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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 371 of 1986 ~~1986~~
~~XXXXXX~~ And
O.A.No. 373 of 1986

DATE OF DECISION 25/08/1987

Gulab Velji
Bhanabhai Chhaganbhai Patel
_____ Petitioner

J.M. Jadav
_____ Advocate for the Petitioner(s)

Versus

The G.M. W.Rly, Bombay & Ors. _____ Respondent

R.M. Vin _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H TRIVEDI : VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI : JUDICIAL MEMBER

J U D G M E N T

(6)

OA/371/86

And

OA/373/86

25/08/1987

Per : Hon'ble Mr P. H. Trivedi : Vice Chairman

The principal facts in these cases are similar and involve the same points for decision. For this reason we have dealt with them in a common judgment.

2. In each case the petitioner has remained absent unauthorisedly and disciplinary proceedings have been drawn-up against him and thereafter he has been removed from service. Against this order the petitioner has appealed and the orders of the disciplinary authority have been upheld. The petitioner in each case had filed review applications which have been rejected and made representations for mercy which also have been rejected. In OA/371/86 the petitioner Gulab Velji, Gangman No.7 has taken the plea that he had to attend to his daughter who was mentally unbalanced. In OA/373/86 the petitioner B.C. Patel, Gangman has taken the plea that he was suffering from liver trouble and was under Ayurvedic treatment. Both petitioners claim that their absence should be adjusted against leave due to them and that the punishment of removal from service is too harsh and having regard to the circumstances of the case and the fact that they are having dependents the punishment should be set aside and they should be treated as having been in service and be paid all the back wages. The petitioners have relied upon Rule 2014 R II and Rule 2116 R II of Railway Establishment Manual. The petitioners have also cited Supreme Court's Judgment SC AIR 1982 854 (Robert D'Souza Case) and GLH 1985 1220.

3. The respondents' case is that fullest opportunity has been given to the petitioner to present his case before the disciplinary authority and the appellate authority and their representations have been also considered in review. The respondents also contend that this Tribunal cannot sit as an appellate authority over the decision of the respondents authorities. The respondents also state that by asking for reduction of punishment on the ground of mercy the petitioners have admitted that they were in fault.

4. Since it is admitted that disciplinary proceedings were drawn-up against the petitioner and the punishment has been awarded as a result of an inquiry and that appeal against the orders were also considered by the appellate authority, the question of not observing the requirements under Article 311 (2) does not arise. The only question is xxxxxxxx the contention of the petitioner that ^{he} is entitled to treat his period of absence as on duty under the Railway Establishment Manual. The relevant part of the rules cited by the petitioners is as follows :-

"Termination of service of Railway servants as a result of continued absence in terms of Note (2) under Exception H of Rule 732 - RI or under Rule 2014 (FR-18) R II.

- (1) As per rule 2014 (2)/F-18-R-II a Railway servant who does not resume duty after remaining on leave for a continuous period of five years or after expiry of his leave remains absent from duty otherwise than a foreign service or on account of suspension for any period which, together with the leave granted to him exceeds five years, shall be deemed to have resigned and shall accordingly cease to be in Railway service. There is ^a further provision in this regard in the case of temporary railway servants in note (2) under exception II to Rule 732-RI.
- (2) The validity of Rule 2014(FR-18) R-II in so far as it applies to cases of permanent railway servants has been considered by the High Court of Orissa vis-a-vis the provision of Article 311 of the Constitution in a case, where the services of a permanent railway employee were terminated after an absence over five years. It was held by the court that the declaration under Rule ²⁰¹⁴ R-II that a railway servant ceases to be in government employee if he continue to absent himself from duty for more than five years, in essence, amounts to removal of the employee. Further it has been held that the mandatory provision of Article

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311 (2) of the constitution cannot be dispensed with in such cases and as the employee was given no reasonable opportunity of showing cause against the action proposed his removal from service was held to be illegal.

3. The Railway Board have considered the matter in consultation with the Ministries of Law, Finance and Home Affairs and have decided that so far as permanent railway servants are concerned there cannot be any automatic termination of service in the event of the absence from duty exceeding the specified limit and if removal by way of punishment for overstaying the leave is contemplated, an opportunity as required under Article 311(2) of the Constitution should be given to the person whose services are proposed to be terminated.

4. In the case of a temporary railway servant however, termination of services as provided under the rules does not operate as forfeiture of his right to hold the post for he has no such right. Consequently, in the case of temporary railway servants the existing provisions of the rules shall continue to be operative."

5. The respondents have stated that the petitioner in OA/371/86 remained absent for about 155 days and in OA/373/86 the petitioner was absent for 38 days in 1982 and 150 days in 1983. The rules cited by the petitioner do not help his case and are not relevant. Rule 2014 R II does not apply because in this case the petitioner is not on leave for a continuous period of five years or having been on leave after its expiry has ^{not} remained on duty in which case the President is given powers to remove from service on ^{adopting} the procedure laid down in the Rules. It has been admitted by the petitioner that he has been removed from service only after following the procedure indicated in the D & A Rules. Rule 2116 R II only states that simple termination after an absence of five years in the case of the permanent railway employee will not do and

that the mandatory provisions of Article 311 (2) cannot be dispensed with. In these cases as proceedings have been taken up against the petitioner, charges framed, his defence considered and the disciplinary authority having passed orders thereon against which appeal has been filed and disposed of, this requirement has been met and this rule has not been breached in any way. So far as the judgments cited are concerned also we do not find any ground to give relief to the petitioner. The petitioners have been absent for extended periods and even if the circumstances for which they remained absent might have involved genuine hardship to them, they should have continued their absence only after obtaining necessary permission. Had it been very short period of absence, their plea that all the circumstances warranted their anticipatory approval might have sounded bona fide and genuine but in this case the period of absence is too long to allow the petitioner the benefits of such an approach. We cannot support the contention of the petitioner that the impugned orders are xxxxxx invalid and that the petitioners should be allowed the relief in terms of the back-wages.

6. We hold that the impugned orders are valid and proper and that the respondents have been given every opportunity to the petitioner ~~to the petitioner~~ to represent his case. However, on humanitarian considerations it would be perfectly in order for the respondents to consider giving the petitioners fresh appointments and even allow them the benefits of causing no break in service protecting their past service for the purpose of retirement benefits but there is no justification to entertain any plea for payment of past dues for the period of unauthorised absence.

7. Subject to this observation, the petition fails.

Parties to bear their own costs.

Sd/-

(P.H. TRIVEDI)
VICE CHAIRMAN.

Sd/-

(P.M. JOSHI)
JUDICIAL MEMBER