

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD

\* \* \*

Allahabad : Dated this 18<sup>th</sup> day of October, 1996

Original Application No. 884 of 1992

District : Varanasi

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Smt. Phulbasi Devi Wife of Shri Ram Ratan Prasad,  
Resident of House No. 724-G, D.L.W., Varanasi.

(By Sri Anand Kumar, Advocate)

..... Applicant

Versus

1. Union of India through the General Manager,  
Diesel Locomotive Workshop, Varanasi,  
Uttar Pradesh.
2. Works Manager (Loco), Diesel Locomotive Works,  
Varanasi.

(By Sri Amit Sthalekar, Advocate)

.... Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

This application has been filed under Section 19  
of the Administrative Tribunals Act, 1985 by Smt. Phulbasi  
Devi wife of Shri Ram Ratan Prasad, who was working as  
H.S. Fitter Grade-II in the Diesel Locomotive Works,  
Varanasi praying that the order dated 15-1-1992 by which  
the latter was removed from service and the order dated  
19-5-1992 by which the appeal against the order of  
removal was rejected, be set aside and the respondents  
be directed to make arrangement of his proper treatment.

2. The admitted facts of the case are that the applicant's husband, who was working as H.S. Fitter Grade II  
suffered mental disorder and remained under treatment

W.L.

from 6-11-1987 to 6-1-1988 in the Central Institute of Psychiatry, Kanke, Ranchi. Therefore, he resumed duty but had a relapse of mental disorder and he was again referred to Ranchi by the Medical Superintendent D.L.W. After being declared fit, he again resumed duty. Thereafter, there was a relapse of the illness and he was again sent for treatment from 6-1-1989 to 24-2-1989. After being declared fit <sup>/for duty,</sup> he again resumed duty and continued to perform his duties until 30-4-1989. There is, however, a controversy on fact as to what happened thereafter. According to the applicant, her husband became mentally ill again after 1-5-1989 and, therefore, he did not attend his duties and his immediate superiors were fully aware of the position, but they did not refer him to Ranchi Hospital for further treatment. The respondents have, however, stated that after 1-5-1989, the applicant's husband started wilfully absenting continuously and, therefore, he was served with a charge memo on 8-4-1991. The inquiry was held ex parte and agreeing with the findings of the Inquiry Officer, the disciplinary authority issued the impugned order dated 15-1-1992. An appeal was preferred by the wife of the railway servant and this was rejected by the impugned order dated 19-5-1992.

3. The case of the applicant is that the charge sheet was served on her husband at his home address when he was actually suffering from mental disability and the fact that he was an old case of mental disability and remained under treatment in the Central Institute of Psychiatry at Ranchi, was fully known to the authorities.

WL,

It has been stated that as soon as the charge sheet was received, the applicant herself represented on 18-4-1991 to the higher authorities to make arrangement for the treatment of her husband ~~instead but~~ instead of taking disciplinary action against him, <sup>but</sup> the respondents took no action and not even a railway doctor was sent to his home address to examine the veracity of the representation. They have further stated that despite the representation dated 18-4-1991, the respondents appointed the Inquiry Officer and completed the inquiry ex parte without examining any prosecution witness. It is alleged that the inquiry is initiated on the ground that no reasonable opportunity was given to the applicant's husband. It has been further pleaded that the penalty of removal from service was too disproportionate to the charge of unauthorised absence, particularly, when the applicant was actually suffering from mental disability.

4. The respondents have stated in the counter reply that as the applicant's husband was continuously absenting w.e.f. 1-5-1989, a memo of charges dated 4-4-1991 was sent by registered post which he acknowledged on 8-4-1991. He, however, did not submit any written statement of defence though the applicant i.e. the wife of the charged official submitted an application dated 18-4-1991 alongwith certain medical certificates dated 24-2-1987, 8-1-1988, 27-9-1988 and the medical prescription dated 6-8-1988 issued by the Central Institute of Psychiatry Ranchi. It is submitted that the applicant had also stated in the said representation that according to her knowledge, her husband has been attending duties after being declared fit on 24-2-1989 and

W.L.F.

she came to know that her husband was absenting from duties since 1-5-1989 only on the receipt of the charge memo. The case of the respondents is that it is clear from the various medical certificates submitted at that time that the applicant was fit to resume duty and he did resume duties on 15-8-1988 and continued to work upto 30-4-1989. Thereafter, he started absenting continuously. It is also their case that before the issue of the charge memo neither Sri Ram Ratan Prasad nor his wife or any other relation admitted him in the Railways Hospital for his treatment. The applicant also did not submit any medical certificate alongwith her representation dated 18-4-1991 indicating that he was again mentally disabled after 1-5-1989. The Inquiry Officer was appointed by the order dated 1-10-1991 and intimation was sent to the applicant's husband by registered post which was acknowledged by him personally on 11-10-1991. The Inquiry Officer conducted inquiry on 9-11-1991 after giving notice to the applicant vide letter dated 1-11-1991 by registered post and since the applicant's husband did not participate in the inquiry nor did he give any intimation that he would not be able to participate in the inquiry, the Inquiry Officer conducted the inquiry and submitted his report finding the applicant's husband guilty of the charges of unauthorised absence. After considering the inquiry report, the disciplinary authority imposed the penalty of removal from service which was confirmed by the appellate authority.

