

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 25/90
~~XXXXXX~~

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DATE OF DECISION 5-10-1990

S Mohanan Applicant (s)

Mr Majnu Komath Advocate for the Applicant (s)

Versus

Union of India & 4 others Respondent (s)

Mrs Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

&

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The Annexure-I order dated 28.2.1983 of the Senior Divisional Mechanical Engineer, Trivandrum removing the applicant from service and the Annexure-VI order dated 12.12.1989 of the Divisional Personnel Officer dismissing his appeal against the Annexure-I order and confirming the penalty imposed on him are challenged in this application. The facts of the case can be briefly stated as follows.

2. The applicant was working as Carriage and Wagon Khalasi under the Chief Train Examiner, Mechanical Department, Cochin. On 12.9.1982 he had sent a leave application for 13.9.1982 and 14.9.1982 through another employee by name Glison Thomas

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stating that he had to attend on his mother who was taken ill. Mr Sakthivelu, TXR to whom the leave application was taken by Mr Glison Thomas told him that the leave should ^{be}availed from the CTXR. When he resumed duty the applicant submitted an application requesting that his absence on 13.9.1982 and 14.9.1982 may be treated as leave. This request was rejected by the CTXR. Thereafter the applicant was served with a charge sheet containing the following charges:

"That the said Shri S Mohanan, while functioning as C&W Khalasi/CHTS committed serious misconduct in that he absented himself from duty on 13.9.82 and 14.9.82. And on 16.9.82 at 12.55 hrs. he approached CTXR/Shri MN Sreedharan to treat the absent as leave due and when CTXR not agreed to, he threatened him to dire consequences and finally warned that he will make Shri MN Sreedharan away from his children if his absence is not regularised on leave.

That the said Shri S Mohanan absented from duty spot on 17.9.82 at 16.30 hrs. when he was asked to collect scrap materials and to deposit in the scrapyard by duty TXR Shri CN Raghavan.

Thus the said Shri S Mohanan failed to maintain devotion to duty and acted in a manner unbecoming of a Railway Servant and thereby contravened Rule 3(i)(ii) & (iii) of the Railway Services(Conduct) Rules 1966".

The applicant submitted his explanation denying the charges. Regarding his absence from duty, he has explained that he had sent a leave application through a colleague by name Glison Thomas and that on returning to duty he again made an application to the CTXR which was not granted by him. It has been stated that usually leave in such circumstances used to be granted and that the refusal to grant leave by the CTXR was on account of personal grudge. He has also denied the allegation that he threatened the CTXR when the latter refused

to treat his absence as leave. He has further stated that since on 17.9.1982 his duty hours was from 7.00 to 16.00 hours, there was no meaning in saying that he absconded from duty at 4.30 hours for that he refused to discharge his duties. This explanation was not accepted and an inquiry was held. The Enquiry Officer found the applicant guilty of the charges. Accepting the finding of the E.O., the fourth respondent found the applicant guilty of the charges and by order dated 28.2.1983 at Annexure-I ordered the removal of the applicant from service as a penalty. The applicant filed OP-1885/83 before the Hon'ble High Court of Kerala and the Hon'ble High Court stayed the order of the fourth respondent removing the applicant from service. It is alleged that the applicant had filed an appeal on 5.4.1983 against the Annexure-I order which was not disposed of by the appellate authority. The writ petition filed by the applicant was transferrad to this Tribunal under Section 29 of the Administrative Tribunals Act. This transferred application re-numbered as ^{TA} K-232/87 was disposed of by this Tribunal directing the applicant to send a copy of the appeal said to have been filed by him on 5.4.1983 to the respondents within a period of one week from the date of that order with a further direction that the respondents should get the appeal disposed of by the competent authority within a period of three months and that the applicant should be allowed to continue in service till the date of communication of the decision of the order in the aforesaid appeal. It was also provided in the order that if

the applicant felt aggrieved by the outcome of the appeal, he would be at liberty to approach the Tribunal for appropriate reliefs. On 7.12.1989 the applicant was directed to appear before the DRM on 11.12.1989 at 3.30 p.m. for a personal hearing. The applicant had sent a telegram to the ^{DRM and the}CTXR, Quilon expressing his inability to appear before the DRM on 11.12.1989 as his uncle was admitted in the Lissie Hospital, Ernakulam. On 10.12.1989 he had also sought clarification as to the purpose of the personal hearing. While so, on 22.12.1989 the applicant was served with the impugned order Annexure-VI dismissing his appeal and confirming the penalty imposed by Annexure- I order and removing the applicant from service with effect from 20.12.1989. Aggrieved by these orders the applicant has filed this application praying that the impugned orders may be set aside and that the respondents may be directed to reinstate the applicant with back wages, continuity of service and other attendant benefits. It has been averred in the application that the inquiry has been held in a perfunctory manner without observing the principles of natural justice and that the findings are not supported by evidence. It has been further alleged that the Disciplinary Authority and the Enquiry Authority were biased against the applicant and that the appellate authority has not considered the appeal properly. It has been further contended that the order dated 12.12.1989 removing the applicant from service with effect from

20.12.1989 has been served on the applicant only on 22.12.1989 which is against the direction contained in the order of this Tribunal in TAK-232/87. The applicant has further contended that since the appellate authority has found that the charge that the applicant threatened the CTRX has not been established the appellate authority has gone wrong in upholding the punishment of removal from service.

