

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

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DATE OF ORDER : 21.07.1999.

ORIGINAL APPLICATION NO. 56/1997.

Govind S/o Shri Bhura Ram Ex Box Boy Staff No. 742, working under Loco Foreman, Loco Shed, Jodhpur, at present residing at Quarter No. 123 Daman Basti Ke Samne, Rawan Ka Chabutra, Jodhpur.

.....APPLICANT.

VERSUS

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Additional Railway Manager, Northern Railway, Jodhpur.
4. Senior Divisional Mechanical Engineer (Power), Jodhpur.
5. Divisional Personnel Officer, Northern Railway, Jodhpur.

.....RESPONDENTS.

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CORAM

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr. N.K. Khandelwal, Counsel for the Applicant.

Mr. V.D. Vyas, Standing Counsel for the respondents.

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ORDER

(PER MR.A.K.MISRA)

The applicant has filed this Application with the prayer that impugned order Annex.A-1 dated 16.9.1994 and

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Annex.A-10 dated 11.2.1997, be quashed. He has further prayed that impugned order dated 18.9.1996 issued by the Estate Officer for eviction of the petitioner from Railway Quarter in Loco Coloney, be also quashed.

2. Notice of the O.A. was issued to the respondents who have filed their reply in which it is stated by the respondents that the applicant remained absent from duty without any intimation. In the departmental proceedings, the applicant did not participate. Consequently, the ex parte proceedings were drawn against him. The applicant was rightly removed from service. It is also admitted by the respondents in their reply that the appeal of the applicant against the removal order is pending with the appellate authority.



3. During the pendency of the O.A., appeal of the applicant was decided by the appellate authority and the order of removal of applicant from service has been confirmed. Challenging the same, the applicant had filed amended O.A. to which the respondents have filed amended reply stating therein that the appeal was considered as per rules keeping in view the factual and legal objections raised by the applicant in his memo of appeal.

4. On 18.12.1998 when the case was heard it was brought to the notice of the Tribunal that the respondents had

passed an order on 15.4.1993 regulating the period of absence from duty of the applicant in respect of which he was subsequently chargesheeted. Therefore, the respondents were directed to produce the order in question for being perused by the Tribunal. The order dated 15.4.1993 passed by the Divisional Personnel Officer, Jodhpur, was produced before us by the respondents on 6.7.1999.

5. We have heard the learned counsels for the parties and gone through the case file.

6. The applicant has challenged the order of removal on the ground that S.F.-5 is not accompanied by statutory documents in proper shape, neither they have been signed by the competent authority. The applicant was ill during the period in question about which information was given to the authorities yet the period has been treated as unauthorised absence. Initially, Shri Tak was appointed as Inquiry Officer but without any reason another Inquiry Officer Shri Shyam Lal was appointed without cancelling the previous order relating to the Inquiry Officer. The departmental witness Shri Hari ^{for} Singh was examined by the Inquiry Officer, who was not named in the list of witnesses. Moreover, Shri Shyam Lal, Inquiry Officer examined himself as a prosecution witness in utter disregard of the laid down procedure. A departmental witness Shri A.L.Sharma was not examined who was named in the list of witnesses and the Inquiry Officer

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Shri Shyam Lal substituted his name in place of Shri A.L.Sharma. The inquiry has also been challenged on many other grounds as mentioned in the O.A. The respondents have denied all these allegations and have stated that for the reasons stated by the applicant, the inquiry is not vitiated.

7. Both the learned counsel for the parties elaborated their arguments on the lines of their pleadings which we have considered in detail. It is not denied by the respondents that Shri Shyam Lal is the Inquiry Officer. It has been stated by the respondents that on transfer of Shri Tak, Shri Shyam Lal was appointed as Inquiry Officer. On 5.7.1994 Shri Shyam Lal examined one Shri Harihar Singh. On the very same day, he also examined himself in the same inquiry by putting on record his statements in detail signed by himself. Moreover, some replies in the shape of question and answer have also been recorded by him in his hand writing and under his own signatures. It appears, as if, he has asked question to himself and gave the answers of his own question. This, in our opinion, is utterly illegal and a very strange act of conducting inquiry. No person can be a judge of his own cause. In other words the Inquiry Officer cannot be a witness in the same inquiry before himself. If during his tenure, the applicant had absented himself without any information ^{to} the authorities, he could have informed the concerned disciplinary authority that he

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being the witness in the case, would not be acting fairly by conducting the inquiry but he did not do any such thing. In our opinion, this particular act of the Inquiry Officer is sufficient to vitiate the entire departmental action in the matter.

8. In the article of charges, it is stated against the applicant that he absented himself from duty w.e.f. 2.1.1992 till 7.4.1993 without prior permission of the competent authority and thus, failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway servant. This charge sheet was served on the applicant on 22.9.1994.



