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CAT/J/13

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A.NO.** 250 OF 1991  
**TAX NO:**

**DATE OF DECISION** 7/6/99

Ishwar Karsanbhai Petitioner

Mr. P.K. Handa, Advocate for the Petitioner [s]  
Versus

Union of India & Ors. Respondent s

Mr. N.S. Shevde Advocate for the Respondent [s]

**CORAM**

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr. A.S. Sanghavi, Judicial Member.

**JUDGMENT**

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

(V)

Ishwar Karsanbhai  
50 years  
Garden Khalasi  
In the office of Campus  
Supervisor,  
Railway Staff College,  
Baroda.  
Residing at:  
Railway Quarter No.45 'C'  
Railway Staff College Campus,  
Vadodara. .... Applicant.

(Advocate: Mr.P.K. Handa)

VERSUS

1. Union of India,  
Secretary,  
Ministry of Railways,  
Notice to be served through  
Principal,  
Railway Staff College,  
Vadodara.
2. The Professor (PM)  
Railway Staff College,  
Vadodara 390 004. .... Respondents.

(Advocate: Mr.N.S.Shevde)

JUDGMENT

O.A.No. 250 OF 1991.

*10*

Date: 7/6/99

Per: Hon'ble Mr. V.Radhakrishnan, Admn. Member.

Heard Mr.P.K.Handa, learned counsel for the applicant and Mr.N.S.Shevde, learned counsel for the respondents.

2. The applicant was working as Garden Khalasi in Railway Staff College, Vadodara. He was issued a charge sheet for major penalty for unauthorised absence. According to the applicant, he was taking treatment under private doctor and he had submitted medical certificates to the authority and fitness certificate from Railway doctor. An enquiry was conducted. The applicant claims that he fallen sick and was unable to attend the enquiry. Ex party enquiry however, was conducted and penalty of removal from service issued. The applicant submitted an appeal which was also rejected. He claims that removal on account of sickness supported by medical certificate from private doctor is unjust and illegal and holding an enquiry when the applicant was sick was also not correct. He claims that enquiry officer fixed the date of enquiry knowing that the applicant was under sick list. He also claims that the applicant was not given opportunity for his defense and ex parte enquiry was conducted. He claims that the respondents should have been given in writing to the applicant that in case he failed turned up to the enquiry ex parte enquiry would be conducted. The applicant claims that he had given an application saying that he was under sick list and would attend the enquiry when he was fit to resume duty and he claims that reasonable opportunity was not given to him to defend his case. He also claims that the statement made by Campus Superintendent, Railway Staff College Vadodara has not been recorded or supplied to the applicant. He claims that enquiry officer has not conducted the enquiry properly. The question of unauthorised absence of the applicant has not been discussed by the enquiry officer hence a charge levelled against the applicant has not been proved. He claims that the disciplinary authority has not applied his mind similarly

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the appellate authority has also rejected the appeal without proper speaking orders.

3. The respondents have filed reply. They have claimed that no intimation was given by the applicant about his sickness under private doctor and no application for leave was sent by him. He did not obtain prior permission for remaining absent from duty and remained absent unauthorisedly. The period of sickness of the applicant was neither accepted by the Railway doctor nor by the competent authority. The applicant did not follow the rules for reporting sick under the certificate of private doctor. The have stated that distance between the applicant's quarter and the Railway dispensary is about 101 meters. The Railway doctor was available in the dispensary instead of taking treatment from Railway doctor who was close to his residence he did not avail of the facility. The private doctor had issued certificate dated 19.7.90. The applicant had produced fitness certificate dated 27.7.90, Annexure R-2 issued by the Railways. The Railway doctor clearly stated in his certificate that period from 20.2.90 to 27.7.90 was rejected vide SR 2/7. The competent authority also rejected the aforesaid period of the alleged sickness of the applicant and the said absence has been treated as unauthorised.

4. The enquiry was conducted and the applicant was given full opportunity to attend the same. The applicant did not avail of opportunities given to him and absented himself to the enquiry on the grounds of sickness and the applicant did not co-operate and remained absent during the enquiry. The enquiry officer had no alternative to proceed with the enquiry ex parte. It is stated that the applicant was given as many as eight chances to appear before the enquiry officer. The applicant chose not to avail of any of the opportunities. The dates of enquiry were fixed on different dates from

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10.7.90 to 25.10.90. The applicant had received the letter dated 4.7.90 fixing the enquiry on 10.7.90 but he did not appear on due date i.e., 10.7.90. The second letter was issued on 10.7.90 fixing the enquiry on 18.7.90 under the intimation from the applicant and the enquiry was adjourned. Third letter sent on 30.7.90 which was received by the applicant on the same day but still the applicant did not appear in the enquiry on 7/8.8.1990. He made a request for adjourning the enquiry to 20.8.90 which was acceded to. However, the applicant did not attend the enquiry and reported sick under private doctor from 21.8.70 to 7.9.90 without any intimation to the enquiry officer. The applicant again remained absent under private doctor treatment on 10.9.90. Letter issued by registered post fixing the enquiry dated 2.10.90 received back "addressee not found" even though the applicant is staying in the campus. Final letter was issued on 19.10.90 fixing the date of enquiry on 25.10.90 which was received by the applicant's wife. The applicant appeared before the enquiry officer date on that day and stated that he was unable to give any statement as he was under private treatment and the he may not be harrased otherwise he would take legal action through Court. Thus it is amply proved that the applicant did not co-operate with the enquiry. Hence the enquiry officer did not any other alternative to proceed with the enquiry ex parte in the facts and circumstances of the case.

