

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No.1178 of 1997

Present: Hon'ble Dr. B.C. Sarma, Administrative Member
Hon'ble Mr. D. Purakayastha, Judicial Member

APURBA KUMAR MITRA

...Applicant

VS

Rail Bhavan

1. Union of India through the
Secretary, Ministry of Railways,
Chairman,
Railway Board
Railway Bhavan
New Delhi

2. General Manager,
Eastern Railway,
Fairlie Place,
Netaji Subhas Road,
Calcutta-700 001

3. The Senior Divisional Electrical Engineer/TRS
Sealdah Division, D.R.M. Office,
Sealdah
Eastern Railway
Calcutta

4. The Assistant Electrical Engineer/TRS,
Sealdah Divn. DRM Office,
Eastern Railway,
Sealdah, Calcutta

5. The Chief Traction Foreman,
Narkeldanga Car Shed,
Narkeldanga
Eastern Railway, Calcutta

.... Respondents

For the Applicant : Mr. S. Bhattacharyya, counsel;

For the Respondents : Mr. C. Samaddar, counsel

Heard on 3.12.1997

: :

Date of order: 3.12.1997

O R D E R

B.C. Sarma, AM

The grievance raised by the applicant in this case is about not permitting him by the respondents to get medically examined and also to join after his period of absence as well as the chargememo dated 11.10.91. Briefly stated the facts of the case are as follows:

The applicant was working as a Khalasi under the Chief Traction Foreman, Narkeldanga. As per his contention, he fell ill

not attend office during the said period. He contends that although information along with unfit certificate was sent to the ~~office at~~ the relevant time, he was unable to submit interim medical certificate in time covering his sick period due to the nature of his unfortunate disease. It is the contention of the applicant that it was permissible for him under the rules to be under treatment of a registered private medical practitioner. Besides, he resided outside 2.5 Kms. jurisdiction of a Railway doctor. The applicant's grievance is that the authority in the meantime has issued a chargememo dated 11.10.91 for his unauthorised absence and departmental proceedings had followed. Meanwhile he became fit to join his duties and he reported to his office along with the certificate of private medical practitioner. But he was not allowed to resume his duty. Being aggrieved thereby, the instant application has been filed with the prayer that a direction be issued on the Railway respondents to get him medically examined and then allow him to join and also for issue of a declaration that the proceeding drawn up on the basis of the chargememo dated 11.10.91 is bad in law.

2. When the admission hearing of the matter was taken up today Mr. Samaddar, learned counsel appears for the respondents and he submits that a copy of the enquiry report was also sent to the applicant, but he did not reply. It was Mr. Samaddar's argument that since the departmental proceeding is pending against the applicant, he was not allowed to join.

3. Mr. Bhattacharyya, learned counsel for the applicant submitted that the applicant is without pay from 1991 and it is unfortunate that despite his repeated representations the railway authorities have not taken any action to get him medically examined and to allow him to join the duty. However, Mr. Samaddar's ~~argument~~ argument is that if a Railway employee was under the treatment of a private registered medical practitioner, on completion of the treatment it was his duty to obtain a certificate from the Railway doctor, which was not done by the applicant in this case.

4. We have considered the matter after hearing the

submissions of the learned counsel of both the parties and perusing the records. We note that whatever may be the reason, a departmental proceeding instituted on the basis of a chargememo dated 11.10.91 is still pending against the applicant. Mr. Samaddar argued that it was the applicant's duty to get him medically examined by a Railway doctor. The applicant is a poor Khalasi and it was possible for him, ^{if} ~~he would have~~ to get him examined by a Railway doctor and there is nothing to doubt, He might have felt inconvenience and that is why he has prayed for the issue of a direction on the respondents to get him medically examined. Whatever be the position of rule considering the facts and circumstances of the case, we find that the Railway respondents through their Welfare Inspector have at least a moral, if not a legal duty to get him medically examined. We are, therefore, of the view that a suitable direction be given on the Railway respondents to assist the applicant in the matter of getting medically examined by a Railway doctor. As regards the departmental proceeding we note that a copy of the enquiry report was sent to the applicant as early as on 9.5.96 and the applicant was directed to submit his representation within 10 days. We also find from the record that the applicant has accepted the findings of the enquiry officer. It is, therefore, not understood why the authorities had not passed any final order in the matter and got the disciplinary case closed which should be done immediately. Accordingly, we direct the Railway respondents to complete the disciplinary proceeding instituted against the applicant upto the stage of appellate order within a period of six months from the date of communication of this order. In view of the above we direct the disciplinary authority to pass an appropriate order at least within a period of three months from the date of communication of this order. We further direct the applicant to cooperate with the respondents. We also direct that if the said proceeding upto the appellate stage is not completed within the time limit fixed, the entire proceeding shall lapse and the applicant shall be exonerated from all the charges levelled against him in

