

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the 20<sup>th</sup> day of Nov 2009

**Original Application No. 1431 of 2006**

**Hon'ble Mr. Ashok S. Karamadi, Member (J)**  
**Hon'ble Mr. S.N. Shukla, Member (A)**

Suvansh Yadav, S/o Sri Ram Awad, R/o Village Nadauli, Post Salempur, Distt: Deoria.

...Applicant

By Adv: Shri S.C. Srivastava and Sri O.P. Srivastava

**VERSUS**

1. Union of India, through its Secretary, Ministry of Railways, New Delhi.
2. Additional Divisional Railway Manager/Divisional Railway Manager, North East Railway, Varanasi.
3. Senior Divisional Engineer-II, North East Railway, Varanasi.
4. Assistant Divisional Engineer, North East Railway, Mau.

...Respondents

By Adv: Shri P. Mathur

**O R D E R**

**Hon'ble Mr. S.N. Shukla, Member (A)**

This OA has been filed seeking the following reliefs: -

- i. an order or direction in the nature of certiorari quashing the orders dated 27/30-12-2005 passed by the respondent no. 4; order dt. 19.04.2006 passed by the respondent no. 3 and the order dated 7/9-6-2006 passed by the respondent no. 2.
- ii. an order or direction in the nature of mandamus commanding the respondent authorities to treat the petitioner in continuous service and pay his salary including the arrears of salary thereof;
- iii. any other order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case;
- iv. award cost of the application to the applicant."

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2. The present OA is being directed against the order of removal dated 27/30-12-2005, passed by respondent no. 4 by which the applicant was removed from service as well as against the order of appellate authority dated 19.4.2006 passed by the respondent no.

3. As also against the order dated 7/9.6.2006 passed by respondent no. 2 on the revision petition of the applicant.

3. The brief facts of the case are that the applicant while working on the post of Gangman, Gang No. 2 was served with the charge sheet dated 10.10.2003. In the article of charges the applicant is charged with absenting himself in unauthorized manner without any prior information and as such he is habitual absentee. As such he has violated para 3-1(i) (ii) and (iii) of Railways Conduct Code 1966. Schedule II deals with the charges that the applicant apart from absenting w.e.f. 06.09.2003 also absented w.e.f. 30.01.2000 to 30.12.2000 i.e. 260 days for which he was already issued SF-11. On subsequent occasion he was also issued SF-5 for the absence w.e.f. 27.01.2001 to 18.06.2001. Against said absence the applicant was placed in the minimum pay scale for 2 years which indicates that the applicant had been a habitual offender for unauthorized absence. The applicant replied the charge sheet on 18.10.2003.

4. Respondent No. 4 vide its order dated 08.07.2005 constituted a Board of enquiry in which one Shri A.A. Khan was appointed as an Enquiry Officer. During the course of inquiry the applicant presented himself for duty before the authorities

concerned who recommended vide his letter dated 27.07.2005 before the respondent No. 4 for being permitted to allow the petitioner to resume his duty and the applicant was required to explain and to give his statement in regard to the charges which was subscribed in the presence of applicant, defence advisor, Inquiry Officer on 13.08.2005. At the initial stage of inquiry i.e. 16.09.2005 the witnesses namely Durga, Sitaram Mani Tripathi were examined. The Inquiry Officer submitted his report on 14.11.2005 and submitted that since the applicant right from beginning from the enquiry has almost asserted this very fact that he has been affected by the disease of Tuberculosis, which can not be over looked, and the same may be required to be examined by the Medical expert. Respondent No. 4 served copy of inquiry report on the applicant on 26.11.2005 and required the applicant to submit his explanation. The applicant submitted his explanation on 09.12.2005. The applicant draw attention of the respondent No. 4 that although in the list of witnesses the names of two persons were mentioned but they were never produced in the course of inquiry as such the question of cross examination does not arise and in this manner one of the important witnesses namely Sri Durga, Gang Mate under whom the applicant was working, was not examined and applicant could not prove his innocence. Had it been so and if said Sri Durga would have been produced certainly he would have confirmed the fact that the applicant had always informed him the reasons of his absence.

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5. Respondent No. 4 without following proper procedure passed the impugned order of removal dated 27/30-12.2005 under Rule 6 (VII) (VIII) (IX) of Railway Servant Discipline and Appeal Rules 1968. The applicant filed appeal before respondent No. 3 on 19.01.2006 which was also rejected by respondent No. 3 vide order dated 19.04.2006. The applicant preferred Revision on 16.05.2006 which was also rejected by the respondent No. 2 vide order dated 07.06.2006. The strict procedure of inquiry was not complied with by the Inquiry Officer and as such the Witnesses mentioned in the charge sheet having not been produced the inquiry report cannot be said as a fair inquiry under law.

6. The Inquiry and the Disciplinary proceedings is also vitiated due to the reason that when the letter dated 08.07.2005 issued by the respondent No. 4 clearly indicates that a decision was taken to appoint the Board of Enquiry which according to the procedure laid down in part IV of Rules 1968 which says that on the Board of Inquiry there must be at least two members but in the present case despite making an order to constitute of Board of Enquiry to enquire the truthfulness of the charges, one man enquiry was constituted as such by not following the statutory requirement the entire disciplinary proceedings and vitiated resulting in the removal order as nonest.

