

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD

Allahabad this the 20 th day of March 1997

ORIGINAL APPLICATION NO.472 OF 1987

Hon'ble Dr. R.K.Saxena, J.M.

Hon'ble Mr. D.S.Baweja, A.M.

Arvind Saxena aged about 35 years son of  
Shri K.S.Saxena, resident of 3012, Kamla Sadan,  
Dewanka Bagh, Rajgarh Phatak, Datia (M.P.)

... Applicant

Counsel for the Applicant: Shri S.K.Mishra

Versus

1. Union of India through -
2. General Manager, Central Railway, Bombay VT.
3. Divisional Railway Manager, Central Railway,  
Jhansi. .... Respondents

Counsel for the Respondents: Shri V.K.Goel

ORDER

Hon'ble Dr.R.K.Saxena, J.M.

This is an application moved by the applicant challenging the order of removal which was passed by the Disciplinary Authority on 25.6.1983 (Annexure-A5).

2. The facts of the case are that the applicant was initially appointed in the Commercial Branch and was posted at Head Quarter of Central Railway, Bombay VT on 2.3.1992. Subsequently he was transferred to the office of Divisional Railway Manager, Jhansi on the personal ground on 9.7.1973. Thereafter the applicant remained working at Jhansi. It is stated that the

applicant was posted under the Loco-Foreman, Jhansi. While he was working in the Loco, he absented himself unauthorisedly from 11.8.1982 to 14.10.1982 and from 11.1.1983 till the date of charge-sheet. Since the applicant had not furnished any application for leave and any medical certificate, the absence was treated as a misconduct and he was served with a charge-sheet (Annexure A1). The applicant submitted explanation to the said charge-sheet. It was contended by him that he fell ill because of typhoid and he remained under treatment of a private Medical Practitioner, it was not possible for him to have remained admitted in the Hospital for such a long period of time. This explanation was given about his absence for the period from 11.8.1982 to 14.2.1982. It was further stated that he remained indoor patient from 15.10.1982 to 31.12.1982 because he was treated for hernia. It is also stated that from 1.1.1983 to 10.1.1983 he had attended the office but from 11.1.1983 onward he again fell ill and for that reason, the duties could not be attended. The explanation was not found satisfactory. The enquiry officer was appointed. He conducted the enquiry and submitted his report dated 23.6.1983 to the Disciplinary Authority holding the view that the charge was established. The Disciplinary Authority then passed the impugned order dated 25.6.1983 whereby the applicant was removed from service. It is averred by the applicant that he had preferred an appeal against the order of removal but nothing was done and, therefore, this O.A. was filed on 21.5.1987.

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3. The grounds taken by the applicant in the O.A. are that there was no misconduct on his part and that the Divisional Mechanical Engineer was neither his appointing authority nor could he be the Disciplinary Authority. He also challenged the order of removal on the ground that the authorities were biased against him and proper opportunity of hearing was not given.

4. The respondents have contested the case and filed written statement. It is pointed out that the appointing authority of the applicant was Assistant Personnel Officer and not the Divisional Railway Manager. It is also contended that the applicant was posted in the Loco ~~form~~ where he worked under the control of the Loco ~~form~~ and Senior Divisional Mechanical Engineer. It is, therefore, stressed that the Divisional Mechanical Engineer was competent to issue the charge-sheet <sup>and</sup> also to punish the applicant for the misconduct. As regards the averment of the applicant that there was no misconduct, it has been refuted and categorically stated that the absence of the applicant from his duties without any application or medical certificate in the event he had fallen ill, did amount misconduct and, therefore, the charge-sheet was validly given. It is also pleaded that the appeal which was preferred by the applicant, was decided on 5.8.1983 and the applicant was communicated <sup>not</sup> vide Annexure-2 which was actually annexed with the C.A. It may be mentioned that no annexure is filed along with the C.A.

5. The applicant has filed rejoinder in which those ~~4~~ facts which were mentioned in the Original Application, were ~~retained~~.

6. The Tribunal had decided this matter on 24.4.1992. The order of punishment was quashed on the ground that the copy of the report of Enquiry-Officer was not furnished to the applicant. The respondents preferred S.L.P. before the Hon'ble Supreme Court. The said S.L.P. was allowed and consequently civil appeal was decided on 29.4.1994 holding the view that the question of supply of the copy of the report of Enquiry Officer was clarified in Managing Director ECIL v. B.Karunakar 1992 (1) SCC 709 and the ratio of the case of Mohd. Ramzan Khan was made applicable prospectively. The result was that non-supply of the copy of the report of Enquiry-Officer could be no ground to quash the order of punishment. The matter was remanded back to the Tribunal, Hence this case is again listed for disposal.

7. The counsel for the applicant did not appear. The applicant ~~was~~ himself was present. He wanted to argue himself. Shri V.K.Goel, counsel for the respondents was also present. We heard the applicant as well as Shri V.K.Goel. We have also perused the record.

8. The first question which arises for decision is whether absence from duties without any application or medical certificat, if illness is made a ground, amounts misconduct. No employee can opt to remain absent without valid reason. Even casual leave is not a right of an employee. Thus the contention of the applicant that there was no element of misconduct, is altogether incorrect. The applicant, nowhere, stated that any application for leave was given by him. No doubt, he has come with the plea that medical certificate was given but even then one is expected to make an application

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for leave, may be medical leave, casual leave or earned leave. In view of these facts, we are of the opinion that if an employee absents himself without making any application of leave of any kind, it amounts to misconduct. Thus the charge-sheet can be served upon him.

