

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 6th day of December, 1996
Original Application No. 1054 of 1992

District : Dabri (M.P.)

CORAM:-

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

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

Hari Gayasi Son of Sri Gayasi
Employed as Safaiwala under
Station Superintendent, Jhansi,
Resident of Behind Railway Station,
Dabri. (M.P.).

(By Sri SM Dayal, Advocate)

..... Applicants

Versus

1. Union of India through
General Manager,
Central Railway, Bombay V.T.

2. Divisional Railway Manager,
Central Railway, Jhansi.

(By Sri Prashant Mathur, Advocate)

..... Respondents

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O R D E R

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

Through this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed an order dated 17-1-1992, by which the disciplinary authority imposed the penalty of removal from service on the applicant. He has prayed that the said order be quashed and the respondents be directed to re-instate him and to pay him backwages from July, 1988 to 17-1-1992.

2. The case set out by the applicant is that he was appointed as a Safaiwala under the Station Supdt. at Jhansi on 27-5-1985. He was taken ill and admitted to the Railway Hospital on 21-3-1987 and his illness was diagnosed as Jaundice. As he was living alone in Jhansi and was not receiving proper treatment in the Railway Hospital his relations took him away to his home town Dabra in U.P. for treatment and a telegram was sent to the Railway Authorities, Jhansi for medical leave. Thereafter, he remained under treatment of Dr. T.P. Saxena till 8-6-1988, when he was declared fit. He reported to the Railway Hospital on 8-6-1988 and was kept under observation for 15 days whereafter he was declared fit to resume duty. It is stated that on 18-7-1988 the Assistant Personnel Officer, Jhansi, directed that he be taken back on duty but this was not done. Instead, he was served with a charge memo dated 9-8-1988.

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It is alleged that action on this charge sheet was kept pending till 28-7-1989 when another communication was received from the office of the DRM Jhansi indicating that the Inquiry Officer ~~appointed~~ earlier has been changed and directing the applicant to be present on the date fixed. The applicant is stated to have made several representations to the Inquiry Officer to furnish him relevant papers including specific charge so that he could prepare his defence. But instead, he only received communication from the Inquiry Officer directing him to appear alongwith his defence counsel. The inquiry was completed in August, 1990 and a report of the inquiry was sent to the office of the DRM holding that the applicant had not completed formalities regarding grant of permission for obtaining private Doctor's treatment nor had he obtained the permission of the competent authority before leaving his Headquarters. Thereafter, it is alleged, no action was taken by the disciplinary authority and the applicant submitted several representations including a registered notice dated 28-9-1991. Finally, the impugned order dated 17-1-1992 was issued removing the applicant from service. The applicant claims to have filed an appeal against the said order but it is alleged that till date neither the same has been acknowledged nor any order has been passed by the Appellate Authority. Hence, this application for the relief aforementioned.

3. The applicant's case is that he should have been first taken back on duty and, if required, placed under

suspension before initiating the disciplinary action. Thus, since July, 1988, he has been punished by the Railway Authorities even before he was served with a charge sheet by not allowing him to join his duties in July, 1988 when he was declared fit to ~~assume~~ his duties. He has also taken a plea that a penalty of removal could not have been imposed only for procedural lapse, ^{even} if it was committed by him.

4. The respondents have contested the case by filing a written reply in which it has been stated that after issuance of charge sheet on 9-8-1988, one Sri PK Tewari was appointed as Inquiry Officer but subsequently, one Sri RS Verma, was appointed as the Inquiry Officer by an order dated 28-7-1989. The ^{found} allegations against the applicant were ~~even~~ to have been established in the proceedings. The applicant was given a copy of the inquiry report to submit his defence and thereafter the disciplinary authority, after considering the entire material and evidence on record, imposed the penalty of removal from service by the impugned order dated 17-1-1992. It has been alleged that an appeal from this order should have been submitted within 45 days from the date of communication of the same, but the applicant did not prefer any appeal and as such the present application is not maintainable, as the applicant had not exhausted the statutory remedy available to him. The plea of limitation has also been taken. The case of the respondent is that the applicant had remained unauthorisedly absent w.e.f 21-3-1987 to

