

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.55/08

Wednesday this the 17th day of June 2009

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

A.Velliammal,
W/o.late Muthuswamy,
Hospital Attendant (Removed from service).
Now residing at 3/9 Alagunagar,
Kenkarasamy Layout, Kurichi,
Sundarapuram P.O., Coimbatore.

...Applicant

(By Advocate Mr.T.A.Rajan)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Chennai – 3.
2. The Chief Personnel Officer,
Southern Railway, Chennai.
3. The Chief Medical Superintendent,
Southern Railway, Palakkad.
4. The Senior Medical Superintendent,
Southern Railway, Palakkad.
5. L.Mercy,
Matron Grade II,
Railway Hospital, Southern Railway,
Palakkad.

...Respondents

(By Advocate Mr.Sunil Jose [R1-4])

This application having been heard on 17th June 2009 the Tribunal
on the same day delivered the following :-



ORDER

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER


The applicant is aggrieved by (i) Annexure A-6 Penalty Order dated 3.5.2006 by which "major penalty of removal from service with immediate effect" was imposed upon her (2) Annexure A-10 Appellate Authority order dated 15.12.2006 by which her appeal dated 16.6.2006 against the aforesaid penalty advise was rejected and (3) Annexure A-12 Revision Petition dated 5.7.2007 by which her revision petition dated 3.2.2007 has been rejected.

2. The brief facts of the case are that the applicant was issued with the charge memorandum dated 22.4.2005 containing the following charges :-

1. Smt.A.Velliammal, Hospital Attendant, at RH/PGT is unauthorisedly absent from duty from 31.3.2004 to till date. She has neither reported sick in any of the Railway Hospital nor submitted any leave application. She has not adhered to Medical Attendance Rules. She has not intimated the reason for her absence. Thus she has failed to maintain proper devotion to duty and behaved in a manner quite unbecoming of a Railway servant and thereby violated the Rules 3.1 (ii) & (iii) of the Railway Services (Conduct) Rules 1966.

2. She is not available in the Railway Qrs. No.120/A, South Colony which is allotted to her. On enquiry it is understood from her neighbours that she is not available in the Railway quarters for more than a year. The neighbours have indicated to the special committee appointed for inspection of the above quarters that unknown persons were residing in the house for about six months. The quarters appear to have been subletted by her to unauthorised person. Thus she has violated the Rules 15 A (1) of the Railway Services (Conduct) Rules 1966.

3. She has fraudulently used the seal of CMS/PGT on the salary certificate without the knowledge of CMS/PGT and also affixed a forged signature of CMS/PGT. This was done to get a salary certificate which was intentionally made out to defraud



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the State Bank of Travancore, Chandranagar Branch, Palakkad for getting a loan for Rs.29,500/-. Thus she has failed to maintain absolute integrity and thereby violated the Rule 3 (i) of the Railway Services (Conduct) Rules 1966.

3. The applicant received the aforesaid charge sheet send to her at her permanent address at Arasampatty P.O., Kolavankarai, Valaparnadu, Kolli Hills, Namakkal Taluk, Salem Distt., Tamilnadu and she had replied to the same vide Annexure A-4 letter dated 12.8.2005. Having not satisfied with the aforesaid explanation given by her the respondents have decided to initiate major penalty proceedings against her under Rule 9 of the Railway Servant Discipline and Appeal Rules 1968. Thereafter, the Enquiry Officer was appointed vide Annexure A-5 letter dated 26.7.2005 and a copy of the same was also received by her. The Enquiry Officer conducted the enquiry proceedings ex parte as the notices sent to the applicant at her above mentioned residential address as well as at her official address at Railway Quarter No. 120/A, South Colony, P.O. Kallekulangara, Palakkad – 678 009 were returned by the Postal Authority stating that the applicant had left the aforesaid addresses. The Enquiry Officer submitted her report holding that the charges levelled against the applicant were proved. According to the said report the applicant had unauthorisedly absented from duty from 31.3.2004 onwards and she had not adhered to Medical Attendance Rules as she had not intimated the reasons for her absence in conceivable manner. The Enquiry Officer has also reported that the charge against the applicant that she has subletted the quarters to an unauthorised person and the other charge that she had fraudulently used the seal of CMS/PGT on the salary certificate without the knowledge



