

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No.1066 of 1996

Date of order: 02.01.2001

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. M.P. Singh, Administrative Member

Achuta Das, S/o Late Madhab Das,  
residing at Vill. & P.O. Baurapura,  
Dist.Dhankra, worked as a Gangman  
under PWI/JGM, S.E. Railway,  
... Applicant

VS

1. Union of India service through the General Manager, S.E. Railway, Garden Reach, Calcutta-43
2. Sr. Divisional Personnel Officer, S.E. Railway, Kharagpur,
3. Senior Divisional Engineer (Coordination), S.E. Railway, Kharagpur
4. Permanent Way Inspector, S.E. Railway, Jhargram

... Respondents

For the Applicant : Mr. M.M. Roychowdhury, counsel

For the Respondents: Mr.P. Chatterjee, counsel

Heard on 02.01.2001 : :

O R D E R

D. Purkayastha, JM

One, Shri Achuta Das, a removed employee from the office of the respondents filed this application alleging inter alia that while he was working as Gangman under PWI, Jhargram suffered from mental disorder with effect from 10.04.89 and he was absenting from duties. Ultimately, he recovered from that disease and obtained medical certificate on 15.09.93 and he reported for duty with medical certificate on 15.09.93, but the respondents did not allow him to perform the duties in the office alleging that he was removed from service for unauthorised absence from duty by holding departmental enquiry. Thereafter he made a representation to the Senior Divisional Engineer (II), S.E. Railway, Kharagpur on 01.09.1994. But the respondents did

not take any action ~~for~~ the representation, nor they grant any relief to the applicant as sought for in the representation dated 01.09.94. The applicant approached this Tribunal on 2.9.96 by filing this application and sought for direction upon the respondents to allow him to join in service as Gangman, since no order of removal has been received by the applicant till date.

2. The respondents filed a reply to the OA denying the allegations of the applicant made in the application. According to the respondents, the applicant while working as Gangman under PWI, Jhargram remained long unauthorised absent from 30.12.1988 onwards and a chargesheet under major penalty was issued and D&A proceedings were conducted duly sending information to him. Since the charge was established, he was removed from Railway service with immediate effect vide AEN (VI), Kharagpur's removal notice No.E/6/VI/727 dated 18.12.89 which was sent to him at his home address by registered post with A/D. He did not submit any appeal to the appellate authority within the specified date and approached on 1.9.94 to take him back to duty i.e., after a lapse of 5 years. It is also stated by the respondents that they did not receive any sick report for unauthorised absence from duty with effect from 30.12.88 onwards. It is also stated that the statement made by the applicant that he was suffering from mental disease is false which should not have stated before this Tribunal, a temple of justice because he was suffering from the disease with effect from 18.12.89 as per medical certificate but he was absenting from duty with effect from 30.12.88 i.e., much earlier than 10.4.89. It is also stated by the respondents that the applicant has been removed from the service by AEN (VI) for his long unauthorised absence vide letter dated 18.12.89, Annexure 'R/1' and all relevant papers and service sheet etc. were sent to DPO (Settlement) on 16.11.90 for settlement payment, so it is almost after four years of his removal he attended PWI, Jhargram to resume duty with a 'fit' certificate when he was

refused; as stated in the application, but the applicant has not annexed any copy of his 'fit' certificate with the application. In fact, it was natural for the PWI to disallow him as he was removed long back. It is also stated by the respondents that as per D&A rules, if the party does not attend inquiry without showing any clause, the Inquiry Officer may submit enquiry report with findings and the disciplinary authority may take exparte decision on the basis of the report. In this connection a copy of the Inquiry Officer's letter dated 23.8.89 is annexed as Annexure 'R/2' and it is seen that the applicant was intimated to attend D&A inquiry on 4.9.89 at 1000 hours without fail. All procedures as laid down in D&A rules were followed. Unfortunately, the D&A file is not traceable in the office of he AEN (VI), Kharagpur, which was shifted to Gidhni long ago. During transhipment of AEN's office from Kharagpur to Gidhni the D&A file of the applicant has been misplaced which would evident from the letter dated 7.12.96, Annexure R/3' to the reply. It is also stated by the respondents that the applicant was removed from service from 18.12.89 and he submitted his representation on 1.9.94 that is after a lapse of almost five years of his removal which is time barred. Accordingly the application should be dismissed being devoid of merit.

