

5
S
CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 450 OF 1992

Cuttack, this 12th day of April, 1999

Sri Nageswar Tiwary Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*

2. Whether it be circulated to all the Benches of the
Central Administrative Tribunal or not? *No*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

12.4.99

6
CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.450 OF 1992
Cuttack, this the 12th day of April, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Nageswar Tiwary,
aged about 55 years,
son of Sri Deonarayan Tiwari,
Asst. Station Master, Bamra,
Railway Quarter No.C 2/1,
C/o. SS EMB, PO-Bamra,
District-Sambalpur Applicant

Advocates for applicant - M/s J.K.Misra
N.C.Misra

Vrs.

1. Union of India,
represented through General Manager,
South Eastern Railway,
Calcutta, West Bengal.
2. Divisional Railway Manager,
Chakradharpur,
South Eastern Railway,
Dist.Singhbhum,
Bihar.
3. Senior Divisional Operating Superintendent,
Chakradharpur,
South Eastern Railway,
Dist.Singhbhum,
Bihar.
4. Divisional Operating Superintendent,
Chakradharpur,
South Eastern Railway,
Dist.Singhbhum, Bihar.
5. Sri P.V.K.Rao, Senior Divisional Transportation
Inspector, Jharsuguda, South Eastern Railway,
Dist-Sambalpur.

6. T.M.Mani,
Asst.Operating Superintendent,
South Eastern Railway,
Chakradharpur, Dist.Singhbhum,
Bihar Respondents

(3)

Advocates for respondents - M/s B.Pal
O.N.Ghosh

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 4.9.1991 (Annexure-10) removing him from service and the order dated 30.7.1992 (Annexure-13) rejecting his appeal. He has also prayed for his reinstatement in service with retrospective effect with back wages and full emoluments with interest. At this stage, it is necessary to note that at Annexure-13 the applicant has enclosed the forwarding letter dated 30.7.1992 of the appellate authority with which a speaking order containing six pages was enclosed. The applicant has not filed the speaking order and from Annexure-13 it does not appear that his appeal has been rejected.

2. Facts of this case, according to the applicant, are that from the year 1975 he was posted and was continuing as Assistant Station Master, Bamra Railway Station. On 26.11.1982 the applicant fell sick and submitted his sickness certificate obtained from the Doctor of the Railway Administration. It was found that he was suffering from Hypertension due to microcardiac infection and he was advised complete bed rest for six months. The sickness certificates granted by Dr.R.C.Prasad of Kalunga were obtained on 26.11.1982, 27.1.1983 and 1.1.1984 and these were sent to the departmental authority accordingly. In the

S. Jum.

8 (8)

chamber of Dr.R.C.Prasad, his son Dr.S.V.Prasad was also practising. The certificates obtained from Dr.S.V.Prasad on 1.8.1984, 1.8.1985 and 19.9.1985 were also sent to the Railway Administration in order to substantiate the fact of sickness of the applicant for which he was remaining absent without joining his duty. The Department drew up disciplinary proceedings and issued chargesheet in letter dated 11.6.1984 which was received by the applicant on 2.3.1985. In the chargesheet the allegation was that the applicant has committed serious misconduct and he has been unauthorisedly absent from duty from 26.11.1982. The applicant submitted his application dated 12.3.1985 for supplying him certain documents but this was not responded to. On 19.3.1985 the applicant received a further notice dated 16.3.1985 to face an enquiry on 25.3.1985. On the application of the petitioner, the enquiry was adjourned. Thereafter again on 4.4.1985 the applicant filed a petition (Annexure-1) asking for copy of certain documents. Without supplying the documents asked for the enquiry was fixed to 31.5.1985 and was adjourned to 15.6.1985. The applicant informed the authorities and the Inquiring Officer that he was sick and could not move, and the documents asked for have not been supplied to him. But the Department did not supply him those documents. The enquiry was held ex parte and the punishment was imposed on him in order dated 16.8.1985 to the effect that he has been found guilty of unauthorised absence from duty from 26.11.1982 and he was removed from service with effect from 4.9.1985. This order of removal from service was received by the applicant on

