

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXX XXXX XXXX~~O.A. No. 647
T.A. No.

1987

DATE OF DECISION 10.03.89

Laxman B. Wagh _____ Petitioner

Shri V.S. Mehta _____ Advocate for the Petitioner(s)

Versus

Union of India & Ors. _____ Respondent

Shri B.R. Kyada _____ Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Laxman B. Wagh,
Head Travelling Ticket Examiner,
Office of the Chief Ticket Inspector,
(Meter Gauge), Ahmedabad.
Western Railway.

.....Petitioner

(Advocate : Shri V.S. Mehta)

Versus

1. Union of India,
Owning Western Railway,
through General Manager,
Western Railway.
2. Divisional Railway Manager,
Western Railway,
Rajkot Division.
3. Area Superintendent,
Mehsana,
Western Railway.

....Respondents

(Advocate : Shri B.R. Kyada)

OA/647/87

Coram : Hon'ble Mr. P.M. Joshi : Judicial Member

10/3/1989

O R A L - O R D E R

Per : Hon'ble Mr.P.M. Joshi : Judicial Member

The petitioner Shri Laxman B. Wagh, holding the post of "Head Travelling Ticket Examiner", in the office of the Chief Ticket Inspector (Meter Gauge), Ahmedabad, Western Railway, has filed this application, on 7/12/1987, under Section 19 of the Administrative Tribunals Act, 1985. He has challenged the validity of the order dated 23/5/1987, imposing the penalty of "Stoppage of one set of Pre-passes" passed by the Disciplinary Authority- "Area Superintendent," Western Railway, Mehsana. According to the case set up by the

petitioner the impugned order is illegal, as he has been given double punishment for a single act of misconduct. It is alleged that the said order is arbitrary and discriminatory, as it is passed on wrong assumption and with a bias. He has therefore, prayed that the impugned order be quashed and set aside and the respondents be directed to treat the period from 25/12/1986 to 30/12/1986, as the period of Earned Leave, or Privilege Leave.

2. The respondents-Railway Administration, has resisted the petitioner's application and denied the assertions and allegations made against them. According to them when the petitioner remained absent without authority, he can not claim the wages for the said period. It is further submitted that the impugned order does not suffer from any infirmity or procedural illegalities and hence the petitioner is not entitled to the reliefs as prayed for.

3. When the matter came up for hearing, Mr.V.S. Mehta and Mr.B.R. Kyada the learned counsel for the petitioner and the respondents respectively are heard. The materials placed on record are also perused and considered. During the course of his arguments Mr. V.S.Mehta the learned counsel for the petitioner has raised three-fold contentions namely : (i) The impugned order results in double punishment (ii) The impugned order is the result of the bias and (iii) The authorities have committed an error in not sanctioning the leave as prayed for. In support of his arguments he has relied on the case of Jyotish Chandra Choudhury Versus Division Medical Officer, decided by the Division Bench

of Gauhati-HC(1984-LAB-IC-102). With regard to the petitioner's request for sanctioning leave Mr.V.S.Mehta, has pressed in service the provisions contained in Rule 2106 of Indian Railway Establishment Code, which reads as under:

2106. (F.R.67). - "Leave cannot be claimed as of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it."

4. At the out set it may be stated that the fact that the petitioner remained absent during the period 22/12/1986 to 30/12/1986 is not in dispute. More over, the fact that he was informed to attend the departmental enquiry at ADI on 28/12/1986 at 11 hours, while he was working as TTE, ADI, under letter dated 18/12/1986, is not controverted. It was alleged against the petitioner that he ~~was~~ avoided to attend DAR inquiry and absented himself during the aforesaid period even though leave was not sanctioned by the CPI-ADI.

5. The disciplinary authority decided to proceed under Rule 11 of Railway Servants (Discipline and Appeal Rules 1968), and served the petitioner with a memorandum (dated 3/3/1987) of charge for imposing a minor penalty. The petitioner explained his stand under his letter dated 18.3.1987.

6. It is pertinent to note that the petitioner seems to have materially improved upon his version with regard to his application for leave. The petitioner, under his letter dated 18/3/1987 (Annexure A-II), has stated that as he was required to attend to his Father-in-law, he had conveyed the message to CTI, ADI, MG on phone and application was also given

to him. The petitioner however, in this application came out with a version that as he was compelled to go on leave to Ujjain, he had approached his Superior - C.T. Inspector, (Meter Gauge), Ahmedabad on phone. But as he rejected his request, he rushed to Ahmedabad on the same day and went to the office of the said C.T.I. but as his office was closed already by that time, he put in through the doors of the office, the application for 7 days leave. No copy of such application is forth coming. However, the petitioner in his letter dated 18/6/1987 addressed to DRM, Rajkot, he has come out with the version that when he contacted the C.T.I. for 7 days leave, he refused his request saying that he is not having staff to man the "sleeper coaches". He has further stated that on the same day he had personally referred to ARS Mehsana for sanctioning his leave. Thus in view of this inconsistent and contradictory reasons assigned by the petitioner, it cannot be said that the disciplinary authority had committed any error in not accepting the defence raised by the petitioner, in reply to the show cause notice served upon him.

7. The fact that the petitioner's absence has not been paid for the relevant period, it cannot be said that the impugned order results in double punishment. In the case of Jyotish Chandra Chodhury (supra), it is significant to note that unauthorised leave was regularised as leave without pay, and by way of punishment, employee was debarred from availing of transfer passes and transfer allowances as per sub-rule (2) of Rule 1707, North Eastern Frontier Railway Discipline and Appeal Rules. Subsequently, the petitioner was removed from the service. Thus, in the light of the said circumstances, it was held that the impugned order of dismissal of employee amounted to double punishment. Obviously,

the said case is quite distinguishable and in the circumstances of the instant case, the ratio of the said case is not applicable to the petitioner. Even the provisions of Rule 2106 relied upon by the petitioner do not help the petitioner. Admittedly, the petitioner was apprised by his superior officer that his request for leave cannot be sanctioned as he had no staff to man the 'sleeper coaches'. It should be borne in mind that leave is after all a privilege and not a matter of right. The authority is empowered to grant leave, refuse or revoke when the exigency of the public service so required. Thus, we cannot be either substitute or sit over his judgment in absence of any amalafide.

8. Nothing is alleged against the C.T.I. or no material is shown to prove bias on the part of the disciplinary authority imposing the penalty. The finding arrived at by disciplinary authority do not suffer from any infirmity. Apparently when there have been no procedural error, there are no valid grounds to interfere with the impugned order.

In this view of the matter, the application is devoid of merits whatsoever and accordingly the same is dismissed with no order as to costs.

(P.D.Joshi)
Judicial Member