3. Learned advocate Mr. Roychowdhury, appearing on behalf of the applicant submits that the applicant did not receive any removal order from the disciplinary authority till date. He has drawn our attention to the order of removal dated 18.12.89, Annexure 'R/1' to the reply and submits that the order has been sent to the applicant under registered post with A/D. So, the burden lies with the respondents to show that the said removal order dated 18.12.89 at Annexure 'R/1' has been duly despatched from the office ~~under~~ service with registered A/D. In the absence of any document adverse presumption should be drawn that the order of removal dated 18.12.89 was not actually served upon

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the applicant and he came to know about it from the office only in the month of September, 1993 when he reported for duty with the medical fit certificate. And immediately after that he made a representation to the authority in 1994. But the respondents did not take any action on the representation till date. According to the applicant, the procedure adopted by the respondents is contrary to the D&A Rules, 1968 and so, the entire proceeding including the order of removal is liable to be quashed.

4. Mr. Chatterjee, learned advocate appearing on behalf of the respondents submits that the relevant file is not traceable and that has been stated in the reply statement of the respondents. He further submits that they collected the order of removal at Annexure 'R/1' from other file of other Section and that has been produced before the Tribunal along with the reply filed and he also submits that from the removal order it is seen that the inquiry was initiated against the applicant and since he did not participated in the inquiry, the AEN (VI), S.E. Railway, Kharagpur, being the disciplinary authority after considering the enquiry report and other relevant documents passed the removal order after being fully satisfied that the applicant was guilty of absenting himself from duty from 30.12.88 onwards without any authority. He also produced another letter issued by the Inquiring Officer and marked Annexure 'R/2' by which the applicant was directed to appear before the Enquiring Authority on 05.09.89 at 1000 hours without fail. But the applicant did not appear before the enquiring authority.

5. We have considered the submissions of the learned advocates of both the parties and have gone through the records available with us. We find that the AEN (VI), S.E. Railway, Kharagpur in the removal order dated 18.12.89 had mentioned that enquiry was held on 5.9.89 and 3.11.89 and the applicant failed to attend the enquiry and the enquiry was conducted ex parte. It

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appears from the letter dated 23.8.89, Annexure 'R/2' to the reply that the AEN (VI), Kharagpur being the disciplinary authority did not hold enquiry himself and he appointed Shri R.L. Sarkar, Bridge Inspector Gr.I as Enquiry Officer to conduct the enquiry and the said enquiry officer held the enquiry on 5.9.89 and 3.11.89 as reflected from the order dated 18.12.89. But nowhere it has been mentioned that the applicant has been furnished with a copy of the enquiry report after holding exparte enquiry against the applicant. The respondeennts failed to produce the enquiry report submitted by the Enquiry Authority on the ground that relevant file is missing. We find that the respondents failed to produce any record to show us that they followed procedures in accordance with the rules. In the absence of any record we must take adverse presumption that the applicant was not given appropriate/proper opportunity to defend his case before the Enquiry Authority or the Disciplinary Authority before passing the removal order dated 18.12.89. No evidence could be produced by the respondents to show chargesheet or order of removal has been served upon the applicant in accordance with the rules. In the absence of evidence, the applicant has genuine grievance as alleged in the representation submitted by the applicant and that representation could be considered by the respondents and passed speaking and reason order. It be mentioned here that in order to bring the case within the ambit of "misconduct" for absence from duty, it is to be proved by the prosecution that he remained absent from duty willfully and without reasonable cause; otherwise, such absence from duty does not amount to misconduct. However, we find that the applicant made a representation on 1.9.94 and that representation has not been disposed of by the appellate authority till date and it is still pending.

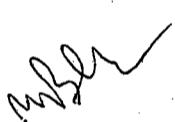
6. Mr. Chatterjee, learned advocate raised the question of limitation in this case since the applicant did not approach the



Tribunal within the period of limitation prescribed since he was removed from service in 1989 and the application has been filed in the year of 1996. Since the representation is pending before the authority for disposal, therefore, we are not inclined to hold any view in respect of limitation raised by the learned advocate, Mr. Chatterjee. The respondents are under obligation to dispose of the said representation in accordance with the rules.

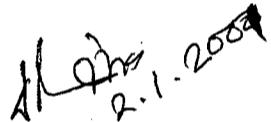
7. In view of the aforesaid circumstances we direct the respondents to dispose of the representation dated 1.9.94 with a speaking and reasoned order within a period of two months from the date of communication of this order and the disciplinary authority should consider all facts as noted by us in the judgment at the time of passing the order, ~~as directed by us~~. If the decision goes in favour of the applicant the respondents shall give appropriate relief to the applicant in accordance with the rules. With this observation the application is disposed of.

No cost.



(M. P. Singh)

MEMBER (A)



(D. Purkayastha)

MEMBER (J)