

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No.O.A.74/1997

Date of order : 27.6.06

Present : Hon'ble Mrs. S. Dogra, Judicial Member
Hon'ble Mr. A.R. Basu, Administrative Member

L.K. SINGH
VS:
UNION OF INDIA & ORS.

Case Laws referred :

Delhi Transport Corporation v. Sardar Singh[(2004)7SCC 574]

State of U.P. v. Sheo Shankar Lal Srivastava and others[(2006)3 SCC 276]

A.Sudharkar v. Post Master General, Hyderabad and Anr.[(2006)(3) SCALE 524]

North Eastern Karnataka R.T. Corpn. v. Ashappa & Anr.[2006 AIR SCW 2644]

For the applicant : Mr. A. Chakraborty, counsel
For the respondents : Mrs. U. Dutta Sen, counsel

ORDER

Per Dr. A.R. Basu, A.M.

The applicant in this O.A. has filed this application under Section 19 of the Administrative Tribunals Act challenging the office order dated 4.10.1996 issued by the Additional Divisional Railway Manager, S.E. Railway Manager, S.E. Railway, Kharagpur. Facts of the case in brief is that the applicant is working as Fitter Gr.II under Carriage Foreman, Nimpura, S.E. Railway. The applicant could not attend office from 20.4.1988 as he was suffering from mental disease and was under the treatment of Neuro-psychiatrist, Ranchi. He also could not give any



intimation to the office regarding his sickness as he was suffering from mental disorder. His wife being a village folk was not aware of the rules and therefore, did not intimate the office about the mental illness of her husband. After recovery from mental illness the applicant made a representation to the Additional Divisional Railway Manager, S.E. Railway, Kharagpur stating inter alia that he was suffering from mental disease and therefore he could not join duty and could not inform the office about his sickness. However, later he came to know that he had been terminated from service by the respondents due to unauthorized absence for a long period. He filed appeal to the authorities concerned against the order of his termination from service but the same was rejected vide office order dated 4.10.96. The applicant alleges that before passing the order of termination against him no disciplinary proceeding was conducted and the order of termination has not been served on him. He further states that he was absent from duty due to his mental illness which cannot be termed as misconduct. Being aggrieved by such action of the respondents he has filed this O.A. praying for the following reliefs:-

- (a) Declaration that the Office Order dated 4/10/96 issued by the Addl. Divisional Railway Manager, S.E. Rly., Kharagpur is bad in law and therefore, the same should be quashed;
- (b) An order do issue directing the respondents to allow the applicant to join in service in the post of Fitter at an early date.

2. The respondents in their reply have disputed and denied the claim of the applicant. They have stated that the applicant was absenting himself from duty for the period from 12.4.1988 till the date of his removal from service as a disciplinary measure. Initially on the basis of report made by

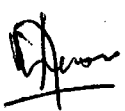


Carriage Foreman, S.E. Railway Nimpura a disciplinary action was contemplated against the applicant under Rule-9 of the Rly. Servants (Discipline and Appeal) Rules, 1968. A chargesheet was framed but as the applicant was not traceable, it was sent to the applicant's address by Registered post with A/D on 19.4.1991 but the postal department returned back the same to the authorities concerned as undelivered with remarks that "no such address was available there." Thereafter the chargesheet was pasted on the notice board in the Carriage Shed Premises in presence of two serving Railway employees with their clear signature and date in support of pasting of the Charge sheet and the charge sheet was thus treated to have been served on the applicant on 30.12.1991. An enquiry was conducted in the matter and intimation regarding various stages of the enquiry was sent through registered post with A/D to the address of the applicant but all correspondences were returned undelivered. Copy of the enquiry report was also sent through registered post but the same was also returned as undelivered. Since the applicant did not avail any opportunity to defend his case, the disciplinary authority passed the orders for removal of the applicant from service with immediate effect vide punishment notice dated 20.12.93/8.2.94. The same was also sent to the applicant through registered post on 25.4.1996. The applicant thereafter filed an appeal against the order of his removal from service on 25.4.1996. The appellate authority i.e. the ADRM upheld the order of the disciplinary authority and the said order was communicated to the applicant on 4.10.1996. The respondents have stated that since all the formalities were duly completed before passing of the order

of removal against the applicant, the application is devoid of any merit and is liable to be dismissed.

