

(17/9/87)

Court No.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.364 of 1987
(Writ Petition No.5599 of 1981 of the High Court of
Judicature at Allahabad, Lucknow Bench, Lucknow)

Avadhesh Sharma Applicant

Versus

Union of India & Others Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, A.M.

(By Hon. Justice K. Nath, V.C.)

The Writ Petition described above is before us by transfer under Section 29 of the Administrative Tribunals Act, 1985 for disposal. The relief sought is to quash an order dated 11.8.71 (Annexure-I) of removal of the applicant from service and its confirmation in appeal as well as revision by order dated 8.1.72, Annexure-3 and 19.8.81, Annexure-7 respectively.

2. The applicant was working as a skilled Carpenter in the Loco Shed, Northern Railway, Charbagh Lucknow when he was sanctioned leave from 13.9.69 to 29.9.69 to go to his village Bhatpurwa, Tehsil Banskagan District, Gorakhpur. However, the applicant did not return for duty at the end of the period of leave. He claimed to have fallen ill and to have remained under the medical treatment of private medical practitioners. He sent a large number of applications (25 in number as detailed in para 7 of the application) from 3.10.69 to 20.10.71 supported by certificates of private medical practitioner. According to the opposite parties, letters

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were sent to the applicant from time to time, beginning from 15.10.69 ~~requiring~~ requiring him to appear before the Authorised Medical Attendant of the Railways, namely the District Medical Officer with corresponding directions to the D.M.O. to examine and submit report about the actual illness of the applicant. All these letters are said to have been despatched by registered post on the village address of the applicant but were returned by the postal authorities with the report that he could not be found and had been reported to be out and that some of them were even refused by the applicant.

3. Departmental disciplinary enquiry was instituted against the applicant for unauthorised absence. By an order dated 6.7.70, Annexure-C-IV, an Inquiry Officer was appointed and a memorandum of charges dated 24.4.70/30.5.70, Annexure-C-V was sent to him by registered post. The applicant ~~had been~~ ^{having} failed to appear in reply to the show cause notice, it was held by the disciplinary authority that it was not feasible to hold enquiry within the meaning of Rule 14(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 and the disciplinary authority arrived at a tentative conclusion contained in the order dated 3.5.71, Annexure-C.VI that the applicant was not a fit person to be retained in service and it was proposed to impose a penalty of removal. Notices were also sent to the applicant alongwith the memorandum, Annexure-C.VI to make any representation on the proposed penalty but this

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memorandum also is said to have been returned by the applicant as refused. Finally, the disciplinary authority passed the impugned order of termination on 11.8.71, Annexure-I.

4. The first point raised by the learned counsel for the applicant is that the removal order was passed by authority who was not competent to do so. According to the learned counsel, the competent authority was the Chief Mechanical Engineer as the Head of the Department under Rule 6(viii) of the Discipline & Appeal Rules read with Schedule I thereof. The removal order, however, has been passed by the Production Engineer (Loco) Charbagh, Lucknow. According to the opposite parties, the appointing authority of the applicant was A.W.M. who is of equal rank of Production Engineer. The original service record of the applicant, described as "particulars of the service" prepared on 26.12.52 was produced before us. At its bottom there is an endorsement dated 27.12.52 signed on behalf of D.C.M.E.(W) recording "Appointing Authority as per declaration A.W.M.(S.N.22) Sl.No.22 of the record is the applicant's own declaration under his signatures acknowledging that the Asstt. Works Manager was his Appointing Authority. That was the position in 1952. It is clear therefore that the Chief Mechanical Engineer was not the Appointing Authority of the applicant. It is not shown by the applicant that he could not have been removed by an authority lower than the Head of the Department. It is not disputed that the A.W.M. of 1952 was lower in rank than the C.M.E. On the

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face of it, the applicant was concerned with the Works Department and the Production Engineer also was admittedly in the Works Section of the Loco. The learned counsel for the opposite parties has produced the "Schedule of powers on establishment matters" corrected upto 30.9.70 and refers to page 23 where the powers to appoint class IV staff is printed. The entry says that full powers of appointment had been delegated, in addition to D.P.Os and Works Manager, to Asstt. Engineer for Engineering labour. The termination order in this case has been passed by the Production Engineer of the Loco Workshop where the applicant was working. In these circumstances, it is not shown by the applicant that the order of removal had been passed by a person who was lower in rank than his Appointing Authority.

5. The next point urged by the learned counsel for the applicant is that he had never been informed that his application for leave had been rejected, ^{and that} the procedure prescribed in Rule 1472 of the Indian Railways Establishment Manual ~~is~~ had not been followed. The case of the opposite parties, as already mentioned, is that by several communications the applicant was called upon to appear before the D.M.O. of the Railways but all those letters, which were correctly addressed by registered post, were returned either because the applicant was not found or because the applicant had refused to take them.