9. It is also contended that the punishment of removal for absence ~~for~~ <sup>for</sup> few days or months is a harsh punishment. We are not setting in appeal and, therefore, we do not want to enter into this aspect which is not covered under the judicial ~~view~~ <sup>review</sup>. The departmental authorities are competent to pass any prescribed punishment, if they feel satisfied for the same. For the purpose of awarding punishment, the departmental authorities are the best judges. Thus this plea also does not hold good.

10. The applicant has pointed out that he was mainly the employee of the Personnel Branch but was posted in the Loco. He further contends that mere posting in the Loco, the Disciplinary Authority is not changed. In other words, he submits that his Disciplinary Authority is the Divisional Railway Manager under whom the personnel branch is placed. The applicant has brought to our notice the Circular dated 18.7.1979 of the Railway Board which deals with ~~the~~ <sup>the</sup> subject of disciplinary authorities for imposition of penalties for various types of irregularities. The reference of the earlier Circular dated 16.10.1973 which too has been brought ~~to~~ <sup>on</sup> record by the applicant as Annexure A6, has been made in the Circular letter dated 18.7.1979. It is mentioned that the Personnel Clerks posted in the Depots and ~~that~~ <sup>of stations</sup> stands belong to Personnel Branch only and the Personnel Officers ~~could~~ <sup>be</sup> be the disciplinary authorities in respect of them.

This position has not been refuted by the respondents in the written statement. In para 5 of the written statement, it was specifically mentioned by the respondents that the appointing authority of the applicant was Assistant Personnel Officer. It is, however, denied that the Divisional Railway Manager was the appointing authority of the applicant. In this connection, the applicant has drawn our attention towards the promotion order which was issued on 29.8.1981 <sup>from</sup> by the Divisional Railway Manager's Office by the Personnel Branch of Divisional Railway Manager Office. The name of the applicant finds place at Serial no.24 of the ~~say~~ <sup>said</sup> order whereby the persons given in the list, were placed in the grade of Rs.330-560 by giving promotion to them. Even if it is assumed for the sake of argument that the Divisional Railway Manager was not the actual appointing authority but the order was issued by some other authority of the office of a Divisional Railway Manager, this fact remains uncontroverted that the applicant belonged to the Personnel Branch of Divisional Railway Manager. When this fact is considered in the light of the Circular letter dated 18.7.1979, it emerges that <sup>for</sup> the disciplinary action with respect to the clerks of Personnel Branch though they may have been posted in the Depots or at the stations, <sup>they</sup> continued to be the officials of the personnel branch. It is true that the earlier circular dated 16.10.1973 was clear when it laid down that the disciplinary action should be initiated and penalised by the authorities under whose administrative control the delinquent employee was working. The clarity of language <sup>could</sup> neither be doubted nor disputed even in circular dated 18.7.1979. In its wisdom the Railway Board appears to have changed the situation but on the date

when the applicant was punished by the impugned order, only the circular letter dated 18.7.1979 was enforced. In this way, the framing of charge-sheet and of awarding punishment by Divisional Mechanical Engineer (P) cannot be said to be legal and sustainable in law.

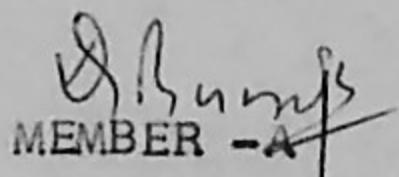
11. The contention of the learned counsel for the respondents is that the ~~delay~~ <sup>appeal</sup> which was preferred by the applicant, was decided on 5.8.1983 and the result was communicated on 18.8.1983. Neither the copy of the order passed in appeal has been brought on record nor is the copy of the communication made to the applicant, has been annexed. No doubt, the Annexure-2 has been written in the written statement but as is pointed out earlier, not a single annexure is attached with the written statement. The result, however, is that there is no documentary evidence ~~for~~ <sup>about</sup> any order of appeal ~~was~~ <sup>having been</sup> passed by the appellate authority. The applicant had written representation to the General Manager, Central Railway on 12.4.1987 (Annexure-8) in which this fact was mentioned that the appeal was pending with D.R.M. for more than 3 years. In case, the result of the appeal had been communicated to the applicant this fact could not have been mentioned in the representation. In these circumstances, the argument of the learned counsel for the respondents that the appellate order having not been challenged, O.A. becomes non-maintainable, is not tenable.

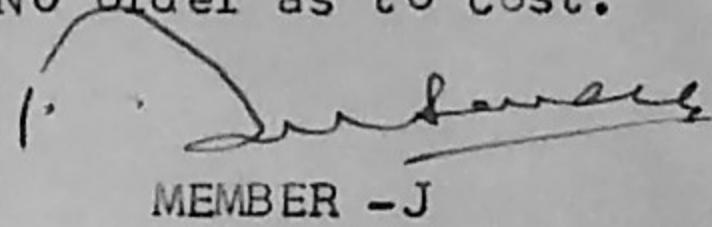
12. On going through the various grounds taken in the case on behalf of the applicant and the respondents, we come to the conclusion that the Disciplinary Authority with regard to the clerks of Personnel Branch was vested in the

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was vested in the personnel officers of the said branch by circular dated 18.7.1979. The framing of the charges and serving the charge-sheet on the applicant by Divisional Mechanical Engineer (P) and on conclusion of the enquiry awarding punishment by the same Divisional Mechanical Engineer (P) was not lawful. Therefore, the punishment does not remain sustainable in law. Since we have also observed that absence from duty without an application for leave, does amount to a misconduct, we direct the respondents, if they so choose, ~~to~~ take action afresh but within a period of 3 months from the date of the receipt of the copy of the judgment.

13. In the result, the O.A. is allowed partly. The applicant may be reinstated but back wages shall not be given because he has not specifically mentioned that he was not gainfully employed. No order as to cost.

  
MEMBER - A

  
MEMBER - J

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