the plaintiff with a request to relieve and there is nothing on record to show that he was not relieved.

11. It appears from the record that the inquiry was adjourned on several dates at the instance of the plaintiff and ultimately, the inquiry officer gave the last opportunity to the plaintiff fixing 18.8.1976 for his defence clearly intimating that in no case further opportunity will be given and the case shall be heard finally on that date. The report shows that the plaintiff was present on that date but he did not produce any evidence on that date for the obvious reasons mentioned above and the inquiry officer was fully justified in concluding the inquiry on that date. No other date was required to be fixed for ex-parte hearing by the inquiry officer on that date and the view taken by the trial Court to the contrary is not correct.

12. The inquiry report contains the necessary details and the order of punishment passed by the disciplinary authority ~~and~~ states the reasons as to why the plaintiff has been held guilty and given the punishment. It is, therefore, a proper and speaking order and is not bad on any technical ground. In view of the fact that this punishment has been upheld by the appellate authority and the revision filed by the plaintiff has also been rejected, the suit filed by the plaintiff is defective but as the defendants did not take this plea, we will not like to dismiss the suit merely on this ground.

13. After a very careful consideration of all the facts and legal aspects of this case, we are of the opinion that the plaintiff was rightly found guilty of unauthorised absence for a very long period during the last three years preceeding the charge sheet and as he claimed his absence as of right, he deserves no sympathy. The tone of his representations filed by way of appeal and review petition can also not ^{be} said to be polite and submissive and as such his punishment was rightly maintained by the superior authorities. However, considering the hard days and specially the fact that the plaintiff claims himself to be a poor Scheduled Caste person and in case an opportunity is given, he may mend himself, he may be allowed one more opportunity to serve the Railway administration on the terms indicated in the next paragraph.

14. The appeal is accordingly allowed in part and upholding the findings of his guilt, his punishment of removal from service as passed by the disciplinary authority and upheld in appeal and review, is set aside. The plaintiff is ordered to be reinstated on duty on the same or equivalent post from the date he reports for duty. From the date of his removal from service till the date ^{and for the days of his unauthorised absence from duty} of his resuming duty, he shall not be entitled to any pay or other allowances nor shall his period of absence shall be counted for duty for any purposes, whatsoever. In case, the plaintiff has received any pay or other allowances under the decree of the trial Court, the same shall not be recovered in lump sum from him but shall be adjusted in instalments of suitable amount against his future dues. The appeal is disposed of accordingly and the parties shall bear their own costs throughout.

Hma
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MEMBER (A)

Sharma
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MEMBER (J)

Dated January 5, 1988.
kkb.