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13-7-1988 as per their records and he has not sent any intimation in this regard to the competent authority. It has been admitted that the applicant had reported sick on 21-3-1987 and submitted a Medical Certificate G-448261 to the Supervisor but on the very date he had also produced a certificate of private Doctor and also without informing either the Medical Supdt. or the Station Supdt. Central Railway Jhansi. Thus, even though he reported sick in the Railway Hospital initially, he remained under treatment of private Doctor at Gwalior for many months without completing the formalities or permission to leave the station. It has further been admitted that the applicant had reported in the office of the Station Supdt. Jhansi on 17-7-1988 alongwith a certificate issued by the Chief Medical Supdt, Jhansi. It is, however, their contention that the applicant actually ~~was~~ reported for duty on 20-7-1988 and he worked till 8-8-1988. Thereafter, he was present in various spells till 7-11-1988 with absence/leave in between and since 8-11-1988, he had been absenting continuously.

5. The applicant has filed a rejoinder affidavit in which he has reiterated his contentions in the OA. He has also averred that he had been giving intimations from time to time regarding his treatment in his home town Dabra. He has also stated that on his reporting to resume duty, though he used to report for duty regularly, he was marked absent and till date no salary has been paid to the applicant nor any allowance has been paid to him. He has also pointed out that the respondents have

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not offered any explanation for the delay in finalising the disciplinary proceedings, which were initiated in 1988 and were brought to a conclusion almost five years later in 1992, during which period he was neither allotted any work nor was placed under suspension.

6. We heard learned counsel for both the parties and also perused the record carefully.

7. The respondents have not disputed the fact that the applicant was taken ill and reported sick in the Railway Hospital on 21-3-1987. They have also not disputed that the applicant was suffering from jaundice. There is no doubt that the applicant thereafter left the station and according to him, he was receiving treatment at his home town since he was alone at his work place and was not likely to receive proper treatment. The applicants claim that he had been sending intimations from time to time but this has been denied by the respondents. The fact, however, remains that the respondents were aware of the fact that the applicant was suffering from a disease like jaundice, which does take a long time to recover from. In such a situation, even if the applicant did not send any intimation from his home town, and apply for leave, he has been guilty of procedural lapse as has been the findings of the Inquiry Officer. For such a misconduct, the penalty of removal would appear to be unduly harsh.

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8. It is settled law that the Courts/Tribunals shall not normally interfere in any disciplinary action on the ground that the penalty imposed is not commensurate with

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the gravity of the misconduct. At the same time, the Courts/Tribunals may interfere if the penalty imposed is so disproportionate to the gravity of the charges that such penalty would ipso facto indicate that the action of the disciplinary authority is capricious and arbitrary.

We have, however, noticed that there is no appellate order in this case. In fact, there is a ~~doubt~~ ^{dispute} ~~on~~ ^{fact} as to whether the applicant submitted an appeal or not.

We, however, see no reason to disbelieve the contention of the applicant that he did file an appeal, a copy of which is annexed as Annexure-A-12. At this stage, we are of the view that the cause of justice will be served by giving a direction to the appellate authority to consider the aforesaid appeal on merit and in the light of the observations made by us, and to dispose of the same by a reasoned and speaking order.

9. We have noted that there is no clarification as to what happened to the applicant when he reported back for duty in July 1988 till the order of removal was passed. The applicant contends that during the entire period he was not taken back on duty and, ~~therefore~~, neither given any salary nor any subsistence allowance. The respondents, on the other hand contend that he was on duty from time to time with absence/leave in between and that he had been absenting continuously from 8-11-1988. We leave this matter also to the Appellate Authority to consider and to pass an appropriate order.

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9. In view of the foregoing, we are disposing of this OA with a direction to the appellate authority to consider the appeal dated 21-2-1992 on merit and in the light of the observations made in this order and to pass a reasoned and speaking order within a period of three months from the date of communication of this order. In case, the appellate authority imposes a penalty short of removal from service, and the applicant is reinstated after imposing of his lesser penalty, such authority shall also pass appropriate order regarding the intervening period ^{and salary/allowance payable from 21.3.1987}. The parties shall, however, bear their own costs.

L. M. Dube

Member (J)

W. L. Dube

Member (A)

Dube/