7. The respondents have filed counter affidavit in which they have stated that the applicant was unauthorizedly absent from duty resulting into serious dislocation of work and compromised

on the safety of the tracks. Therefore, he was removed from service as a consequence of a major penalty charge sheet in which all allegations leveled against the applicant were found to be true. The allegation leveled against the applicant was enquired upon by a duly nominated enquiry officer in which on the basis of oral, documentary and circumstantial evidence, the charges leveled against the applicant were proved beyond doubt. The Section Engineer, PW Salempur infact was only required to furnish the details of unauthorized absence of the applicant which was to be considered by the inquiry officer in the proceedings as contemplated under the Rules.

8. It is also submitted that as Sri Durga Prasad had superannuated and Sri Sita Ram Tripathi was had expired and as such the statement of Sri Ganga Sagar, Gangman was produced as a Prosecution Witness had given his statement and confirmed the prosecution case the applicant cannot derive any benefit of the statement as mentioned. A bare perusal of the inquiry report would reveal that on the basis of the oral documentary and circumstantial evidence the charges leveled against the applicant were proved beyond doubt as admitted that no documentary evidence whatsoever was produced by the applicant for such unauthorized absence. The allegations against the applicant stood proved. It is only after furnishing the inquiry report and the explanation called in this regard the necessary punishment was imposed upon the applicant by the competent authority in which subsequent report dated 09.12.2005 was also considered by the

competent authority. The Inquiry Officer was fully conscious about the non availability of the Prosecution Witnesses for the reasons mentioned above and had permitted Sri Ganga Sagar to depose the persecution case.

9. A bare perusal of the nomination letter dated 08.07.2005 filed by the applicant as Annexure A-3 of Page-41 would itself reveal that the same is on the proforma and Sri A.A. Khan Section Engineer East, Mau Junction was appointed as an Inquiry Officer who after giving ample opportunity to the applicant had submitted a detailed report by proving the guilt against the applicant.

10. Heard learned counsel for the parties and perused the pleadings on record.

11. The crux of the matter is that the applicant remained absent without authorization/proper permission of the leave on various occasions for different durations. In past also he was punished for similar behavior. The stand of the applicant on the other hand is that he suffers from Tuberculosis which was the main reason for his repeated absence though he remained under treatment under private doctors whenever felt necessary by him as also kept his senior Supervisory Colleagues informed orally who were never called out to depose even though cited as prosecution witnesses. Though he admitted that on certain occasions he remained absent without proper authorization.

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12. Inquiry Officer after completing the inquiry held that the charges of unauthorized absence are proved. However, he also made a few observations such as that the complainant official has reported against the applicant out of prejudice (para 3 page 5 of Annexure 7 of compilation No. II). He also observed that the applicant has repeatedly taken a plea of being suffering from the same decease time and again, a fact which cannot be overlooked. Therefore, before any decision is taken in 'favour' of the employee it will be appropriate to get an Specialist Medical Examination done, though the final decision in this regard is of Disciplinary Authority (second last and last para at page 7).

13. The Disciplinary Authority for the reasons discussed in its order imposed a penalty of removal from service. The applicant filed an appeal before the Appellate Authority which was decided vide order dated 19.04.2006 (Annexure 12). Thereafter, applicant filed somewhat identical Revision Petition dated 16.05.2006 which was decided by the Reversionary Authority vide order dated 09.06.2006.

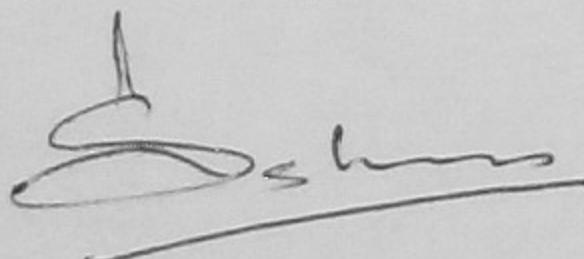
14. The appeal memo dated 19.01.2006 at Annexure 11 of compilation No. II raised certain specific issues such as not obtaining deposition of the two prosecution witnesses and that the inquiry report's observation to the effect that the report against the applicant was made on account of a bias 'amongst other' issues like his illness etc. The Appellate Authority in its order dated 19.04.2006 instead of dealing with the issues raised by the

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applicant / appellant through a speaking order as to whether or not the issues raised therein had any bearing on the final outcome of the inquiry or, whether if considered, whether nor not it will have any bearing on the order of the Appellate Authority. Not only that he made an observation regarding certain discrepancies in the dates of duty / absence of the applicant (Second para of page 2 of the Appellate Order) which appears to be in contradiction of the observations of the Inquiry Officer (Second para on internal page 5 of the of Annexure 7 to the OA).

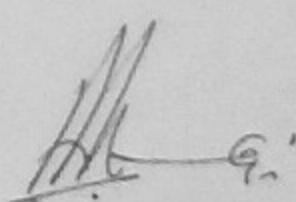
15. A perusal of the order of the Reversionary Authority shows that is extremely cryptic and gives an impression of having been made in a automated and casual manner.

16. In view of the our observations as above the order dated 19.04.2006 passed by the Appellate Authority and Revisional order dated 07.06.2006 respectively are quashed set aside and remitted back with directions to pass reasoned and speaking orders dealing with all the contentions raised by the applicant / appellant within a period of three months (within 06 weeks by the Appellate Authority and 06 weeks, thereafter, by the Revisional Authority) from the date of receipt of a copy of this order. The OA is treated to be allowed in part. No cost.



Member (A)

/pc/



Member (J)