6. Leaving aside the controversy whether the sanctioned leave extended upto 27.9.69 or 29.9.69, the

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admitted fact is that the applicant did not attend duty after 29.9.69. According to para 7 of the application itself, the first private Medical Certificate dated 28.9.69 was despatched by the applicant on 3.10.69. That medical certificate was not accepted by the opposite parties and letter dated 15.10.69, Annexure-C.IVA was written to the applicant with reference to it, asking him to submit Medical Certificate from the nearest Railway Medical Officer. With reference to the Private Medical Certificate of 28.9.69 and 29.10.69, letter dated 16/18.12.69, Annexure-C.III informed the applicant that the said certificates were not accepted and called upon him to file the Medical Certificate of the nearest Railway Doctor or else report for duty in default of which he would be liable to disciplinary action under D & A.R. With reference to the earlier Medical Certificate^{S/h} and one dated 23.12.69, letter Annexure-CII dated 3.2.70 was issued on the lines of letter dated 16/18.12.69, Annexure-C.III. On 6.3.70 letter Annexure-CIV was written to the D.M.O. to "arrange to examine the above named employee at the address given above" and submit the report of the employee's actual illness; copy of this letter was endorsed to the applicant with a direction to report to the D.M.O. and get himself medically examined and submit sick certificate from the Doctor.

7. According to the opposite parties these letters were despatched by registered post on the address given by the applicant himself, but the applicant refused to receive them from the postman. They were all addressed

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to the applicant S/O Brij Raj R/O Village Bhatpurwa, P/O Baripur, Tehsil Bangaon Distt. Gorakhpur. This is the very address of the applicant given in his own ~~application~~^{affidavit} dated 17.11.69 in support of the Writ Petition except the Post Office which is described as Ahirauli; but in the Rejoinder Affidavit dated 9.5.88, even the P.O. is Baripur. The opposite parties also produced before us the private Medical Certificate dated 6.7.71, 6.8.71, 7.9.71 and 7.10.71 submitted by the applicant; they all bear the same address. It is stated in the Counter Affidavit that Annexure-CAII, CAIII, CAIV and CAIVA were returned by the postal authorities on refusal of the applicant to receive them. It can be safely concluded and presumed that all these letters were tendered to the applicant, hence were served upon him. Reference may be made to para 1474 of the Railway Establishment Mannual which requires the railway servant under treatment of a private medical practitioner to intimate his address without delay to the competent authority. It is not shown that the applicant furnished any address other than the one mentioned above. Indeed, it is admitted in para 10 of the Writ Petition that the applicant received the registered letter on 4.11.71 containing the punishment orders, Annexure-I.

8. The contention of the learned counsel for the applicant is that it was the duty of the D.M.O. to visit the applicant at the applicant's residence in terms of the letter Annexure-C.IV. We do not agree; the expression : "arrange to examine the above named employee at the address given above" only means that the

addressⁿ of the applicant had been given in the upper portion of the letter and that the D.M.O. should arrange to examine the person so residing. Further, the endorsement to the applicant unmistakably directed him to report to D.M.O. and get himself medically examined; it was the applicant's duty to approach the D.M.O.

9. The learned counsel for the applicant next urged that the opposite parties did not comply with para 1472 of the Indian Railways Establishment Manual. The para is reproduced in para 5 of the Writ Petition. Para 1472 entitled the applicant to submit the Medical Certificate of his Medical Attendant, but the competent authority could "in its discretion accept the certificate or refer the case to District Medical Officer for advice or investigation and then deal with it as circumstances may require." It is clear that the competent authority could ask for the medical report of the District Medical Officer and also deal with the case as the circumstances may require. That is what the opposite parties have done.

10. Admittedly, the applicant did not submit himself to District Medical Officer of the Railway for medical examination. The opposite parties were, therefore, justified to draw disciplinary enquiry proceedings against the applicant.

11. A memo of chargesheet dated 24.4.70/30.5.70 Annexure-CV was drawn calling upon the applicant to submit a statement of his defence. By letter dated 22.7.70, Annexure-CVII, and dated 14.1.71, Annexure-^{CIII,}

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the applicant was called upon to nominate his defence helper and to appear on specified dates for enquiry proceedings. These letters were despatched by registered post on correct address to the applicant, but he did not appear. The Disciplinary Authority then recorded a finding under Rule 14(2) of the D. & A.R. Rules that for reason of the applicant's failure to participate in the proceedings, it was not possible to conduct the enquiry in the normal manner and that he proposed to award the punishment of removal from service and issued notice Annexure-CVI dated 3.5.71 to show cause why the applicant may not be punished accordingly. The applicant did not respond and ultimately the impugned termination order dated 11.8.71 Annexure-I was issued under registered post received by the applicant on 4.11.71. Learned counsel for the applicant has not been able to point to any illegality in these orders. In particular, there is no reason to hold that the order under Rule 14(2) of the Disciplinary Authority to dispense with the usual enquiry proceedings suffered from any infirmity.

12. The last point urged by the learned counsel for the applicant is that the punishment of removal from service is excessive. We do not agree. For more than 2 years the applicant remained absent without sanction and repeatedly disregarded the orders of the competent authority to get himself examined by the District Medical Officer. The Department was deprived of the applicant's services for all that period and

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he exhibited persistent disobedience and disregard of authority. There is no impropriety in the view of the Disciplinary Authority that the applicant was unfit to be retained in service. The petition must fail.

13. The application is dismissed. The parties shall bear their costs.

h. m. cawney

Member (A)

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Vice Chairman

Dated the 15th Dec., 1989.

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