9. From the letter produced by the respondents on our direction, it appears that the Divisional Personnel Officer, Jodhpur, had informed the Loco Foreman, Jodhpur, that the employee who remained sick from 2.1.1992 to 15.3.1993 be taken on duty, if he produces fitness certificate, issued by the Divisional Medical Officer, Jodhpur. It is also mentioned in the order that from 2.1.1992 till resumption of duty, the period should be treated to be without pay. After the employee joins the duty, sick and fit certificates are to be sent to this office. It has also been mentioned in the same letter that this issues with the approval of the competent authority. This means that period of absence of the applicant which is subject matter of chargesheet, has

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been regulated by the competent authority and the applicant was only required to produce the medical certificate. This is a settled position of law that once the period of so called unauthorised absence is regulated by grant of leave of one kind or the other then the period of absence cannot be treated as unauthorised so as to come within the definition of misconduct for purposes of imposing a penalty. If reference is necessary in this respect, following rulings can be referred :-

1. (1992) 22 ATC 200 - Mangaram Vs. Commissioner of Police and Another.
2. (1992) 2 ATJ 401 - Shri Karam Chand Vs. UOI, through the Secretary, Ministry of Health and Family Welfare and Others.
3. SLJ 1982 (1) 697 - Bhur Singh Ham Singh Rajput Vs. The State of Gujarat and Another.

10. In these rulings, it has been very clearly said that once the period during which the applicant remained absent without permission has been regulated as period without pay or any other type of leave than disciplinary action cannot be taken. In this case also, the disciplinary proceeding was initiated much after the competent authority had regulated the period of applicant's absence. Thus, in our opinion, the chargesheet issued to the applicant was ill-founded and has no legal sanction behind it. Having once

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regulated the period of absence of the applicant from duty as leave without pay there was no necessity for the respondents to proceed against him by departmental action. In fact, as per the order passed by the Divisional Personnel Officer, Loco Foreman should have taken the applicant on duty on production of fitness certificate from the Divisional Medical Officer. In this case, the allegation of the applicant is that he was not taken on duty on the other hand it is alleged by the respondents that the applicant did not report on duty but there is nothing on record to show that the applicant was ever called upon to produce medical certificate issued by the Divisional Medical Officer in pursuance of order passed by the Divisional Personnel Officer dated 15.4.1994. We are of the view that in the instant case, no cause to serve the chargesheet and conduct the departmental inquiry survives.

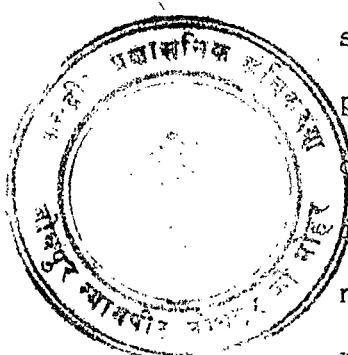
11. We come to the conclusion that the inquiry has vitiated because of gross violation of rules and no chargesheet could have been served once the period of absence has been ordered to be regulated by sanction of one or other type of leave. In view of the foregoing conclusion, no other point of attack as pleaded and argument in respect of departmental inquiry is required to be discussed. Respondents are required to be directed to take the applicant on duty on his producing medically fit certificate. Since the applicant had not initially presented

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himself on duty on the ground of illness and thereafter admitted to have remained absent from duty because of some mental ailment, therefore, the applicant will not be entitled to any pay from 2.1.1992 till he reports on duty. The OA deserves to be accepted accordingly.

12. Applicant's second prayer relates to quashing of eviction notice issued by the Estate Officer but during the pendency of the O.A. applicant has vacated the Railway Quarter on 21.4.1997 as mentioned in the O.A. In view of this, there is no necessity to discuss the matter relating to eviction notice. Even otherwise, a Government servant has defined rights in respect of occupation of a Government accommodation. Once the applicant has been removed from service, he can retain the Government accommodation for a period permissible under the rules beyond which his occupation will be against the rules and consequently, illegal. Therefore, in the instant case, the eviction notice issued by the Estate Officer, cannot be quashed as requested by the applicant. The prayer in this respect stands disposed of accordingly.

13. The O.A. is, therefore, partly accepted. The impugned order Annex.A-1 dated 16.9.94 and order passed by the appellate authority Annex.A-10 dated 11.2.97 are hereby quashed. The respondents are directed to take the applicant on duty within a period of 15 days from today on applicant's



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with in the said period reporting for duty alongwith a fitness certificate issued by the Divisional Medical Officer of the Railways. The applicant is directed to present himself before the Divisional Medical Officer for medical check up within the aforesaid period and thereafter report on duty accordingly. The applicant shall, however, not be entitled to any pay for the period from 2.1.1992 till he is taken back on duty as per our direction. The aforesaid period shall also not be counted for seniority, pensionary benefits or promotion etc.

14. The parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)

Adm. Member

A.K. Misra
(A.K. MISRA)

Judl. Member

(mehta)

Copy of order dated 21-7-99
Sent to Colenso for respondents
by Post-Vade no 234 dt 20-7-99

H.C.
N.
Kh.
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Part II and III destroyed
in my presence on 11.7.06
under the supervision of
Section Officer (R) as per
order dated 16.15/2006

Section Officer (Record)