

Open Court.

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 28th Day of July, 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 1413 of 1992.

Roshan Lal Madhok,
aged about 54 years
son of Late Banarasi Lal,
R/O 4/1 Saharanpur Road,
Dehradun.

. . . Applicant.

Counsel for the Applicant: Sri A.K. Sinha, Adv.

Versus

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Moradabad.
3. Senior Divisional Personnel Officer in the
office of the Divisional Railway Manager,
N. Railway, Moradabad.

. . . Respondents.

Counsel for the Respondents: Sri D.C. Saxena, Adv.

Order (Open Court)

(By Hon'ble Mr. S. Dayal, Member (A.))

This application has been filed for setting aside of orders of deemed removal dated 2.7.90 and 4.9.92 with consequential benefits of seniority, emoluments, promotion etc. Directions are also

sought to the respondents to treat the period from 1972 to 28.2.1989 as period of sickness and grant continuity of service from 1958. Directions have also ^{been} sought to pay salary and other allowances including yearly increments with interest from 1.3.1989 till 4.9.92.

2. The case of the applicant is that he was appointed as Loco Cleaner in 1958. He was granted Casual Leave from 26.4.1972 to 02.5.1972 (seven days) and left the place of posting for his home village in District- Muzaffarnagar. He claims to have fallen seriously ill and remained ill on account of number of illnesses. He claims to have sent Medical Certificate Registered ^{mark} to the respondents under/Acknowledged Due or certificate of posting. He also states that the respondents did not communicate rejection of Medical Certificates. Since he was seriously ill, he had no time to think of his employment of leave (para 4.5 of O.A.). He claims to have been cured and declared fit on 28.2.1989 and reported for duty on 01.3.1989 to the Loco Foreman , Northern Railway, Laksar. The Loco Foreman asked the applicant to report for duty to respondent No.2. The letter of Loco Foreman dated 01.3.1989 has been annexed by the applicant to his O.A. Respondents sought a copy of the letter of appointment from the applicant which the applicant regretted. He gave his P.F. Account No. issued by the respondents. The respondents are asked for record of the applicant from the subordinate authorities which was not forthcoming. The relief has been claimed by the applicant with this Back- drop of facts. The applicant has mentioned in

-3-

the O.A. that his date of birth was 09.10.1938 and he was due for superannuation on 31.10.1996.

3. The arguments of Sri A.K. Sinha for the applicant and Sri. D. C. Saxena for the respondents have been heard. The pleadings on record have been considered.

4. The learned counsel for the respondents has contended that no leave can be sanctioned if an official has remained absent for five years or more. He has also drawn attention to section 108 of Indian Evidence Act according to which a person who has been absent for more than seven years is deemed to have died. He has contended that the applicant simply disappeared and did not report duty till 01.3.1989 when he produced himself before Loco Foreman and claimed to have worked at Laksar in the capacity of Loco Cleaner.

5. We have considered the arguments of learned counsels. We find from the impugned order dated 02.7.90 and 04.9.1992 that the applicant was deemed to have been removed from service due to long absence. The respondents have not denied that he had Provident Fund Account with them and that the account had some amount deposited in it. It is clear that the respondents have passed the impugned orders without following the procedure laid down in Railway Servents Discipline and Appeal Rules 1968. It is also the requirement of law that no major punishment can be taken against an employee without following the procedure laid down for the purpose. The order of deemed removal is therefore, *given to* taken against

-4-

unsustainable under the law. The respondents should have given a notice to the applicant after he had remained absent and should also have initiated disciplinary proceedings. No such action has been taken by the respondents. We, therefore, set aside the impugned orders dated 02.7.90 and 04-09.1992.

6. In view of an inordinate long absence of the applicant, the applicant cannot be held entitled to benefit of seniority and pay for the period of absence. He shall however, be entitled to pay w.e.f. 04.9.1992 the day the second impugned order of deemed removal was passed on account of the fact that he has filed the O.A. only on 29.9.92. He shall be entitled to the pay of Loco Cleaner in the scale of Rs. 750-940. He may be given retiral benefits on the basis of this pay within a period of three months, from the date of receipt of this order.

7. There shall be no order as to costs.

D. N. Mehta *H. S. Jayal*
Member-J. Member-A.

/Nafees/

OR

(13)

MSC. 6424/201.m
on 14/12/92 is submitted
to archive

~~Not
in
order~~

08-12-2000
From. Mr. SKINNAGVIJ. m.

no representation. Put up
for orders on 13-1-2001

b
J.M.

✓

MA. NO. 6424/2000
in
O.A. 1413/92

19.1.2001

Hon'ble Mr. S. Dayal, A.M.
Hon'ble Mr. Rabiquddin, J.M.

None for applicant.

Sr. A.K. Gaur, learned counsel
for respondent has sought
adjournment on the ground of
illness. Since the Mise
Application has been filed
by the learned counsel for
the respondent, adjourned the
case.

List this case for order
on 20.2.01

AM

DR
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W.M.

OP

20/02/2001

Hon. Mr. V. Sri Kantan, A.M.
Hon. Mr. S.K. D. Nagri, J.M.

Shri M.K. Sharma proxy counsel to Shri A.K. Gaur
counsel for the applicant in M.A. No. 6424/2000.
Shri A.K. Sinha for the respondents in M.A.
Shri Sinha mentioning that in view of the order passed
in Writ Petition by the Hon'ble High Court, this
matter has become infructuous, therefore, this
M.A. be rejected accordingly. Shri M.K. Sharma
has not opposed this statement. The M.A. No. 6424/2000
is rejected accordingly as having become
infructuous.

S.K.
JN

AM.

MSL. No. 6424/2000
is submitted for order
M.A.
19/2/2001