5. We have heard learned counsel for both the parties and perused the record carefully.

6. There is no dispute on the fact that the applicant's husband had been under treatment for mental

W

disorder for a fairly long time in a recognised mental institution with the knowledge of the respondents. Therefore, even if he had started absenting himself from duty w.e.f. 1-5-1989, it was obviously not a simple case of unauthorised absence. The respondents have admitted that after the charge memo was served on the applicant's husband, the applicant herself sent a representation requesting that the applicant be given proper treatment. Since the background of the mental illness of her husband was known to the department, it was just and proper on their part to verify whether the applicant was still suffering from mental disorder before proceeding with the disciplinary action. This view of ours is fortified by the decision of the Hon'ble Supreme Court in the case of Union of India Vs. I.S. Singh (1994) 28 A.T.C. 53 and the decision of the Ernakulam Bench of the Tribunal in the case of O.M. Cherian and another Vs. The Director General, Corps of Signals reported in (1994) 28 A.T.C. 27.

7. We have perused the inquiry report, a copy of which is Annexure-A-7 to the OA. It is a one page report in which it has been stayed that the inquiry was conducted ex parte since the applicant did not appear on the date fixed i.e. 9-11-1991. In the conclusion, it has been stated that during the inquiry, on the basis of the available documents, the Inquiry Officer has reached the conclusion that the charge of unauthorised absence has been fully established against Sri Ram Ratan Prasad. It is, therefore, clear that the Inquiry Officer did peruse certain documents to come to the conclusion. Curiously, Annexures-III and IV to the charge sheet, a copy of which is placed at Annexure-A-3 to the OA, indicate that there are neither any documents nor any witnesses in support of the charges. In such a situation, it is not clear what are the documents which the Inquiry Officer relied upon to come to a conclusion that the applicant was unauthorisedly absenting himself. Apart from the above, even the procedure for holding ex parte inquiry has not been

18

disorder for a fairly long time in a recognised mental institution with the knowledge of the respondents. Therefore, even if he had started absenting himself from duty w.e.f. 1-5-1989, it was obviously not a simple case of unauthorised absence. The respondents have admitted that after the charge memo was served on the applicant's husband, the applicant herself sent a representation requesting that the applicant be given <sup>proper</sup> ~~treatment~~. Since the background of the mental illness of her husband was unknown to the department, it was just and proper on their part to verify whether the applicant was still suffering from mental disorder before proceeding with the disciplinary action.

7. We have perused the inquiry report, a copy of which is Annexure-A-7 to the OA. It is a one page report in which it has been stated that the inquiry was conducted ex parte since the applicant did not appear on the date fixed i.e. 9-11-1991. In the conclusion, it has been stated that during the inquiry, on the basis of the available documents, the Inquiry Officer has reached the conclusion that the charge of unauthorised absence has been fully established against Sri Ram Ratan Prasad. It is, therefore, clear that the Inquiry Officer did peruse certain documents to come to the conclusion. Curiously, in Annexures-III and IV to the charge sheet, a copy of which is placed at Annexure-A-3 to the OA, indicates that there are neither any documents nor any witnesses in support of the charges. In such a situation, it is not clear what are the documents which the Inquiry Officer relied upon to come to a conclusion that the applicant was unauthorisedly absenting himself. Apart from the above, even the procedure for holding ex parte inquiry has not been

W.L.

followed. An ex parte inquiry is an exceptional provision by which the disciplinary authority is enabled to complete proceedings against the charged employee when such employee is deliberately not appearing before the Inquiry Officer. The Inquiry Officer cannot proceed ex parte if the charged employee does not appear on the first day fixed for inquiry. The procedure for holding ex parte inquiry is specified in sub-rule 12 of rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. This sub-rule reads as follows :-

"(12) The inquiring authority shall, if the railway servant fails to appear within the specified time or refuses or omits to plead, require the 'Presenting Officer', if any, to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the railway servant may for the purpose of preparing his defence give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in sub-rule(6)."

8. It will be clear from the provisions of the rule that the Inquiry Officer could not have completed the inquiry on 11-11-1991 itself but should have adjourned the inquiry to give one more opportunity to the charged employee to prepare his defence. Since this was not done, it was a clear violation of the mandatory provision and this itself is sufficient to vitiate the inquiry.

9. In view of the foregoing, the application succeeds. Both the impugned orders dated 15-1-1992 and ~~19-5-1992~~ imposing penalty of removal from service and the appellate order dated 19-5-1992 are quashed. The respondents are directed to refer the applicant to ~~the~~ Medical Specialist for Examination. If he is found fit to resume duty, he shall be forthwith

W.L.

- 8 -

reinstated in service. If, however, he is not found fit to continue in service, necessary action may be taken to board him out on medical grounds as per the extant rules. The period from 1-5-1989 till the date of reinstatement or the date of boarding out, as the case may be, shall be covered by the grant of leave as due.

10. The parties shall, however, bear their own costs.

*Jharna*

Member (J)

*WL*

Member (A)

Dube/