5. The applicant has filed a rejoinder in which he has more or less reiterated his earlier allegations.

6. During the hrearing Mr.Handa, learned counsel for the applicant stated that the applicant was illiterate and a low paid Garden Khalasi and he was generally sick and could not attend the enquiry. The enquiry officer should have given him more proper opportunity to defend his case. He also mentioned that the punishment of removal from service is very harsh as the

applicant had completed more than 18 years of service and he is left without any retirement benefits. He also states that ex parte enquiry held without participation of the applicant violated principle of natural justice and could be quashed.

7. Mr. Shevde however stated that the applicant was given total number of chance to appear before the enquiry officer and he did not aware of any of the chance and he remained absent without participating an enquiry because of his non-cooperation. There were no alternative to proceed with the enquiry ex parte and punishment imposed by the disciplinary authority in accordance with the misconduct of the applicant and the disciplinary and appellate authority had examined his case and given their rulings. Therefore, there was nothing illegal to conduct an enquiry and there is no reason for the Tribunal to interfere with the finding of enquiry under such circumstance the O.A should be dismissed.

8. We have heard the learned counsel for both the parties and gone through the documents. The main issue is that the enquiry was conducted ex-parte but this has happened only due to the behaviour of the applicant not appearing before the enquiry officer. Even his conduct obtaining medical certificate from private doctor when the Railway dispensary is nearby proves that conduct was not above board. It is a fact that the applicant was given eight to nine opportunities to appear before enquiry but he did not appear before him and he did not co operate with enquiry officer who was forced to go ahead with the enquiry ex parte. In such circumstances we can not hold the ex parte enquiry as illegal. The law is well settled that once finding of facts, based on appreciation of evidence are recorded, the Tribunal in its jurisdiction may not normally interfere with those factual findings unless it finds recorded findings were based either on no evidence or the findings

*OR*

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were wholly perverse or legally untenable. Adequacy or inadequacy is not permitted to be canvassed before the Tribunal as the Tribunal does not sit as an appellate authority while exercising the power of judicial review. The Tribunal can not substitute its own conclusion with regard to the guilt of the delinquent for that of the departmental authorities. The judicial review is not concerned with the correctness of the finding of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at to proceedings which can not be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Taking into account the foregoing observations we are of the view that no case is made out for our interference in the matter. However, in case applicant wants to make a mercy appeal to the head of the department i.e., General Manager, Western Railway, he may be permitted to do so within a period of one month from the date of receipt of a copy of this order. It shall be considered and decided by the General Manager, Western Railway taking into account 18 years of service put by him and the fact that because of the penalty of removal he is at present not receiving any pension. Application accordingly dismissed. No costs.

*AS*

(A.S.Sanghavi)  
Member(J)

*VR*

(V.Radhakrishnan)  
Member(A)

Vtc.

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

- 8 -

CORRIGENDUM

O.A./250/91

(Judgment Dated 7/6/1999)

Ishwar Karsanbhai

... Petitioner

Vs.

U. of India & Ors.

... Respondents

The undersigned is directed to advise that in para  
8 of page No. 7 (Seven) <sup>of above Judgment</sup> the words- "General Manager, Western  
Railway" may be replaced by words- "Principal, Railway Staff  
College, Vadodara".

S. 2  
12/7/99

DEPUTY REGISTRAR (J)  
C.A.T.  
AHMEDABAD BENCH

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD**

- 8 -

**CORRIGENDUM**

**O.A./250/91**

**Judgment Dated 7/6/1999**

**Ishwar Karsanbhai**

**... Petitioner**

**Vs.**

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8 of page No. 7 (Seven) <sup>of above Judgment</sup>, the words- "General Manager, Western  
Railway" may be replaced by words- "Principal, Railway Staff  
College, Vadodara".

*Shri* 12/6/99  
**DEPUTY REGISTRAR (J)**  
**C.A.T.**  
**AHMEDABAD BENCH**

Note

It is notified that there is a typographical error in para 8 of page No.7 of our order in OA/250/91 dated 7.6.99 the words " General Manager, Western Railway " instead of "The Principal, Railway Staff College, Vadodara " The same may be replaced by words " Principal, Railway Staff College, Vadodara .

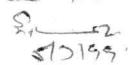
D.R(J) may issue necessary corrigendum accordingly.

  
(V. Radhakrishnan)

Member(A)

D.R.(J)

S.O. (J) copy no. II  
P. do the needful immediately.

  
5/7/99

Draft is put up for order (Flag A)

per  
9-7-99

  
D.R.(J)