

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

~~CIRCUIT BENCH, AT RANCHI~~

O.A. NO. 737 of 1995

Date of order 8-11-2000

Bhattacharjee Singh Sardar, son of Late Ananda,
Ex G/Man of G/No./11/JC under PWI/VAA (Bhaga), S.E.
Railway, District Dhanbad.

.. Applicant

-versus-

1. Union of India through the General Manager,
S.E. Railway, Garden Reach, Calcutta.
2. The D.R.M., S.E. Railway, Adra, District Purulia.
3. Assistant Engineer, S.E. Railway, Mohada, District
Dhanbad.

.. Respondents

Counsel for the applicant .. Mrs. M.M. Pal.

Counsel for the respondents.. Mr. G. Bose.

CORAM: Hon'ble Mr. Justice S. Narayan, Vice-Chairman
Hon'ble Mr. L.R.K. Prasad, Member (A)

ORDER

L.R.K. Prasad, Member (A) :-

The applicant has filed this O.A. seeking
following reliefs:-

- (i) For quashing the order dated 28.8.1990
(Annexure-3) by which the applicant has been
removed from the Railway Service on the
basis of a departmental proceeding.
- (ii) To direct the respondents to dispose of the
appeal including the reminder appeal dated
28.7.1995.
- (iii) To direct the respondents to reinstate the
applicant with all consequential benefits
and for staying the removal order dated
28.8.1990.

2. We have heard the learned counsel for the parties and perused the materials on record.

3. The applicant was initially appointed in November 1965 under South Eastern Railway. While working as Gangman under P.W.I., Bhaga, the applicant was served with a major penalty charge-sheet on 4.1.1990 (Annexure-1). He submitted his explanation on 26.4.1990 vide his reply as at Annexure-2. It is alleged that the departmental inquiry was not conducted properly and he was not given due opportunity to defend his case. The Inquiry Officer submitted his findings on 27.7.1990. The conclusion of the Inquiry Officer was that the applicant had neither intimated the Department about his sickness nor submitted periodical progressive medical certificate as required under law. Therefore, he held that charges framed against the applicant stood proved. On the basis of the findings of the Inquiry Officer, the Disciplinary Authority imposed on the applicant the major penalty of removal from service vide his order dated 28.8.1990 (Annexure-3). Against the said order, the applicant filed a mercy appeal before the Divisional Railway Manager stating therewith that he fell sick from 25.1.1988, as a result of which, he could not submit any medical certificate in time as he was staying at the relevant time at a remote village. He pleaded that on humanitarian ground, he should be reinstated in service in order to save his family from starvation. This appeal was followed by reminder dated 20th July 1995 (Annexure-5). The statutory appeal of the applicant has not yet been disposed of by the concerned authority.

4. It is alleged by the applicant that he was not given proper opportunity to defend his case. Even though it is alleged that the impugned order has been passed

without jurisdiction, the applicant has not been able to substantiate the same. It is pointed out that inspite of charge-sheet dated 4.1.1990, he was allowed to join his duties on 2.5.1990 and he performed the said duties till his removal from service in August 1990. Moreover, the punishment imposed on the applicant is harsh and is disproportionate to the gravity of the charges which were proved without the applicant being allowed due opportunity to place his side of the case.

5. The above application has been opposed by the respondents on various grounds including limitation clause under Section 21 of the A.T.Act, 1985. It is stated that the respondents have not received any statutory appeal from the applicant. At this belated stage, the appeal also becomes time-barred and cannot be entertained. The major penalty charge-sheet was issued to the applicant for unauthorised absence from duty without proper authority since 15.1.1988. In response to the said charge-sheet, the applicant had reported for duty on 2.5.1990 and produced unfit medical certificate at that time in support of his sickness. It is asserted by the respondents that the applicant was given due opportunity to defend his case but the applicant failed to give adequate justification for his long unauthorised absence. If he had fallen sick, he should have sent his leave application along with medical certificate to his controlling officer but the same was not done. He reported for duty only when a charge-sheet was served on him. He failed to give convincing reasons for his long absence without any proper authority. The disciplinary authority has passed the removal order after careful consideration of the entire matter and with due application of mind. It is also pointed out that as per rule, the disciplinary authority

may also conduct the inquiry as Inquiry Officer if he is not the reporting officer. It is further clarified that Assistant Officer is the appointing authority for all Class IV staff and, therefore, the question of jurisdiction does not arise at all.

The removal order has been issued under the signature of AEN who is the legal authority. Regarding the claim of the applicant that he had filed a mercy appeal against the order of the disciplinary authority before D.R.M., it is stated that no such appeal representation was received from the applicant. Moreover, at this stage, the same has become time-barred.