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of CMS/PGT and also affixed a forged signature of CMS/PGT were proved. The respondents have stated that copy of the aforesaid enquiry report was also send to the applicant at the aforesaid addresses but there was no response from her. Finally, the Disciplinary Authority has passed the Annexure A-6 penalty advise dated 3.5.2006 removing her from service. According to the applicant she received the said penalty advise when she came to the respondents to join duty. Immediately, thereafter, she made the Annexure A-7 representation dated 22.5.2006 to the Senior Divisional Medical Officer, Southern Railway, Palakkad, from her permanent address requesting to make available all the letters issued to her after the said letter dated 26.7.2005 appointing the Enquiry Officer including the enquiry proceedings, the deposition of the witness, the documents relied upon and marked in the enquiry and the enquiry report etc. as the enquiry was held ex-parte. Thereafter, she has send the Annexure A-8 reminder dated 2.6.2006 also. As the applicant did not get the documents requested for, from the respondents she made the Annexure A-9 appeal dated 16.6.2006. In the said appeal, she has stated that while she was working as Hospital Attendant in the Railway Hospital, Palakkad she fell ill due to "Sandigate Vatham" on her left knee and she had undergone ayurvedic medical treatment for it in the Government Ayurveda Dispensary, Paipara, Ernakulam from 31.3.2004 to 5.5.2006. She explained that her absence from duty from 31.3.2004 onwards was due to ailment and the treatment she was undergoing. According to her, she had been submitting the necessary leave applications supported by the medical certificates to Sr.DMO. Palakkad from time to time and thereby she had fully complied



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with the Medical Attendance Rules. After considering the aforesaid appeal, the Appellate Authority rejected it vide Annexure A-10 letter dated 15.12.2006 and confirmed the Disciplinary Authority's Penalty Advise of "removal from service". Thereafter, she has made Annexure A-11 Revision Petition before the Chief Medical Director, Southern Railway, Chennai and the same was also rejected vide Annexure A-12 order dated 5.7.2007.

4. Counsel for the applicant submitted that the applicant could not make an effective appeal explaining the reasons for her absence from duty and refuting the charges levelled against her because she has not received any documents/letters in connection with the enquiry.

5. We have heard Shri.T.A.Rajan for the applicant and Shri.Sunil Jose for the respondents. We have also perused the records of the disciplinary proceedings held by the respondents which have been made available today. We have seen that the applicant has absented from duty from 31.3.2004. She had received the charge memo dated 22.4.2005 and she has replied to the same also. She has also received the Annexure A-5 letter dated 26.7.2005 appointing the Enquiry Officer. Thereafter, she was never available at her permanent address or at her official address. She has never given her correct address at which the respondent could contact her. The respondents have tried to serve the copies of the notice at her permanent residential address at Salem as well as at her official address. All those documents/letters send to the applicant by the respondents were returned by the Postal Authority as the applicant was not available at any of



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those addresses. Finally, the Disciplinary Authority has passed the Penalty Advise of "removal from service". When she was aware that the respondents have initiated disciplinary proceedings against her and an enquiry officer was also appointed to hold the enquiry, it was her duty to give the correct address to which the communications have to be sent. Merely absenting herself from duty by submitting some medical certificates without intimating the address to which communications have to be sent, will not absolve her from her responsibility as a disciplined Railway servant. Such absence from duty without being available at the addresses given by the applicant and without giving any other address at which she could be contacted would amount to absconding from duty purposely, particularly when her absence was for the long duration of 10 months up to 3.5.2006 ie. the date on which the Annexure A-6 penalty advise was issued to her.

6. However, in view of the contention of the learned counsel for the applicant that the applicant did not get an effective opportunity to make an appropriate appeal against the disciplinary authority's order, we do not intend to adjudicate upon the Disciplinary Authority's order at this stage. In fact, the applicant had made the Annexure A-7 representation dated 22.5.2006 followed by the Annexure A-8 reminder dated 2.6.2006 requesting department to make her available the copies of all the documents/letters to enable her to make the appeal. There was no reason why those documents/letter could not be made available to her. It was only then that she made the Annexure A-9 appeal dated 16.6.2006 without having seen the record of the disciplinary proceedings including the report



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of the Enquiry Officer. We, therefore, permit the applicant to make a fresh appeal after having obtained all the necessary documents in the matter. Consequently, we quash and set aside the Appellate Authority's order dated 15.12.2006 and the Revision Authority's Order dated 3.2.2007. We also direct the 4th respondent to permit the applicant to inspect the file relating to the disciplinary proceedings to identify the various documents on record. Thereafter, the applicant may make an application to the 4th respondent indicating the list of documents required by her. For this purpose, she shall report to the 4th respondent's office on 23.7.2009 at 11:00 A.M. along with a defense assistant, if she so desires. The respondent shall ensure that the required documents are made available to her within 15 days from making such an application. Thereafter, the applicant may make a fresh appeal and on receipt of such an appeal, the Appellate Authority shall consider the same in accordance with the rules and pass a reasoned and speaking order within a period of two months thereafter. If she is still aggrieved, she will be at liberty to approach this Tribunal again.

7. With the aforesaid orders/directions, the OA is disposed of. There shall be no order as to costs.

(Dated this the 17th day of June 2009)


K.NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER

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