3. Ld. Counsel for the applicant, Mr. A. Chakraborty has argued that as the applicant was mentally sick he could not inform the office regarding his absence. His wife being an illiterate villager was not aware of the rules and therefore it was not possible for her to intimate the department about the absence and mental illness of her husband. He further argued that the applicant submitted medical certificate, Doctor's prescription etc. to the concerned authorities in support of his statement when he recovered from mental illness and appealed for reinstatement in service, but the respondents did not consider his prayer. According to the Ld. Counsel for the applicant, the applicant was mentally sick which could not be termed as 'misconduct' and therefore, the O.A. should be allowed and the applicant should be reinstated in service with all consequential benefits.

4. Ld. Counsel for the respondents Mrs. U. Dutta Sen has submitted that the applicant was absent from 20.4. 1988 onward whereas he submitted the Medical Certificate in respect of his mental illness from 18.11.1992 to 26.3.1996. Nothing has been stated about the period of absence from 20.4.1988 to 17.11.1992 and, therefore, the applicant's case for reinstatement in service could not be considered. She has further submitted that as no intimation has been sent to the department regarding his absence from duty even by his wife or any other family member, the respondent authorities found no other alternative but to terminate the applicant from service after due inquiry. The Ld counsel also submitted that the respondents



have duly followed the procedures as per rules before terminating the applicant from service and, therefore, the O.A. should be dismissed.

5. We have heard the Id. Counsel for the parties and have gone through

the pleadings. From the perusal of the record it appears that the applicant was absent from duty w.e.f. 20.4.1988 till the date of his removal and no intimation had been sent to the department by him /wife of his family member about his mental sickness. It further appears that the respondents have followed proper procedures while conducting the disciplinary enquiry against the applicant and thereafter passed the order of removal against him. The respondents have tried to serve every document to the applicant which were relevant for his defence, but failed. Finding no other alternative they had to paste the chargesheet on the Notice Board. It appears that all the documents including the enquiry report, which were sent to the applicant by registered post, came back with the remark "undelivered". It appears that after being recovered from his mental illness the applicant filed an appeal to the authorities concerned against the order of his removal from service on 25.4.1996 and submitted the prescription and medical certificate in support of his mental sickness copy of which are produced before the court. From a perusal of those documents it appears that the applicant was earlier under the treatment of one, Dr. Tushar Kanti Ganguly, Psychiatrist (prescription of the said Doctor has been annexed with the O.A.). From the Medical Certificate dated 26.3.1996 issued by Dr. Tushar Kanti Ganguly, the Assistant Superintendent of Ranchi Manasik Arogyashala it appears that the applicant was under his treatment in private capacity from 18.11.1992 to 26.3.1996. It

moreover covers only a part of the period of his unauthorized absence. The applicant does not seem to have been admitted in Ranchi Arogyashala as no certificate to that effect has been submitted. Moreover, no medical certificate was produced in respect of the remaining period of unauthorized absence of the applicant. The quantum of punishment in disciplinary matters is primarily for the disciplinary authority to decide and the jurisdiction of the Tribunal is limited and is confined to the applicability of one or other of the wellknown principle known as Wednesbury principles. In the instant case the disciplinary authority passed order of removal taking into consideration such a long period of unauthorized absence. No relevant fact was omitted nor any irrelevant fact has been taken into account and the punishment seems to have been awarded after consideration of the relevant material. Therefore, we find no reason to interfere in the order of removal from service passed by the respondent authorities against the applicant. In *Delhi Transport Corporation Vs. Sardar Singh*, [(2004) 7 SCC 374] it has been held that the conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. In *State of U.P. v. Sheo Shankar Lal Srivastava and others*, [(2006) 3 SCC 276] it has been held that the court should not normally interfere with the quantum of punishment imposed by the respondents. The Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of