

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

Original Application No. 184 of 1991

this the 10/5 day of May '2000.

HON'BLE MR D.V.R.S.G. DATTATREYULU, MEMBER (J)
HON'BLE MR S. MANICKAVASAGAM, MEMBER (A)

Aditiya Prasad, S/o Gauri Shanker, R/o Village Soni Har Lal
Post Babbani Kanoongo, District Gonda posted as Leveman at
Railway Zunction, Aaishbagh, Lucknow.

Applicant

By Advocate : None.

Versus.

Union of India through General Manager, Northern Eastern
Railway, Gorakhpur.

2. Divisional Railway Manager, (Safety), Northern Eastern
Railway, Lucknow.
3. Station Supdt. Aaishbagh, Lucknow.

Respondents

By Advocate : Smt. Maya Sinha

with

Original Application No. 155 of 1991

Aditiya Prasad

Applicant

Versus

Union of India & others

Respondents

By Advocate : Smt. Maya Sinha

ORDER

D.V.R.S.G. DATTATREYULU, MEMBER (J)

The applicant in O.A. no. 184/91 prays for quashing of the removal order passed by the respondents and to treat him on continuous duty and to grant him all the arrears of salary. The relief sought for in O.A. no. 155/91 to the effect that he should be allowed to join his duty also ^{and} to release the wages, allowances from the period 13.7.83 onwards.

(Third)

2. The facts gave rise for filing the present O.A. are as follows :

The applicant was appointed in the year 1957. Subsequently he was posted to the post of Leverman in the year 1963 and was confirmed in the year 1964. On 13.12.1982, the applicant had a dispute with Station Supdt. of the railways, when the applicant was asked to take charge of Cabinman, to which the applicant refused stating that he is not having skill to handle the charge. Therefore, the applicant was put off duty. Subsequently, it was stated that the applicant was absented from duty from 15.12.1982 to 25.12.82 and 27.12.82 to 30.12.82. Therefore, the applicant was directed to appear and join the office of A.O.S., Lucknow Jn. The applicant went there and he was again transferred to Aaishbagh Jn. On 7.1.83, the applicant was issued a chargesheet stating that the applicant has disobeyed the orders to join as Cabinman. The applicant has submitted his reply. An enquiry was conducted and enquiry report is at Annexure-2. The applicant filed a suit for recovery of pay from 15.12.82 to 25.12.82 and again on 27.12.82 to 30.12.92 in the court of Munsif, Gonda, which was transferred to this Tribunal and was registered as T.A. no. 15/92. The Tribunal directed the respondents to consider afresh and pass a speaking order, but it was not followed. in the enquiry report as stated above. After the enquiry report was received by the disciplinary authority, the applicant did not join as Cabinman. Therefore, the punishment of removal was ordered on 25.4.91. It is stated that these orders are without jurisdiction and they are not done following the principles of natural justice, hence these O.As.

3. In the Counter filed on behalf of the respondents, it is stated that the applicant was initially appointed as Hamal. He was promoted as Pointman and thereafter as Leverman w.e.f. 19.3.63 and was confirmed in the year 1966. It is

stated that the applicant filed O.A. no. 155/91 on 15.7.91 after his retirement and in that O.A. the applicant claimed relief that he may be allowed to join his duty ^{but not} as he is no more in service w.e.f. 25.4.91. The applicant was asked to work as Peintman due to shortage of staff and he was told that as soon as the staff would be available, he would be relieved from there. The applicant was asked by Station Supdt. to take memo to attend the office of Area Manager, G.D. for necessary orders, but without taking the memo, the applicant went-out of the office and absented from duty unauthorisedly from 15.12.92 to 25.12.92 and again on 27.12.92 to 30.12.92. His salary was not paid for the said period for the reason that he ^{had} not performed the duties. A chargesheet was issued for dis-obeying the orders of S.S./GD in terms of memorandum no. E/A-3 LVM/GD/83 dated 7.1.83. The applicant submitted his reply on 31.1.83 stating that he was not accepted the charges. Then the enquiry was ordered. The enquiry was properly conducted and ultimately, he was found guilty and he was removed from service. With regard to the ~~clarification~~ allegation of the applicant that he was not allowed to join his duty by S.S., a clarification was sought and it was denied by the authorities that he was not allowed to join duty. The applicant had not reported for duty since 11.3.83 and, therefore, the disciplinary proceedings were initiated. The details of the proceedings are mentioned in Annexure R-2. A major memorandum no. E/A-3 LVM/GD/83 dated 7.1.83 and D.A.R. proceedings under rules were processed and after giving him reasonable opportunity, the applicant was punished with W.I.P. for two years vide orders dated 1.9.86. Thereafter, the applicant preferred an appeal against the order dated 1.9.86, but the same was dismissed and the same was communicated vide letter dated 26.2.87. In compliance of the Tribunal's judgment, absence of the applicant was considered for the period as indicated above and ~~by~~ the

payment was not made. As regards the absence from 11.7.83, the enquiry officer submitted his report on 22.10.89. The applicant was asked to submit his reply within seven days under letter Annexure R-5. It is stated that the applicant has not joined duty at Aaishbagh Jn. on his own accord. Finally it is stated that there was no violation of any rules or any principles of natural justice and the proper procedure has been followed as such there are no merit in the application and the same has to be rejected. Entering the order in dismissed from service.

4. It is the same reply and the facts narrated above constitute the applicant as alleged in the reply in O.A. no. 155/91.

5. No representation on behalf of the applicant. We have heard the learned counsel appearing for the respondents. We have perused the application, Counter, Rejoinder & Annexures.

6. The point for consideration is whether the applicant is entitled to any relief sought for or not.

7. It is seen from the record that the applicant had not joined his duty from 15.12.82 to 25.12.82 and again on 27.12.82 to 30.12.82 at Aaishbagh Railway Station, Lucknow that is why the applicant was put off duty and not ~~paid~~ paying the salary for the period as indicated above. Because the applicant had not been attending his duty on those days, the authorities are justified for not paying the salary. The explanation of the applicant that he wants to go to join his duty on some another place, but he was not allowed to join his duty other places are not of consequence in view of the fact that the responsible official had stated that the applicant had not attended his duty. It is brought to our notice that none of the official has any malice, prejudice against the applicant. Therefore, their reply can be accepted without any fear. (With attention)

8. The question with regard to his removal which is sought in O.A. no. 384/91 goes to show that he failed to attend his duty from 15.12.82 to 25.12.82 and again on 27.12.82 to 30.12.82 at Aaishbagh Railway Station, Lucknow. These facts are clearly mentioned in the Annexures filed on behalf of the respondents. The chargesheet was served on the applicant and the applicant denied the charges. The enquiry officer ^{had} submitted his report in which the charges were proved. The applicant has not been able to show how the principles of natural justice has been violated and also in conducting the enquiry. There is no whisper with clear plea how the applicant was denied any opportunity at the time of enquiry. Therefore, it is seen that the enquiry was properly conducted and the disciplinary ~~proceedings~~ authority came to the conclusion that the applicant had not joined his duty in the new station and, therefore, the authorities took a decision to remove him from service. In service jurisprudence, the discipline is main criteria, for interfering that the finding arrived at by the disciplinary authority. Here, not only one time but even second time, the applicant had shown determination to disobey the orders. Therefore, the respondents have no option except to remove him from service.

9. In view of the foregoing, there are no merit in both the applications and the same are, therefore, liable to be dismissed and are dismissed. The parties shall bear their own costs.

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MEMBER (A)
LUCKNOW: DATED:
GIRISH/-

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21/1
MEMBER (J)

10/1-1
K. B. B.
G. J. V.