

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH ALLAHABAD

O A No. 42 of 1992

Durga Prasad

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Applicant

Versus

Union of India & others

...

Respondents

Hon'ble Mr K Obayya - A M

Hon'ble Mr A K Sinha - J M

(By Hon'ble Mr K Obayya - A M)

The applicant is a Mail man in R M S Agra. In this application, he has prayed for ~~xxx~~ direction to the respondents for allowing him to duty and to pay salary with effect from 01 05 91. The applicant has also prayed for quashing the ^{vide} punishment of withholding one increment/order dated 24 08 91.

2- The applicant joined the service as Mail Man in the office of respondent no.1 i.e. Sub-Record Officer, Railway Mail Service Agra Fort on 18 03 80. He was made permanent on the said post with effect from 01 10 82. According to the applicant, his work and conduct has been found to be satisfactory. However, on 21 01 91 there was an incident in which he was pushed down by another Mail Man namely Shakti Babu, as a result of which he fell down and received grievous injuries and also fracture. He reported about this incident to the head sorter with the request that the complaint be sent to Superintendent Rail Mail Service Jhansi. He also made a complaint to Superintendent of Police, G R P Agra.

He went on leave on 21 01 91 and he was admitted in District Hospital Agra. After treatment, he submitted fitness certificate and reported for duty on 01 06 91 but respondent no.1 under whom he ~~xxx~~ worked, did not allow him to join duty. The

applicant represented the matter to respondent no.2 i.e. Supdt. of Rail Mail Service Jhansi. The applicant was asked to give leave letter and also fitness certificate. While his leave letter was not decided, chargesheet dated 27 06 91 was issued to him. The charge related to unauthorised absence from duty from 01 06 91, failure to submit medical certificate and leave letter, for making complaint against the superiors to Supdt. R.M.S. ~~and~~ sending Jhansi and ~~make~~ complaint to the police without apprising the same to the department. He also received a letter from the respondent no.2 as to why he is not attending the duty since 22 01 91. The applicant replied that he went to join duty but he was not given duty and requested that the charges be dropped. Notwithstanding this, punishment order dated 23/24-1-1991 withholding increment for one year without cumulative effect was passed.

3- The impugned order of punishment is assailed on grounds that it is malefide and that no notice or opportunity was given and that the order was passed without holding of enquiry. The applicant also refuted the contention that he was absent from the duty.

4- The respondents have contested the case. It is pointed out in the counter that the applicant was habitual absentee from the duty. In the past also, he was absent from the duty for the period from 14-11-90 to 16-11-90 and was treated as dies-non and that he was also issued warning from time to time. The respondents denied the incident of 21 01 91 and contended that the applicant did not report about this to respondent no.1 under whom he is serving. It is also stated that the applicant applied for leave for the period from 21 01 91 to 07 03 91 and the leave for this period was sanctioned

and the leave salary was also paid to the applicant. The applicant produced another medical certificate for the period from 22 01 91 to 05 04 91 and also O.P.O slip dated 03 05 91 recommending rest till 31 05 91. Since the O.P.O. slip is not a medical certificate, it was not considered. The applicant has not sought extension of leave beyond 08 03 91. The leave request was sent directly to respondent no.2 and the applicant never asked for duty. Regarding the incident on 21 01 91 when the police came for enquiry, the applicant left the office. It is averred that neither the applicant reported for duty in the sub-record Office nor he was refused duty.

5- In the rejoinder, the applicant has admitted that he did not report the incident of 21 01 91 in the daily report as he apprehended that his report will not be forwarded but reported the matter to the head sorter. The applicant asserts that he has submitted medical certificate. It is also stated that the O.P.O. slip is only advise to take rest after treatment and as such earlier medical certificate should have been accepted. It is also stated that he submitted medical certificate, fitness certificate to respondent no.1 under whom he was working but he refused to accept the same then the applicant sent the leave letter alongwith medical certificate, fitness certificate etc., to respondent no.2, who in turn sent the papers to respondent no.1. It is allegedly the applicant that he was not allowed to attend to duty with a view to harass him by the respondent no.1.

6- We have heard the counsels for the parties. Admittedly

the applicant proceeded on leave; for the period from 21 01 91 to 07 03 91 which was also sanctioned and leave salary has also been paid. It would appear that the applicant has sought extension of leave and remained out of duty till 31 05 91. For this period according to the applicant he submitted medical certificate etc. to respondent no.2 since it was not accepted by respondent no.1. This is denied by the respondent no.1. According to him, the applicant has not reported for duty, and when he was asked to do so and also asked to explain his absence for which registered letter was also sent to the applicant all this produced no compliance of the instructions by the applicant.

7- Having regard to the rival contentions and also going through the record carefully, it is established that the applicant was on leave and he sought extension of leave which should have been in normal course submitted to concerned authority i.e. respondent no.1 duly supported by medical certificate. Inspite of notice, the applicant appears to have chosen to approach respondent no.2, and not his immediate superiors. This of course can be said to be breach of discipline. The conduct of the applicant in not approaching the Competent Authority but going to superiors for whatever compelling reasons, can not be justified. The applicant has submitted his leave application, medical certificate etc. to respondent no.2 who is senior authority. Since according to him, respondent no.1 was not well disposed off towards him. Even in such circumstances the applicant should have submitted the application to the

Competent Authority along with the copy to the Higher Authority for their intervention. Respondent no.1 has received leave letter, medical certificate and also O P D letter and forwarded the same to respondent no.2. Though, the matters were not dealt in proper way, in any case the applicant can not be denied duty. We direct respondent no.1 to allow the applicant to duty with immediate effect. The applicant will be entitled for salary and allowances from the date he joins duty. With regard to the period in dispute about the leave, the applicant should submit leave application accompanied by certificates in proforma along with fitness certificate to respondent no.1 within one month of the date of his joining and the same shall be considered by respondent No.1 in accordance with law. Regarding punishment of withholding of one increment that is only a minor punishment in which an enquiry was not necessary. We do not see any ground to interfere in that matter. The application is allowed in part. Parties to bear their cost.

Ashok Ganguly,
MEMBER (C)

R. Bhattacharya
MEMBER (A)

DATED: 25/6/1993.

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