3. In the reply statement filed on behalf of the respondents the impugned orders have been justified on the ground that the inquiry has been properly and validly held, that the findings are supported by evidence and that the appeal has been disposed of after due consideration.

4. As directed by us, the learned counsel appearing for the respondents have produced for our perusal the file relating to the disciplinary proceedings against the applicant. We have gone through the entire records produced before us and have also carefully listened ^{to} the arguments of the learned counsel on either side.

5. The charges against the applicant are that he absented from duty on 13.9.1982 and 14.9.1982 and that on 16.9.1982 at 12.55 hours when the CTRX, Shri MN Sreedharan did not agree to treat his absence as leave due, he threatened him with dire consequence and warned that he would be made away of his children if the latter refused to regularise his absence as leave and that on 17.9.1982 at 16.30 hours he absconded from

and
duty, that when he was asked to collect scrap materials by
the TXR Shri SN Raghavan, Though the Enquiry Officer and the
Disciplinary Authority found the applicant guilty of all these
charges, the Appellate Authority has held that charge of threa-
tening Shri Sreedharan CTR to ^{do} physically harm to his children
has not been proved. The Appellate Authority ^{held} that unauthorised
absence from duty on 13.9.1982 and 14.9.1982 and ~~that~~ wilful
disregard of orders given by Shri SN Raghavan, TXR to carry
scrap materials at 16.30 hours on 17.9.1982 have been proved.
The applicant has in his explanation submitted that he had
sent leave application through Mr Glison Thomas and had also
personally submitted an application to the CTR to grant him
leave for absence and that therefore he did not absent himself
from duty without justifiable reason. He has also stated in
the explanation that as per the practice, leave applications
sent through colleagues used to be accepted and leave granted
and that the refusal to grant leave in his case ^{was} only due to
personal grudge. Shri MN Sreedharan, CTR was examined as
witness No.1 before the Enquiry Officer. The E.O. had put a
definite question to Shri Sreedharan as follows:

"Q.5. (Exhibit No.1 leave letter officially) It is
seen in the leave letter that the employee absented
himself due to his mother's illness and left head-
quarters which appears to be a human valid reason,
and after his arrival when he requested you to
treat it as leave, what is the cause for treating
absent period as absent?

A. This employee has been a regular absentee. He
was in the habit of demanding leave on this plea
(mother sick & etc.) therefore I doubted the
validity of his leave letter and its reasons
dated 15.9.82 on his reporting duty, after his
unauthorised absent.

In cross-examination, the defence helper asked the Witness

No.1:

"Q.No.16. Do you aware through any source that the charged employee's mother was sick when he requested leaves for the period?

Ans. I am not aware through any source.

Q.No.17 Had you been aware of his mother sickness what would have been your attitude towards his request?

Ans. Had I been known his mother in sickness I would have granted leave."

These answers given by Witness No.1 would show that the applicant had submitted a leave application for his absence from duty on 13th and 14th September, 1982 on the ground of his mother's illness and that the witness was not satisfied about the genuiness of the request. It has also come out in evidence that on 12.9.1982 itself the applicant had sent a leave application through a colleague by name Glison Thomas. This shows that the applicant though did not appear for duty on 13.9.1982 and 14.9.1982 had done everything within his powers to inform of his inability to attend to duty on these days by sending leave application through a colleagues and that even after returning to duty he had made an application for leave. If the CTR was not convinced about the genuiness of the reason mentioned in the leave application he should have given an opportunity to the applicant to substantiate the averment in the leave application. Further, the leave application submitted by the applicant on return to duty is not seen rejected though absent is written there under signature