S. V. M.

9.9.1985. Challenging this order the applicant filed OA No. 89/86 which was disposed of in order dated 30.11.1987. The Tribunal set aside the order of removal from service at Annexure-9 of OA No.89/86, and the respondents were directed that the petitioner should be allowed to defend himself in an enquiry which should be started afresh. A direction was also issued that the petitioner would appear before the disciplinary authority, i.e., the Divisional Operating Superintendent, South Eastern Railway, Chakradharpur and renew his prayer for supply of copies of documents (as per Annexure-6) to effectively defend himself. The Divisional Operating Superintendent would decide the relevance of the documents and in case he finds the documents to be relevant, copies of those documents should be supplied to the petitioner by 10.1.1988. In case any of the documents are found to be irrelevant the disciplinary authority would be at liberty to reject the petition with a reasoned order. The petitioner should file his explanation within 15 days thereafter by 25.1.1988 and within seven days therefrom the disciplinary authority should decide as to whether an enquiry should be started or not. In case, an enquiry is proposed to be held, an Inquiring Officer should be appointed by 30.1.1988 and the entire disciplinary proceeding should be disposed of by passing final orders by 31.5.1988. The Tribunal also issued certain other directions regarding appearance before the Inquiring Officer. According to the above direction, the applicant appeared before the Divisional Operating Superintendent, Chakradharpur (respondent no.4) on 18.12.1987 and asked for supply

S. Jam.

of copies of documents. He filed a further representation on 30.12.1987 for supply of documents. On 8.1.1988 the Department asked the applicant to attend the office of Senior Divisional Operating Superintendent, Chakradharpur (respondent no. 3) to take copies of available documents. Accordingly, the applicant took copies of two documents on 9.1.1988, but the other three documents mentioned in Annexure-1 were not supplied to him without assigning any reason. The disciplinary authority also did not assign any reason for non-supply of the documents as directed in OA No.89/86. The applicant has stated that the Department should have supplied these three documents to him. Copies of applications dated 18.12.1987 and 30.12.1987 submitted by the applicant are at Annexures 2 and 3. At Annexure-4 is another representation of the applicant in which he asked for the remaining three documents and prayed for taking him back in service immediately. On 19.1.1988 the applicant submitted his reply along with photo copies of the medical certificates sent to the Department earlier with a prayer to treat the said application as Written Statement of defence. This application dated 19.1.1988 is at Annexure-5. The disciplinary authority appointed respondent no.5 as Inquiring Officer and the enquiry commenced on 10.2.1988. It is stated by the applicant that the Inquiring Officer did not examine the witnesses from the Department first. The applicant was first examined and he submitted that the copies of three relevant documents have not been supplied to him. He also stated that he has submitted the medical certificates on the basis of which he has

R.S.M.

(W)

been granted medical leave from 26.11.1982 to 25.5.1984 and his attendance was marked "sick". When he was marked "sick", there was no justification for the Department to mark his attendance as "absent" with effect from 26.5.1984. He also stated that during March 1985 under an emergency circumstance he was forced to take advice from Dr.H.C.Roy of Rourkela and the certificate granted by Dr.Roy was also submitted to the Department. All the medical certificates were submitted to Station Master, Bamra Railway Station. It is further submitted by the applicant that according to the Muster Roll of Bamra Railway Station, in the attendance-sheet the applicant was marked "sick" from 26.11.1982 to 25.5.1984. According to the applicant, this shows that his medical certificates have been received by the Department. On 10.2.1988 the evidence of the petitioner was closed. On 13.2.1988 the petitioner submitted a Defence Statement which is at Annexure-6. The stand taken by the petitioner from the beginning was amplified in the Statement of Defence. On 24.5.1988 the enquiry was conducted at Jharsuguda instead of Chakradharpur and one witness, Sri P.V.K.Rao, Sr.Divisional Transportation Inspector, Jharsuguda, was examined, who has been impleaded here as respondent no.5. It is alleged that respondent no.5 had mala fide intention to harass the applicant and that is why he gave evidence against the applicant on behalf of the Railway Administration. The applicant has further stated that in his evidence respondent no.5 has mentioned that the applicant continued to remain sick and after seven to eight months when the applicant did not resume his duty, respondent no.5

S.Jm.

