

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 401 / 2009

Monday, this the 8th day of November, 2010.

CORAM

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

G.Suresh,
S/o K Govindan,
(Retired Mail Guard/Southern Railway,
Palghat),
Residing at: Karungad House,
Marutha.P.O.
Palghat District.Applicant

(By Advocate Mr TC Govindaswamy)

v.

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.
2. The Senior Divisional Operations Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Additional Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.Respondents

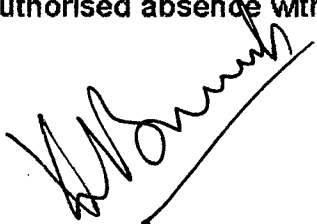
(By Advocate Mr Sunil Jacob Jose)

This application having been finally heard on 28.10.2010, the Tribunal on 8.11.2010 delivered the following:

ORDER

HON'BLE DR K.B.SURESH, JUDICIAL MEMBER

Forty days of unauthorised absence are compounded by the fact that there had been earlier instances also in which the applicant had come late for duty and was absent also has resulted in a charge being laid against him for unauthorised absence without any prior information and application for leave.

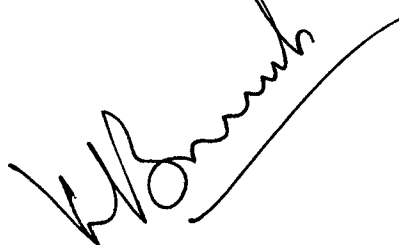


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2. The applicant would contend that infact on 26.10.2007 he had to attend to his brother-in-law who was suffering from heart attack and while so at a distant place he suffered fever and was taken to a Doctor and was apparently diagnosed as suffering from liver cirrhosis. He would say that this disease prevented him from moving out but on the same day of the absence itself he had informed through his daughter to Shri Rajagopal, the concerned officer of his sickness and she had confirmed to him that she had in fact made a telephone call and she presumed that it was to Shri Rajagopal whom she spoke. During the enquiry, Shri Rajagopal would say that in fact he had not received any phone call.

3. We have gone carefully through the enquiry details. It would appear that on 14.3.2007 the applicant was sent for medical check up to a Railway Hospital and the doctor found him to be fit and he had joined duty thereafter. The Administrative witness would say that while on duty the applicant's work was satisfactory. The Administrative witness would also agree that there are cases of private sick periods regularised by competent authority on representation from the concerned employees. He would also agree that the concerned authorities have without any objection forwarded the applicant's representation to DOM/Palghat in which the applicant would say that he had stated various aspects of his illness and explained his inability to report for duty since he was undergoing treatment. Administrative witness admits that it was forwarded by the concerned official with a forwarding endorsement without any dispute as to the genuineness of the reasons.

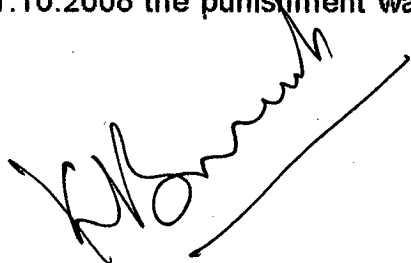
4. The applicant would aver that his son is suffering from Haemophilia which is a debilitating disease and the treatment thereof is also very expensive and for that reason thereof he was going through acute domestic problems which might have resulted in his illness. He would say that he was not unauthorisedly absent

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at any other time even though he was departmentally dealt with earlier.

5. He would aver that he had produced a medical certificate from a competent doctor and therefore if at all its genuineness is doubted, under Rule 538(4) a re-examination ought to have been ordered against him to find out the truth about his illness. That having not done, the reasons for his absence cannot be surmised as unauthorised absence. He would point out that his representation and medical certificate were self explanatory and it was upto the authority concerned either to accept or reject it. Since they had not rejected it after giving him an opportunity of being heard in the matter or pursue the re-medical examination opportunities available to them, he would canvass it as a vitiating indication against the enquiry held and which was not properly focused. There was no question of any unauthorised absence on his part as his absence was purely due to illness which he would claim as reported by his daughter.