of the CTRX. That the applicant was absent on 13.9.1982 and 14.9.1982 is a fact admitted. The request made in the leave application ^{is} to treat this absence ~~xxx~~ as leave, if that request ~~was~~ rejected the CTRX should have rejected the leave application. The leave application with the endorsement of the CTRX 'absent' is available at page No.24 of the file relating to the inquiry. This shows that no specific order rejecting the leave application has been made. So it is impossible to conclude that the absence of the applicant on 13.9.1982 and 14.9.1982 has been unauthorised because a final decision is not seen taken either granting the request for leave or refusing the same. Though in the appellate order it has been held that the absence was unauthorised, it is curious to note that there is no charge for unauthorised absence. The charge is that he absented himself for duty on 13.9.1982 and 14.9.1982 and not that he had unauthorizedly absented from duty. The TXR Shri Sakthivelu to whom the leave application of the applicant was submitted by Shri Glison Thomas should have normally forwarded the leave application to the CTRX. For reasons best known ^{to him} this has not been done by him. Though it is seen that one or two questions were asked to TXR Shri Sakthivelu, i.e. question No.24 and 25 etc. under the caption 'Proceeding Officer Intervent', it is not seen recorded that this Sakthivelu was examined as a witness because these questions and answers were seen interpolated within the testimony of the Witness No.1. This is an erroneous procedure. Moreover, a mere perusal of

of the inquiry proceedings especially the examination of the two witnesses and the questions put to the applicant by the Enquiry Officer would show that the Enquiry Officer was not impartial. While there was no charge for being a habitual absentee the attempt from the very beginning of the inquiry appears to be to bring in evidence to show that the applicant was habitual absentee. The second question put to the Witness No.1 by the E.O. is as follows:

"Q.No.2: During his tenure of this period was he regular absentee, or a regular sick reporter or demanding frequently or irregular towards duty?"

Question No.8 put by the E.O. to Witness No.1 runs as follows:

"With all your sincerity and unbiased look as it depot officials please comment his general behaviour and working nature?"

The answer to the question is:

"His general behaviour is most unsatisfactory and picks up quarrel every time he is asked to perform some duties, he will not do his work satisfactorily and instigates others not do their portion of work. He spends time by arguing without doing work allotted to him."

This question was not warranted because there was no complaint about the general behaviour of the applicant in the chargesheet.

The putting of this question by the E.O. to the Witness No.1^{which} enabled the latter to give a damaging answer points to the unfair manner in which the inquiry was held. Similarly, while examining the Witness No.2, the Witness ~~No.2~~ as to question No.4 answered that the applicant has never refused to do the job or work. So the E.O. asked question No.5 which runs as follows:

"Then did he collect all the scraped materials and deposited the scrap yard as per your orders?"

The answer is :

"No. I found him sitting in 68 Express rake at 16.20 hrs. again I reminded him about the job I have given to him but he simply walked towards pit line and he went away at 16.30 hrs."

Then the question No.6 is:

"That means he absconded from duty from 16.30 hrs. onwards was he not?"

This question has actually put the answer to the mouth of the witness. This shows that the E.O. was not conducting the inquiry in an impartial manner. So regarding the charge that the applicant absented from duty on 13.9.1982 and 14.9.1982, it cannot be said that there is any evidence to show that his absence was wilful and without justifiable reason because he had submitted leave application before his absence and also after he returned to duty. Further, it cannot be found that the applicant was unauthorizedly absented during the period because in the charge sheet, there is no averment that his absence on 13.9.1982 and 14.9.1982 was unauthorised. Regarding the charge that the applicant threatened the CTR, since the Appellate Authority has found that this charge has not been established, it is not necessary to go into that aspect. Now coming to the charge that the applicant absconded from duty at 16.30 hours on 17.9.1982, there is absolutely no evidence to show that the applicant was drafted for duty till 17.00 hours on that date. The specific case of the applicant in the explanation submitted by him to the charge sheet is that his hours of duty was from 7.00 AM to 4.00 PM on 17.9.1982 and that therefore the charge that he absconded from duty and refused

to perform his duty at 4.30 PM on that date is meaningless. To establish the charge that the applicant was drafted for duty until 17.00 hours on 17.9.1982, the Department should have produced evidence. The witness examined to prove this aspect of the charge is Witness No.2 Shri CN Raghavan, TXR. In the entire evidence rendered by this witness, there is nothing to show that as per records the applicant was drafted for duty upto 17.00 hours on 17.9.1982. It is worthwhile to extract the entire chief-examination of this witness:

- "Q.No.1 Do you know the reason for shifting from sick line coaching yard on 17.9.82 for 8 to 17 hrs. duty?
Ans. I do not know the reason.
Q.No.2 When you deputed him for external washing of rake as he completed satisfactory till 16.00 hrs.
Ans. Yes. He completed his duty satisfactory till 16.00 hrs.
Q.No.3 After 16.00 hrs. what work you have given to him?
Ans. I asked him to collect the scrap materials from the pit lines and deposit in the scrap yard.
Q.No.4 Did he refused the job or work?
Ans. No. He never refused.
Q.No.5 Then did he collect all the scraped materials and deposited the scrap yard as per your orders?
Ans. No. I found him sitting in 68 Express rake at 16.20 hrs. again I reminded him about the job I have given to him but he simply walked towards pit line and he went away at 16.30 hrs.
Q.No.6 That means he absconded from duty from 16.30 hrs. onwards was he not?
Ans. Yes. He absconded from 16.30 hrs."