reported the matter to respondent no.3 in detail. Respondent no.5 could not say under whose direction the applicant was marked "absent" from 26.5.1984 to 3.9.1985. It is further stated by the applicant that by 18.9.1985 the applicant completely recovered from his illness, but by that time the order of punishment removing him from service issued on 16.8.1985 was in force. After examination of respondent no.5 on 24.5.1988 respondent no.6 passed the final order holding the applicant guilty of unauthorised absence and on the basis of this enquiry report respondent no.4 passed the order of removal from service for the second time on 30.5.1988. Soon after receipt of the second removal order passed on 30.5.1988 the applicant moved the appellate authority in his letter dated 18.7.1988 which was rejected in the order dated 12.8.1988 by respondent no.3. Thereafter the applicant moved respondent no.2 on 5.10.1988 for review of his case, but no consideration was shown to him. The applicant thereupon moved the Tribunal in OA No. 107/89 for quashing the order of removal from service and the order of appellate authority rejecting his appeal and also for his reinstatement with retrospective effect. OA No.107/89 was disposed of in order dated 19.4.1991 in which the Tribunal, after noting the submissions of the learned counsels for both sides pointed out that the order of punishment was passed without supplying a copy of the enquiry report to the applicant. In view of this, the second order of removal from service as also the order of the appellate authority dated 12.8.1988 rejecting his appeal were quashed and the matter was remanded to the disciplinary authority to supply copy of the enquiry

S. Jom.

report and give an opportunity to the applicant to make his representation, if any, which was to be considered before passing appropriate orders. The Tribunal refrained from giving any decision on the various averments made by the parties lest the same would prejudice the case of the applicant before the disciplinary authority. The disciplinary authority was directed to consider the case afresh from the stage of supply of copy of the enquiry report. It was also directed that final orders should be passed within two months from the date of receipt of copy of the order dated 19.4.1991. On 17.6.1991 the applicant received a copy of the enquiry report and submitted his representation dated 3.7.1991 (Annexure-8) against the report of the Inquiring Officer. He also submitted another representation dated 16.7.1991 (Annexure-9) to take him back in service. On 4.9.1991 respondent no.4 passed the order of dismissal from service without hearing the applicant. This order is at Annexure-10. It is submitted that in this case for the third time in succession the order of dismissal was passed against the applicant. The applicant filed an appeal on 30.9.1991 at Annexure-11. But this was rejected in order dated 30.7.1992 at Annexure-13^{of}/which, as we have already mentioned, only the forwarding letter is there and not the speaking order of the appellate authority. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

S. Jam.

3. The respondents in their counter have submitted that the authority of the Tribunal in the case of departmental proceeding is akin to the power of the Hon'ble High Court in the matter of issuing a writ of certiorari and none of the

4
iA

conditions for issuing of a writ of certiorari being existent in the present case, the order of punishment cannot be quashed. The finding of the Inquiring Officer accepted by the disciplinary authority is based on materials on record and there is no illegality in issuing the order of punishment. None of the Rules governing the applicant have been infringed. The respondents have stated that the applicant was earlier working as Assistant Station Master, Bamra Railway Station. He remained absent from duty from 26.11.1982 without submitting any medical certificate. He also did not intimate his whereabouts to his controlling authority and as such his absence from duty was treated as unauthorised. The respondents thereupon initiated disciplinary proceeding against him. The respondents have mentioned about the first order of dismissal, the order of the Tribunal in OA No.89/86, the second order of removal from service in order dated 8.6.1988 and the order of the Tribunal in OA No.107/89. It is furtherstated that as per the direction of the Tribunal in OA 107/89 copy of the enquiry report was supplied to the applicant and after receiving his representation on 3.7.1991 the disciplinary authority again considered his case, held him guilty of unauthorised absence, and issued the punishment notice removing him from service which was acknowledged by the applicant on 13.9.1991 when the order of removal from service took effect. The respondents have denied that the applicant had submitted medical certificates in support of his illness from time to time, as alleged. They have stated that even though the applicant remained absent

S. Jam.

from 26.11.1982 he submitted a certificate for the first time on 20.3.1985 for the purpose of getting adjournment in proceeding against him. Though he alleged to be sick he never reported to the Railway Doctor at Jharsuguda nor was he available in his Railway quarter at any point of time during the relevant period. In view of this and in view of the report of Senior Divisional Transportation Inspector, it was found that the applicant remained absent unauthorisedly. It is also stated that as per the order of the Tribunal dated 30.11.1987 in OA No.89/86 documents were supplied to the applicant and he was given opportunity to defend his case. It is furtherstated that as the applicant had not submitted any medical certificates, those certificates could not have been supplied to him. It was also ascertained from the Assistant Divisional Medical Officer (Line),Jharsuguda, that the applicant was not in his sick list and therefore his absence from duty was deemed to be unauthorised from 26.11.1982. The respondents have stated that the submission of medical certificate on 20.3.1985 by the applicant cannot be considered a written statement of defence. It is also stated that the applicant never reported to Railway Doctor at Jharsuguda nor was he available in his Railway quarters when the Assistant Divisional Medical Officer,Jharsuguda along with Assistant Operating Superintendent, Chakradharpur visited his quarters. The respondents have stated that absence from duty from 26.11.1982 has been rightly taken to be unauthorised. The respondents have also stated that the appeal of the applicant was duly considered and rejected, and there is no illegality involved in the order of the disciplinary authority and that of the appellate authority. On the above grounds, the respondents have opposed the prayer of the applicant.

