

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 978 of 2000

Allahabad this the 07th day of February, 2002

Hon'ble Mr. Rafiquddin, Member (J)

Hon'ble Mr. C.S.Chadha, Member (A)

Ishwar Das, aged about 48 years, Son of Shri Moti Lal, resident of Topkhana Bazar, Jhansi.

Applicant

By Advocate Shri R.K. Nigam

Versus

1. Union of India through General Manager, Central Railway, Mumbai CST.
2. Chief Workshop Manager, Sabari Dibba Marammat Karkhana, Central Railway, Bhopal.
3. Works Manager, Sabari Dibba Marammat Karkhana, Central Railway, Bhopal.

Respondents

By Advocate Shri Prashant Mathur

O R D E R (Oral)

By Mr. Rafiquddin, Member (J)

This O.A. has been filed by the applicant Ishwar Das for quashing the orders dated 08.08.00 (annexure A-1) and 26.11.94(annexure A-2), and has also sought direction to the respondents go grant him all consequential benefits, backwages, seniority and intervening promotions etc. By the said order

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dated 26.11.1994 the services of the applicant as Khalasi has been terminated and by the order dated 08.08.00 the appellate authority has rejected the appeal filed by the applicant against the punishment order.

2. The applicant while working as permanent Khalasi in Yardshop of Sabari Dibba Marammat Karkhana, Central Railway, Bhopal was served with a charge sheet (SF 5) dated 8.9.93 for alleged unauthorised absence during the period from 25.6.93 to 08.7.93, and 10.7.93, and further from 15.7.93 to 06.9.93 for allegedly violating the Railway Conduct Rules. During the departmental inquiry the applicant could not attend the inquiry proceedings. According to the applicant he sent a telegraph message on account of ~~xx~~ his sickness. The Inquiry Officer after considering the evidence on record, held charge levelled against the applicant proved. On the basis of inquiry report the disciplinary authority has passed the impugned order whereby the services of the applicant has been terminated w.e.f. 26.11.1994. The appeal filed by the applicant against this punishment order was also rejected by the revisional authority vide order dated 23.5.95. It appears that the applicant filed O.A.No. 716/95 challenging the aforesaid termination order as well as the appellate order before this Tribunal which was decided vide order dated 05.07.2000. The relevant part of the order is as under:-

"3. For the reasons stated above, the O.A. is allowed. The order dated 23.5.1995 (Annexure A-2) is set aside. The Appellate Authority is directed to restore the Appeal of the applicant to its original

number and decide the same in accordance with law by a reasoned order within a month from the date the certified copy of the order is filed.

4. It is further provided that the petitioner shall be given liberty to raise further pleas in respect of his Appeal as advised by his counsel."

3. Accordingly the applicant produced himself in person before the Chief Workshop Manager, Bhopal-respondent no.2 and submitted the copy of the aforesaid order alongwith his application dated 15.07.2000. The appellate authority after reconsidering the earlier appeal has, however, again rejected the same vide impugned order dated 08.08.-2000.

4. Now the applicant has again challenged the correctness and validity of the removal order as well as the appellate order mainly on the ground that the impugned order has been passed without any evidence on the record and has been passed in arbitrary manner.

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

6. Learned counsel for the respondents has contended on the basis of pleadings in the C.A. that the impugned orders have been passed on the basis of material available on the official record of D.A.R. file, and the applicant was sanctioned only one day leave for 14.7.93 with permission to leave Headquarter. It is admitted that the applicant sent a telegraph dated 19.07.93 for extending his leave, but the applicant was treated on unauthorised absence from..pg.4/-

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duty. It is admitted that fitness and sick certificates have been submitted by the applicant, but it is urged that the competent authority will not ipso facto entitle the applicant to claim the leave to be converted into medical leave. Particularly when the applicant did not inform about the same immediately when he reported sick with the concerned Doctor.

7. It may be stated at the outset that learned counsel for the applicant has not pointed out any procedural irregularity in conducting the inquiry against the applicant. It is, however, stated that it is a case of no evidence against the applicant because admittedly the leave to the applicant from 25.6.93 to 08.7.93 was duly sanctioned by the competent authority vide order dated 09.07.93 copy of the order has been annexed as annexure A-4. It is also not in dispute that the applicant has submitted application for medical leave for the period alongwith sick/fitness certificates of the Medical Officer of the Railways. It transpires from perusal of the order passed by the appellate authority that the appellate authority has observed that since the applicant did not inform the competent authority as per medical rules regarding sickness, this period cannot be regularised on medical leave. It is not specifically mentioned that the leave application of the applicant was rejected by the competent authority. It is, thus, clear that the period in question i.e. from 25.6.93 to 08.7.93,
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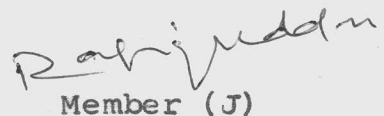
10.07.93, 15.7.93 to 06.09.93 cannot be treated as unauthorised absence. Thus, the findings recorded by the Inquiry Officer are perverse. Hence, the orders passed by the disciplinary authority based on such findings are liable to be quashed.

8. For the reasons stated above, we allow this O.A. and ^{quashed} ~~quash~~ the orders dated 26.11.1994 (annexure A-2) and 08.08.2000 (annexure A-1), and direct the respondents to reinstate the applicant on the post of Khalasi and grant him all consequential benefits.



Member (A)

/M.M. |



Member (J)