

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 AHMEDABAD BENCH
 XOEXXXXXXOXXXXX

O.A. No. 482 OF 1988.

DATE OF DECISION 4-4-1990

Shri Anil Kumar D. Sharma Petitioner

Shri K.K. Shah Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. A.V. HARIDASAN : JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
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? Yes

Shri Anil Kumar D. Sharma,
Divisional Office,
Western Railway,
BARODA.

1988
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... Applicant

(Advocate : Shri K.K.Shah)

Versus

1. General Manager,
Western Railway,
Churchgate,
BOMBAY - 400 020.
2. Divisional Railway Manager,
Divisional Office,
Western Railway,
BARODA.
3. Chief Operating Suptd.,
Western Railway,
Churchgate,
BOMBAY - 400 020.

... Respondents

(Advocate : Shri N.S. Shevde)

JUDGMENT

O.A. No. 482 OF 1988.

Date :

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

Cases referred :

- (1) 1985 (3) S.C.C. P. 398
- (2) U.O.I. v/s. Kanaiyalal K. (Unreported judgment)
referred in Babusingh's case Judgment of High Court of
M.P.
- (3) Ramchandra Vs. Union of India & Others
(1988) (3) S.C.C. P. 103)
- (4) AIR 1985 P. 398, P. 500 & 501,
Union of India and Others Vs. Tulsiram Patel
- (5) H.C. Goel, (equivalent to 1964 AIR SC 864)
Mr.E. Bashyan (1988 (2) S.C.C. P. 196)
- (6) Premnath Sharma Vs. Union of India and Others,
(1988 (6) ATC P. 904)

(7) Satyavir Singh Vs. Union of India and Others,

AIR 1986 S.C. P.555

(8) 1974 225 P. 772.

(equivalent to 1974 (4) S.C.C. Page. 37).

In this original application No. 482/88 the important relevant facts and law applicable are analogous. The petitioner like several others has run through the course of order of dismissal appeal, review inquiry and confirmation of the order of dismissal on account of absence without Railway Doctor's Certificate during the period of the strike in Baroda area in which special emergency measures by which leave on medical certificate of Non-Railway Doctors was banned by the special instructions. In a batch of similar cases in which the petitioners had run through the gauntlet of similar inquiries, appeals etc. We had held that the petitioners in several cases were wrongly dismissed and that it was not established that they had conspired for bringing about the dislocation of the railway and that mere absence on duty without a certificate of the Railway Doctor for a day or two did not call for the extreme penalty of dismissal which has found to be harsh and disproportionate to their guilt.

2. In those cases also the plea of the discriminatory treatment has been taken and it was observed that no logical basis for distinguishing the cases of those who were leniently dealt with from those of the petitioner was discernible. This observation applies to the plea of the petitioners in these cases also.

3. The learned advocate for the petitioner was asked whether there was any material circumstances or point of law distinguishing these cases from those which were earlier decided by the Ahmedabad Bench in ^{its} judgment dated 21-6-1988 etc. The learned advocate for the respondents merely relied upon the fact of the Jabalpur Bench of this Tribunal, which by

its judgment in O.A./421/87 Mehboobkhan Vs. Union of India and another and several other cases had not agreed with this Bench's views in respect of ban on the leave on medical ground by Doctors other than the Railway Doctor, on the issue of the orders withdrawing that facility. We reproduce the observations of the Jabalpur Bench in the case on which the learned advocate for the respondent relies.

"In the circumstances of the cases before us, we do not however entirely agree with the decision of the Ahmedabad Bench on this aspect of the matter. Consequent to the withdrawal of such facility by the Railway Administration it was incumbent on the applicants to furnish medical certificates only from the authorised Government doctors of Railway hospital etc. In the absence of such certificate, the absence from duty of the applicants whether it be for one day or more will be deemed to be unauthorised. Moreover, it is not very credible that such a large number of railway employees like the applicants should be sick or indisposed at the same time almost simultaneously.

Therefore, we hold that the charge of unauthorised absence from duty against the applicants stands established."

4. The order of dismissal states that the petitioner was absent on duty from 29-1-1981. In the order dated 2-6-1988, the reviewing authority has stated that it was not established that he was absent on 29-1-1981 and in findings of the inquiry by the Board of Inquiry against Col. 4 it is held that the relevant document ^{shows} ~~saw~~ that the petitioner had worked on 29-1-1981 upto 13-10 hrs. and that contention is accepted. The petitioner states that he is entitled to rest for 30 hrs. and for this period his absence cannot be regarded as absence without leave. The petitioner has challenged the genuiness of the statement showing the position of calls and has stated that no register was being

maintained and at best their entries were made subsequently.

In view of the findings that the petitioner was present on 29-1-1981 the ground of dismissal viz., his absence ^{from} on that date is not established, the facts.

5. The main challenge of the respondent arises from the different points of view that the Jabalpur Bench has expressed regarding the interpretation of the orders withdrawing the facility. This point therefore, needs some examination. Para 535 dealing with Sick Certificate of the Indian Railway Medical Manual which has the force of law is as below : -

535. Sick Certificate.---(1)

When a Railway employee, who is residing within the jurisdiction of a Railway doctor is unable to attend duty by reason of sickness, he must produce, within 48 hours, a sick certificate from the competent Railway doctor in the prescribed form as given in Annexure X to this Chapter.