4. When this OA was called for hearing on 4.3.1999 the learned counsel for the petitioner was absent nor was any request made on his behalf seeking adjournment. In view of this, we have heard Shri B.Pal, the learned Senior Panel Counsel appearing for the respondents and have also perused the records. The applicant had earlier filed OA Nos.89/86 and 107/89 which have also been perused.

5. In the absence of the learned counsel for the petitioner, we have considered the grounds for relief urged by the applicant in his OA. Before considering these grounds, it is relevant to note that according to a series of decisions of the Hon'ble Supreme Court, the scope of interference by the Tribunal in the case of disciplinary proceedings is somewhat limited. In such cases the Tribunal does not act as the appellate authority and cannot substitute its judgment in place of the judgment of the disciplinary authority or the appellate authority. The Tribunal can interfere only if there has been violation of principles of natural justice and if the findings of the Inquiring Officer and the disciplinary authority are based on no evidence or based on such evidence that no reasonable person could come to the conclusion arrived at by the Inquiring Officer and the disciplinary authority. The grounds urged by the applicant will have to be considered in the context of the above well settled position of law.

6. The first point urged by the applicant is that notwithstanding the order dated 30.11.1987 of the Tribunal in OA No.89/86 the applicant was not supplied with the copies of the

three documents mentioned in his letter dated 4.4.1985 asking for copies of documents. The reason for non-supply of these three documents was not communicated to the applicant contrary to the direction of the Tribunal in their order dated 30.11.1987. The respondents have pointed out that in the letter asking for copies of documents in Annexure-1 the applicant had asked for five documents of which two documents have been given to him. The other three documents asked for are (1) copy of medical certificate submitted by the applicant on the basis of which he availed medical leave from 26.11.1982 to 24.6.1984; (2) document on the basis of which his attendance was marked "absent" instead of "sick" from 25.6.1984; and (3) his applications dated 26.6.1984 and 12.9.1984 for his sickness. The respondents have pointed out in their counter/ that their persistent stand is that the applicant never submitted any medical certificate nor any application for leave prior to submission of medical certificate on 20.3.1985 for the purpose of adjourning the disciplinary proceeding. As the medical certificates have not been submitted by him, as asked for under item no.1, the documents not being in existence or in the custody of the respondents, these could not be supplied to him. The same point has been made by the respondents with regard to the documents under item nos. 2 and 3 above. We also find from the report of the Inquiring Officer that the case of non-supply of these three documents has been dealt with by the inquiring officer and it has been noted that the petitioner did not submit these documents and therefore, the question of supplying him copies of

V.S.M.

these documents does not arise. The applicant has not produced any record in support of his contention that the medical certificates were submitted by him to the Station Master, Bamra Railway Station, as alleged by him. In view of this, we hold that the applicant has not submitted these documents to the respondents and therefore, this contention is rejected.

7. The second point raised by the applicant is that his contention in OA No.107/89 recorded by the Tribunal in their order dated 19.4.1991 should have been discussed by the disciplinary authority and the appellate authority. But this not having been done there is non-application of mind. The applicant in his representation, after getting the copy of the report of enquiry, has mentioned that the points urged by him in OA No.107/89 should be taken into consideration by the disciplinary authority, but these have not been taken note of. The applicant has mentioned that the inquiring officer started the enquiry with the examination of the applicant and not with any departmental witness and this has seriously jeopardised the interest of the applicant. The respondents have pointed out that even though the applicant received the chargesheet on 2.3.1985, he did not submit any explanation. In these circumstances, it cannot be said that the inquiring officer did anything wrong by examining the applicant at the first instance. Had the applicant admitted the charge, then there would not have been any need to proceed with the enquiry. By examining the applicant first, the inquiring officer merely gave him a chance to state his case and this cannot be said to have jeopardised his defence. It is also to be noted that the inquiring officer in a departmental proceeding is

S. Som.

not bound by the strict rules of evidence and court procedure, and this ground is, therefore, held to be without any merit and is rejected.