In cross-examination by the defence helper, this witness has answered that the duty hours are from 7.00 to 12.00 and 13.00 to 16.00 hours but he would say that in the case of the applicant on that particular day he reported for duty at sick line

at 8.00 'O' clock for 8.00 to 17.00 hours duty and from sick line coaching yard for 8.00 to 17.00 hours duty. H8 has further said that since he was on duty ~~only~~ from 10.00 to 19.00 hours he was not present when the applicant was taken to duty on 17.9.1982 and that he had already been taken to duty by TXR who was on 7.00^{to}/16.00 hours duty prior to his arrival. Though the witness would say that on checking the register he came to know that the applicant was booked for 8.00 to 17.00 hours duty the document which would show that the applicant was booked for 8.00 to 17.00 hours duty has not been produced before the E.O. The answers to questions 10 and 11 are worth to ^{be} extracted.

Q.10 "Who has booked the employee other than the timing marked i.e. 7.00 to 16.00 hrs. Have you booked the employee at any other times?"

A. 7.00 to 16.00 hours. duty TXR has booked him for 8.00 to 17.00 hrs. duty since he has reported at 8.00 O clock.

Q.11 If an employee comes late for 1 or 2 hrs. will you extend his duty hrs. further?

A. No I will not taking for duty."

Since the TXR who ~~xxx~~ booked the applicant for duty on 17.9.1982 has not been examined and since document to show that the applicant was booked for 8.00 to 17.00 hours duty has not been produced, it is impossible to reach a reasonable and justifiable conclusion that the applicant was booked for duty from 8.00 to 17.00 hours on 17.9.1982. Since the applicant has at the very outset in his explanation submitted that he was on duty only until 16.00 hours, the first and foremost thing that the Department should have established at the inquiry is that he was booked for duty till 17.00 hours by producing the

at 8.00 hours for 8.00 to 17.00 hours duty and from sick line
coaching yard at

relevant records. This having been not done there is absolutely no dependable evidence to conclude that the applicant has absconded from duty at a time when he was bound to perform duty. There is an overwriting in the testimony of the second witness. The last answer of this witness is "Yes, I contradicted your statement. He is booked for 7.00 to 16.00 hrs. duty". Over this 7.00 to 16.00 hours there is overtyping making the answer to appear as he has booked for 8.00 to 17.00 hours to 16.00 hours duty probably in an attempt to make it that he was booked for 8.00 to 16.00 hours duty. There is no initial over this over-typing and it is not possible to conclude when this over-typing took place. It could be argued that this over-typing was done after the examination of the witnesses was over. At any rate, there is no dependable evidence to come to a finding that the applicant was booked for 8.00 to 17.00 hours duty on 17.9.1982 and that therefore there is absolutely no ~~dependable~~ evidence to arrive at a conclusion that the applicant absconded from duty at 16.30 hours on 17.9.1982. We are aware that in exercise of supervisory jurisdiction over the domestic Tribunals in matters like this, the Tribunal will not be justified in reassessing the evidence as if in an appeal. But when there is a total lack of evidence and when the finding is absolutely perverse, we cannot but interfere and set right the wrong committed by the domestic Tribunals. In this case, a careful scrutiny of the inquiry proceedings compelled us to hold that

the inquiry has not been properly held and that the findings that the applicant is guilty of the charges is absolutely perverse. For the above said reasons, the impugned order at Annexure-I cannot stand. The Appellate Order Annexure-VI is also unsustainable. Though ~~it has been stated~~ it has been stated that the Appellate Authority has carefully gone through the appeal and the proceedings of the inquiry the appellate order does not disclose such application of mind. In the final order passed by this Tribunal in TAK-232/87 the respondents had been directed to allow the applicant to continue in service till the communication of the decision of the competent authority in the above appeal. The applicant has averred that the impugned order Annexure-VI dated 12.12.1989 removing the applicant from service with effect from 20.12.1989 has been received by him only on 22.12.1989. Though in the reply statement, it is contended that the appellate order was conveyed to the applicant on 12.12.1989 itself, this contention does not appear to be correct. If that was true the respondents should have produced evidence to prove this. Further, since the applicant was removed from service as per the Annexure-VI order communicated on 12.12.1989 itself, then there would not have been any necessity to prolong his service until 20.12.1989.

6. For the reasons mentioned in the foregoing paragraphs, we are of the view that the impugned orders at Annexure-I and VI are unsustainable in law and therefore we quash these orders.

We direct the respondents to reinstate the applicant in

service with continuity of service, back wages and all
within a period of 2 months from the date of receipt of this order
incidental benefits. There is no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER



(NV KRISHNAN)
ADMVE. MEMBER

5-10-1990

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