(2) Should a Railway employee, residing within the jurisdiction of a Railway doctor, desire to be attended by a non-railway medical attendant of his own choice, it is not incumbent on him to place himself under the treatment of the Railway doctor. It is, however, essential that if leave of absence is required on medical certificate, a request for such leave should be supported by a sick certificate from the Railway doctor.

(4) When a Railway employee residing outside the jurisdiction of a Railway doctor requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. Such a certificate should be, as nearly as possible, in the prescribed form as given in Annexure X, and should state the nature of the illness and the period for which the Railway employee is

likely to be unable to perform his duties.

The competent authority may, at its discretion, accept the certificate or, in cases where it has reasons to suspect the bona fides, refer the case to the Divisional Medical Officer for advice or investigation. The medical certificates from registered private practitioners produced by Railway employees in support of their applications for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications.

On 6-1-1972, after recounting the various instructions earlier issued the Railway Board instructed as follows :

"4. After having considered the replies received from Railway Administrations, the Rly. Board have decided that certificates from registered private medical practitioners for grant of leave on medical grounds may normally be accepted under provisions made above. Having regard to local circumstances, to prevent misuse, the railway administrations may, however, withdraw this privilege by special notification to the staff for specified periods. The authority competent to take action in these circumstances shall not be lower than the Divisional Superintendent."

On 17-11-1972 the Board circulated its earlier letter dated 28-9-1972 in which it was decided that the facility be withdrawn during specific periods or when mass sick reporting was contemplated. The relevant ^{for extra} abstract of this instructions is reproduced below :

"2. In para 4 of the above letter, it has been provided that with a view to prevent misuse, the Rly. Administrations may withdraw the privilege of acceptance of medical certificates from registered medical practitioner for grant of leave, by special notification to the staff for specified periods. The

Board have considered the matter further and have decided that the Divisional Supdts. must issue notification regularly during summer (1st April to 30th June) and Diwali (1st October to 15th November) as also when mass sick reporting is contemplated by staff of any department."

The instructions elevated by the respondents to the status of notification dated 27-1-1981 reproduced below.

The respondents' reply is to be seen in the light of the powers conferred by earlier instructions referred to in it.

"All Subordinates BRC Division
C/-ARS - ADIW M PRTN

Preivilage of accepting of Medical Certificates from Registered Private Medical Practitioners for grant of leave on Medical ground to all the staff is hereby withdrawn with immediate effect till further orders AAA Also powers to grant leave to staff is withdrawn from Subordinates with immediate effect AAA In case of emergency leave can be granted with the prior approval of the Branch Officers AAA."

6. There is no doubt that the Railway Board has power to restrict or withdraw the facility of grant of leave on medical certificates. However, it is obvious that such restrictions or withdrawal has to be considered within the ambit of the facility and in terms of the procedure to be adopted and the authority declared competent to withdraw or restrict the same. The thrust of the instructions in the Manual is clearly in recognition of the need for allowing room for Non-Railway Doctors giving certificates in certain circumstances being accepted by the Railway authorities. By instructions of 6-1-1972 the withdrawal of this privilege has been allowed but such withdrawal is in the context of local circumstances and has to be by special notification to the staff for specific periods. The authority competent to

take action in these circumstances is also specified to be not lower than the Divisional Superintendent. In other words, the authorities restricting or withdrawing the facility cannot ignore the fact that the powers to restrict or withdraw the facility carry stipulations regarding period, competence and procedure.

7. In the instructions dated 27-1-1981 which is merely the message addressed to subordinates two questions arise.

The respondents have not pleaded that these instructions were placed on a notice board or otherwise widely circulated or published and have treated any such instruction as notifications. In the circumstances of this case the duration of period when the strike was apprehended, it is obvious that the fact of this notification having been widely known could be challenged. Respondents have not stated which mode of publicity they had adopted but during the hearing merely stated that such a notification must have been widely known by the staff. In view of the careful wording of the instructions in which the notification is required to be separately published on each occasion this plea cannot be accepted without reservations. The Jabalpur Bench no doubt held that mere issue of such instructions amounted to issue of notification but we need to ask whether there was any plea in those cases raised before that Bench relating to the question whether such instructions can be regarded as Notification without proof of its being placed on the notice board for wide circulation. We do not find whether that Bench arrived at its conclusion with reference to such a plea. With great respect therefore, we must observe that the Jabalpur Bench's observation might have been made in the circumstances and in the facts which might not be identical with those in this case. In any case, the observations themselves make clear that the words of the judgment apply

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to the circumstances of that case. Learned advocate for the petitioner has stated that in the interpretation of a document by one Bench is not bound by the views of another Bench in the meaning attributed to. For this reason and also for the reasons above we are not inclined to consider that any change is warranted in the view taken in the judgments of the Ahmedabad Bench earlier referred to. We therefore, hold that the instructions dated 27-1-1981 cannot be regarded as having been notified as required under the instructions of the Railway Board empowering Divisional Superintendents to issue them.

8. As observed earlier all other important and relevant facts of this case and the law applicable to these cases been dealt with in the judgment of Ahmedabad Bench earlier referred to and these cases are governed by them.

9. In the result the petition has merit. The impugned order is quashed and set aside. The petitioner be reinstated and be paid his back-wages within a period of four months from the date of this order. No order as to costs.


(A.V. Haridasan)
Judicial Member


(P.H. Trivedi)
Vice Chairman