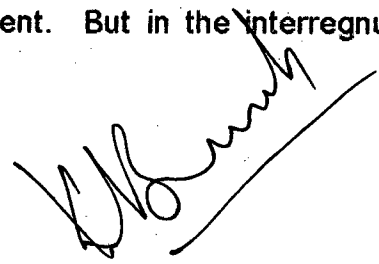
6. The Railways on the other part would say that on seven occasions earlier starting from 2001 to 1.6.2006 either late comings in arriving at different places or unauthorised absence punishment like withholding of privilege passes, censure and reversion had to be imposed upon him. The applicant apparently had not followed medical attendance rules for taking private treatment. They would say that when a Railway servant residing outside the jurisdiction of the Railway Medical Officer, if he requires leave on medical ground he should submit within 48 hours a sick certificate from a registered medical practitioner. The applicant would contend that he was laid up and therefore incapacitated to go and meet a medical practitioner and produce it before the authorities. But since the enquiry report was against him, he was inflicted with a punishment of removal from service vide Annexure A-1 dated 12.6.2008. In the appellate order vide dated 1.10.2008 the punishment was modified, apparently in view of the 30

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years of service put in by the applicant into compulsory retirement and pension and gratuity were fixed at 90% of the full compensation. Challenging this the applicant has approached this Tribunal.

7. The question which arose in this connection is whether an opportunity under the rule has been utilised by the respondents as the rules provide that when a private medical certificate is produced by an employee; which is to be disputed, then a re-examination is possible. In this case, apparently, the medical certificate is not seen disputed. But even when not accepting a medical certificate an enquiry is ordered against the applicant with all consequences which was flowing from it. Therefore, the crux of the matter would be that on what basis was the medical certificate issued by private doctor is disbelieved. After having gone carefully through pleadings, it would appear that this aspect of the matter was left unattended by the enquiry officer, the disciplinary authority as well as the appellate authority. The matter could have been easily settled at rest by investigating the methodology of treatment meted out to the applicant while under private treatment. By supportive evidence it could have been possible for a medical investigation that if the applicant did not have liver cirrhosis the veracity of the same can be assessed by scanning and other related methodologies and especially so in view of the fact that the rules provide them with an opportunity of re-medical examination in case they doubt the medical certificate. It is to be noted in this connection that the medical certificate which was before the concerned authorities were forwarded without any dispute as to its genuineness. Therefore, it can only be inferred that a proper opportunity has not been afforded to the applicant.

8. This finding in normal course would have only resulted in the order for reinstatement. But in the interregnum, the applicant had sought for voluntary



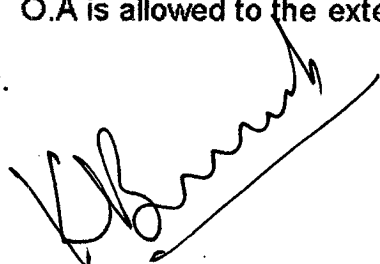
retirement. Therefore in the entire conspectus of the issue, we do not think that it is desirable, in the circumstances to reinstate the applicant. But at the same time, justice must be dealt to him as well. Therefore, even the Railways had also contended that while the disciplinary proceedings are in force voluntary retirement cannot be granted need not be taken in its full effect as otherwise, we may be compelled to order re-instatement. That we do not want to do. Therefore, the following directions are issued:

a) Respondents are directed to consider the applicant as voluntarily retired with effect from the date of the appellate order.

b) We direct the respondents to recalculate the terminal benefits and pension available to the applicant on the basis that he had voluntarily retired as on the date of appellate authorities order and if he is entitled to any such arrears, pay the same to him within three months next from the date of this order.

c) The applicant will be entitled to all the consequential benefits for having voluntarily retired on the date of the appellate order and all monetary benefits including full pension and gratuity as admissible for voluntary retirement on that date.

O.A is allowed to the extent indicated above. There shall be no order as to costs.



DR K.B.SURESH
JUDICIAL MEMBER



K NOORJEHAN
ADMINISTRATIVE MEMBER

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