6. We have considered the entire matter in the light of submissions made by the parties and materials on record. It is admitted fact that the applicant, who was a Gangman at the relevant time, remained absent from 25.1.1988 to 1.5.1990 (828 days). A major penalty charge-sheet was served on him on 4.1.1990 (Annexure-1). The main allegation in the charge-sheet is that the applicant, while employed as Gangman, was absenting himself from duty without proper authorities since 25.1.1988. Vide Annexure-2, the applicant sent a reply to the Assistant Engineer, S.E. Railway, Mahuda, explaining the circumstances because of which he could not attend office since 25.1.1988. He stated that from 25.1.1988 to 4.4.1990, he was seriously ill and lying in precarious condition, as a result of which he could not send any information to his controlling officer. He has further stated that he was treated by local Physician and when he was declared fit for duty, he sent the information to the concerned authorities. In the meantime, the departmental proceeding was under way and the Inquiry Officer submitted his report dated 27.7.1990, which is at Annexure-3. He has stated in his

report that during the inquiry, the applicant had accepted the charges framed against him and had stated that due to sickness and there being no adult family member, he could not pass on information regarding his illness to concerned authority. This only shows that the applicant had participated in the inquiry process. Therefore, the Inquiry Officer had limited option to indicate his findings as the charges had already been admitted by the applicant. The findings of the Inquiry Officer is reproduced below:-

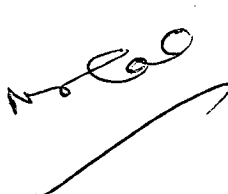
"On careful consideration of the foregoing facts and circumstances, I have come to the conclusion that Sri Bhattacharjee S/o Ananda, has failed to intimate of his sickness and submit periodical progressive medical certificates as required under the rules. Thus the charges framed against him are proved."

After taking into consideration the findings of the Inquiry Officer, the Disciplinary Authority imposed on the applicant penalty of removal from the Railway service. He came to the conclusion that during the course of inquiry, the applicant could not furnish convincing reason for his long absence and during the inquiry, the applicant had accepted the charges. In his view, the applicant was not fit to be retained in Railway service and, accordingly, he passed the order for removing him from service (Annexure-3).

7. The applicant has categorically stated that he had filed a mercy appeal for his reinstatement in service before the Divisional Railway Manager, S.E. Railway, Adra (Annexure-4). On the other hand, the respondents have stated that they never received any such appeal from the applicant. Moreover, according to the respondents, now the statutory appeal has become time-barred. Therefore, the question of disposal of statutory appeal by the

concerned authority does not arise.

8. It would be appropriate to go through the relevant leave rules applicable in the Railway Service. The legal position is that leave cannot be claimed as of right and leave of any kind may be refused or revoked by the competent authority. According to Rule 510 of the Indian Railway Establishment Code, volume I, unless the President, in view of the exceptional circumstances of the case, otherwise determines, ~~no~~ railway servant shall be granted leave of any kind for a continuous period exceeding five years. Rule 511 provides that an application for leave or extension of leave shall be made to the competent authority. Rule 517 (3) of the said Code provides that railway servant, who has taken leave on medical certificate, may not return to duty unless he has produced a medical certificate for fitness from the appropriate medical authority. Rule 518 of the said Code provides that unless authority competent to grant leave extends the leave, a railway servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were leave on half average pay, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave. It further provides that wilful absence from duty after the expiry of leave renders a railway servant liable to disciplinary action.



9. In the instant case, it is admitted position that the applicant remained absent from duty in an unauthorised manner from 25.1.1988 to 1.5.1990. He has himself admitted that during the said period, he could


not send any intimation to his controlling officer on the ground that he was seriously ill. However, we find that no medical certificate from a local doctor is available in the O.A. In any view of the matter, for grant of medical certificate, there is prescribed procedure, in such a circumstance, the prayer for grant of leave cannot be considered in absence of medical certificate from prescribed authority. In the instant case, we find that the applicant reported for duty on 2.5.1990 and he was allowed to join. He remained in the office for sometime and ultimately removed from service vide order of the disciplinary authority dated 28.8.1990 which is at Annexure-3. As already stated above, it is admitted fact that he remained absent from duty in an unauthorised manner with effect from 25.1.1988 even though he has given explanation for such long absence.

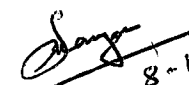
10. It may be pointed out that the concerned authority is fully competent to initiate disciplinary proceeding against the applicant for his long unauthorised absence and pass appropriate order in the disciplinary proceeding in accordance with law. In the instant case, the disciplinary authority has imposed on the applicant the penalty of removal from service. Keeping in view the facts and circumstances of the case, it is our considered opinion that the purpose might have been served by awarding lesser punishment to the applicant. It is the settled principle of law that punishment has to commensurate with the gravity of the charges. However, the matter has to be considered by the competent authority by passing appropriate order in the matter. In the instant case, the applicant has categorically

referred

stated that he had filed mercy appeal followed by a reminder before the Divisional Railway Manager, S.E. Railway, Adra Division. They are at Annexures-4 and 5, which have not yet been disposed of. On the other hand, the respondents have denied to have received any such appeal from the applicant. Whatever it may be, in the interest of justice, it is necessary that the appeal representations of the applicant, as stated above, are considered by the concerned appellate authority by passing a suitable order in accordance with law in the light of observations made by us hereinabove.

11. In view of the above facts and circumstances of the case, the concerned appellate authority is directed to consider the representations of the applicant, as at Annexures-4 and 5, in the light of observations made by us hereinabove and pass appropriate order in accordance with law within a period of four months from the date of receipt of a copy of this order. No order as to the costs.


(L.R.K. Prasad)
Member (A)


(S. Narayan)
Vice-Chairman