

(A3)

Jahoor Ahmad Plaintiff.

Union of India & others Defendants.

(Delivered by Hon'ble D.S.Misra)

2. The plaintiff's case is that he was working as highly skilled fitter grade II in the N.E.Railway Kanpur, Anwarganj w.e.f.1.8.78; that in early 1978 he organized a Branch of All India Carriage and Wagon Staff Council and he was elected divisional president of the Lucknow division of the said Staff Council, which office he holds till this date; that he used to represent the grievances of Carriage and Wagon Staff to the authorities concerned and became an eye-sore to the railway officers; that w.e.f. 18.8.80 the Staff Council had organised railway safety campaign all over India; that in pursuance thereof the plaintiff submitted an application for five days leave on half average pay and thereafter another application for 10 days leave on half average pay on 15.9.80 for organising the said railway safety campaign in Lucknow Division of N.E.Railway from Kanpur(Anwarganj) to Gorakhpur; that it was the usual practice that the employees including the plaintiff proceeded on leave after submitting application in anticipation of sanction and the plaintiff was not informed on either of the two occasions of submission of leave application on 8.9.1980 and 18.9.1980; that his leave would not be sanctioned; that the plaintiff was served with a chargesheet dt.6.10.80 in English language issued by the Assistant Mechanical Engineer(C and W) Lucknow proposing to hold an inquiry against him under Rule 9 of the Railway Servants(Discipline and Appeal) Rules(hereinafter referred to as the DA Rules); that the plaintiff has studied only upto 5th class and does not know English language; that on 3.11.1980, the plaintiff submitted an application to the Divisional Railway Manager(Mechanical) Lucknow through the Chief Train Examiner Anwarganj requesting for supply

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supply of Hindi version of the said chargesheet; that the plaintiff neither received reply to his aforesaid application, nor he was supplied Hindi version of the said chargesheet; that in early December, 1980 and the plaintiff's wife was taken ill, he submitted leave application on 10.12.1980 to the Chief Train Examiner Kanpur for 3 months leave expiring on 9.3.81; that in the third week of Jan. 1981 the plaintiff learnt of his transfer from Kanpur-Anwarganj to Mailani and in his letter dated 23.1.1981, submitted personally to the D.R.M. Lucknow in his capacity as Divisional Secretary, he complained against three transfers including his own transfer as victimization amongst other grievances mentioned therein, but the order of his transfer was not cancelled; that the plaintiff was not served with the transfer order and after the expiry of leave period the plaintiff reported for duty to the Chief Train Examiner when he was told that his name was struck off the strength of his office and he was not allowed to resume duty; that thereafter on 2.4.81 and on 28.5.81 the plaintiff personally met the D.R.M. Lucknow and represented to the General Manager also for cancellation of his transfer and resumption to duty but with no result; that he sent a notice dated 2.11.81 through his counsel to the General Manager, Gorakhpur; that shortly before the expiry of the statutory period of legal notice on 28.12.81 the plaintiff was served with chargesheet dated 20.11.1981 by the DME(C and W)/Lucknow with a covering letter dated 24.11.81 from DRM(P) Lucknow proposing to hold an inquiry against him under Rule 9 of the DA Rules for alleged misconduct and absence from duty without due authority since 10.12.1980; that on 3.12.81 the plaintiff sent his reply to the chargesheet denying the charge levelled against him in the chargesheet; that the plaintiff was served with dismissal order dated 18.9.82 passed by DME (C&W) Lucknow dismissing him from service w.e.f. 19.9.82; that the aforesaid dismissal order dated 18.9.82 is illegal and ultra vires as the plaintiff was given no opportunity for submission of his written statement, for cross-examination of witnesses and for his defence. The plaintiff has prayed for a declaration that the transfer order dated 6.12.80 is illegal and ultra vires and the plaintiff continues to hold office of Highly Skilled Fitter grade II at Kanpur (Anwarganj); that the dismissal order dated 18.9.1982 dismissing the plaintiff from service from 19.9.82 is illegal and ultra vires and treating him in continuous service without any break on the post of H.S. Fitter Grade II.

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3. In the written statement filed on behalf of the defendants, it is stated that there is no question of the plaintiff becoming an eye-sore in the eyes of the officers of the railway administration; that the order of transfer of the plaintiff was ^a routine and administrative order and the allegations of malice and ill-will are baseless; that the plaintiff had absented himself unauthorisedly without prior sanction or permission of the competent authority that the administration is not obliged to communicate whether the leave has been sanctioned or not and that it was the duty of the applicant to find out before proceeding on leave; that in his reply dated 3.11.1980, the plaintiff controverted the allegations contained in the chargesheet and this indicates that he fully understood the allegations of the chargesheet and his demand for supply of Hindi version of the chargesheet was not accepted; that the plaintiff had not been prejudiced by issuance of the chargesheet in English as is clear from the detailed reply furnished by him; that the reply of the plaintiff dated 3.11.1980 was treated as a reply to the chargesheet and his reply was not accepted and Sri G.B. Singh was appointed as Inquiry Officer; that the Inquiry Officer tried to contact the plaintiff at Mailani as the plaintiff had already been spared at Kanpur on 31.12.80; that the plaintiff did not join at Mailani till 16.5.82, he could not be contacted; that the applicant declined to participate in the inquiry under the pretext that until he is allowed to join his duties at Kanpur, he will not participate in the proceedings and also stated that since the plaintiff has referred the matter to higher authorities and also served court notice, the proceedings of the inquiry report are not acceptable to him; that no assurance was given to the applicant regarding cancellation of his transfer order; that the plaintiff was in the know of his transfer and deliberately absented himself and therefore, the transfer order could not be served upon him personally; that the inquiry for unauthorised absence was conducted by Sri G.B. Singh between 24.11.80 and 17.5.82 and thereafter a copy of the said report was also sent to the plaintiff but the plaintiff failed to make any representation; that DME(CandW) in exercise of his powers passed the order dated 18.9.82 dismissing

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the plaintiff from service; that the allegations contained in the chargesheet dated 6.10.1980 have been admitted by the plaintiff and no further proof is required to hold him guilty of the charges; that the plaintiff's only plea that his absence was under the impression that the leave will be granted to him, was contrary to rules and the action taken against him was justified.