8. The next point urged is that the applicant having been marked "sick" in the Muster Roll from 26.11.1982 and as the administration itself has shown him "sick", it would be incorrect to treat his absence as unauthorised. This aspect has been gone into in greater detail by the inquiring officer in his enquiry report. He has pointed out that generally on verbal information given by a responsible staff that he is reporting "sick", the person is normally marked "sick" in the Muster Roll. Further the staff concerned has to support his sickness by sick certificate from the Doctor, but the applicant has not given such certificate. The inquiring officer has also noted that the applicant was in the habit of reporting sick. He has given a number of instances from 1974 and has mentioned that for the unauthorised absence from 6.2.1976 to 30.4.1976 the applicant was served with major penalty chargesheet. The applicant was again overstaying leave from 7.1.1980 to 5.7.1980. Having gone through the report of the inquiring officer, we do not find his reasoning for rejecting the contention of the applicant is incorrect. The applicant was in the habit of reporting sick and producing ^{private} medical certificate subsequently. On that basis, on his reporting sick, he was shown in the Muster Roll as "sick", but he did not produce medical certificate even though he remained absent from 26.11.1982. This contention of the applicant is that because he was marked

✓ Jan.

"sick" from 26.11.1982, he could not have been taken to have been on unauthorised absence subsequently. This contention is, therefore, rejected.

9. It has been further stated that the enquiry was conducted at Jharsuguda instead of Chakradharpur and this prejudiced the applicant. If that be the case, the petitioner should have applied before the inquiring officer to change the venue of enquiry. Not having done so, he cannot raise this point.

10. Having gone through the report of the inquiring officer it is clear that the applicant remained absent from his duty from 26.11.1982. He never submitted any medical certificate and therefore, his absence has been rightly treated as unauthorised. It is necessary to note here that this was the only charge against the applicant that he committed serious misconduct in that he remained unauthorisedly absent from 26.11.1982. In the statement of imputation it was mentioned that he failed to produce any unfit certificate. As the applicant was an Assistant Station Master at the relevant point of time connected with running of trains, his continuous absence for months together cannot but be taken as serious misconduct. He also did not submit any explanation to the charge. His stand is that he submitted medical certificate in time, this has been rejected by the inquiring officer and the disciplinary authority. If the fact of submission of medical certificates by the applicant was true, then he could have easily submitted an explanation to the charge indicating that

S. Jom.

he submitted the medical certificates in time. In consideration of this, we do not think that the finding of the inquiring officer and the disciplinary authority is illegal and arbitrary.

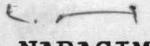
11. As regards the order of the appellate authority, we have noted that the speaking order has not been enclosed by the applicant and the forwarding letter enclosed by him at Annexure-13 does not even show that his appeal has been rejected. As prayed for by the applicant, we had called for the proceedings file from the respondents and we have gone through the same. In that file at page 569 to 564 is the speaking order of the appellate authority. We find that the five points raised by the applicant in his appeal have been elaborately dealt with. The appellate authority has noted that contrary to the applicant's statement that he submitted the medical certificates through Station Master, Bamra, the latter had confirmed non-receipt of the medical certificates by stating that the applicant reported sick on 26.11.1982 and no medical certificate has been produced and he has not resumed duty. The appellate authority has dealt with the contention of the applicant that since he was noted as sick in the Muster Roll, his subsequent absence cannot be termed as unauthorised. The appellate authority has noted the provisions of Paragraph 537 of Indian Railway Medical Manual under which, 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. This paragraph

S. Jam.

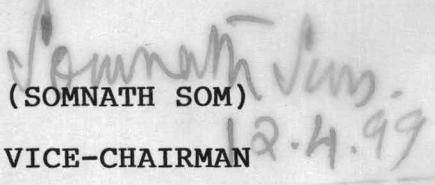
22

also lays down that it is not incumbent on him to place himself under the treatment of the Railway doctor. But it is 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. In this case, the applicant was residing in Railway quarters at Bamra and the Railway rules enjoin that sick certificate must be produced by him only from a Railway doctor. But he later on produced sick certificate from a private doctor of Kalunga which is situated about 50 KM away from Bamra. On the other hand, the Railway doctor from Jharsuguda on his beat was visiting the Bamra Station 4 days in a week as per the roster given by Divisional Medical Officer, Chakradharpur, on every Monday, Wednesday, Thursday and Saturday. After going through the order of the appellate authority, we find that on cogent and sound reasons he has rejected the appeal of the applicant. We, therefore, hold that the applicant has not been able to make out a case for any of the reliefs claimed by him.

12. In the result, the Original Application is held to be without any merit and is dismissed but, under the circumstances, without any order as to costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)

VICE-CHAIRMAN