4. A replication was filed on behalf of the plaintiff in which the averments made in the plaint were reiterated and it was stated that leave is a legal right and can not be arbitrarily refused. At the instance of the plaintiff, service-records, leave application and other documents including the memo of charges and inquiry report were filed by the defendants. Documents were also filed by the plaintiff in support of his case.

5. We have heard learned counsel for the parties and have also perused the records of the case. Learned counsel for the plaintiff contended that the entire inquiry proceedings were null & void as the plaintiff was denied the opportunity to defend himself. He invited our attention to the letter dated 3.11.80 in which the plaintiff had requested for Hindi version of 4 pages of the chargesheet served on him in English language to enable him to send his reply. The action of the disciplinary authority in treating this letter as reply to the chargesheet amounts to denial of giving a proper opportunity to the plaintiff to defend himself. We have examined the contents of this letter and we find that the letter is addressed to the D.R.M. and the subject of the letter is grant of leave from 9.9.80 to 13.9.80 and 16.9.80 to 25.9.80. It is stated therein that the plaintiff used to go on leave after giving information thereof to the office and this used to be sanctioned. It further states that he was under the impression that his leave has been sanctioned and he was not aware of any rule that any certificate regarding grant of leave is issued to the concerned staff. In this very letter, it is also stated that he may be supplied Hindi version of the four pages of the chargesheet served on him in English language so that he may send a reply in Hindi. On this letter the DME(C&W) Lucknow has given the following remark on 4.11.80:

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"Defence not accepted .Sri G.B.Singh CWI to conduct DAR inquiry"

From the record of inquiry filed by the defendants, it appears that the chargesheet served on the plaintiff contained the following allegations: "the plaintiff unauthorisedly absented himself repeatedly from duty which tantamounts to serious misconduct the plaintiff unauthorisedly absented himself from 9.9.80 to 13.9.1980, on 15.9.80 at 2625 hours Jahoor Ahmad ,Fitter C&W CPA applied for 10 days LAP from 16.9.80 which was regretted by CTRX/CPA in view of exigencies of work. Inspite of this Jahoor Ahmad absented himself from 16.9.80 to 25.9.80. The repeated absence from duty tantamounts to serious misconduct. In the list of documents on which the articles of charges^{were} framed against Jahoor Ahmad, the following is mentioned: "CTRX/CPA's vide no.E/PC/1 dated 25.9.80." The following is mentioned in the list of witnesses: "Sri R.N.Rudra CWI, L.J.N officiating as CTRX/CPA; Sri S.N.Misra Sr.clerk CTRX/CPA." The important points of the inquiry report are reproduced below.

"As far as the oral evidence of the delinquent employee is concerned, the same could not be recorded for the reasons that he has not been found interested despite various personal contacts. * * * * *

In order to safe-guard employees' interest and to afford him all reasonable opportunities to defend his cause, the first question which arose was to treat the employee's application dt. 13.10.1980 as defence by the then DME/C&W (disciplinary authority) was correct or not, but the points raised in his application were exactly those incorporated in the article of charges, furnished with the chargesheet and also there was no mention that he was unable to understand English -to treat the application as defence was in no way incorrect" The report goes on to narrate the conduct of the plaintiff in absenting himself from duty without permission and the fact of his noncompliance with the order of transfer to Mailani. The report says further "hence he could not be heard in person nor he has desired so by any type of communication instead on few occasions, he was seen loitering in the Divisional Office building where he was asked about the place and date convenient to him for his oral evidence but he has always declined on the pretext that until he is allowed duty at CPA, he will not prefer it and also stated that since he has referred the matter

to higher authorities and also served some court notice, the question of this inquiry does not arise.

Considering the exceptional delay caused to finalise this case, merely for the purpose of oral evidence of the delinquent railway servant and to hand over the proceedings in pursuance of DME/C&W's order to finalise it by 31.5.82, I find no other way to suggest the following ex parte finding with the least prejudice."

6. We have examined this matter very carefully and we are of the opinion that the inquiry officer was influenced by the remark dated 4.11.1980 of the disciplinary authority treating the application dated 3.11.1980 of the plaintiff as his reply to the articles of charges served on him in English language. The inquiry report appears to have been submitted in-compliance with yet another order of the disciplinary authority to finalise the inquiry before 31.5.82. We are of the opinion that both the disciplinary authority and the inquiry officer have failed to follow the procedure prescribed in the DA Rules for the conduct of inquiry and the imposition of a major penalty on a railway servant. We are of the opinion that such an inquiry report can not be a basis for imposition of a penalty and we hereby quash the penalty imposed on the plaintiff with the stipulation that the defendants are free to conclude inquiry into the conduct of the plaintiff and to take suitable action ^{in accordance with} under the DA Rules.

7. We have also considered the other relief claimed by the plaintiff regarding the cancellation of order of his transfer to Mailani, and are of the opinion that transfer is an incidence of government service and no railway servant can refuse to obey the order of transfer made by a competent authority. We accordingly reject this prayer of the plaintiff on this ground.

The suit is decided accordingly. There will be no order as to cost.

[Signature]
A.M. 31/8/87

[Signature]
31/8/87
J.M.

JS/31.8.87