

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 199 OF 2006[Patna, this , the 22nd Day of February, 2012]C O R A MHON'BLE MR. NARESH GUPTA, MEMBER [ADMN.]
HON'BLE MS. URMITA DATTA (SEN), MEMBER [JUDL.]

Amarjeet Kumar Mondal, son of Shri Ram Chandra Mandal, Ex-Bunglow Peon under Chief Transportation Manager [P], Eastern Railway, Kolkata, resident of village – Rahmatpur Basa, PO/PS – Asarganj, District.

APPLICANTBy Advocate :- Shri M.P.Dixit.
Shri S.K.Dixit.

Vs.

1. The Union of India through the G.M., Eastern Railway, Kolkata-1.
2. The Chief Personnel Officer, Eastern Railway, Kolkata.
3. The Chief Operations Manager/CPTM, Eastern Railway, Kolkata.
4. Dy. Chief Operating Manager [Goods], Eastern Railway, Kolkata.
5. Sr. Operating Manager [Coaching], Sr. Transportation Manager [CMG], Eastern Railway, Kolkata.

RESPONDENTSBy Advocate :- Shri Mukund Jee,
Standing Counsel.O R D E RUrmita Datta (Sen), Member (Judl.) :- The instant OA has been filed for relief, inter-alia :-

“8/[I] That your Lordships may graciously be pleased to quash and set aside the impugned order of removal dated 14.10.2004 [Annexure-A/14], order of appellate authority dated 28.12.2004 [Annexure-A/17], order of revisional authority dated 21.03.2005 [Annexure-A/19] and order dated 17/18.08.2005 [Annexure-21] respectively.

[II] That the respondents be directed to reinstate the applicant in service henceforth w.e.f. the date of removal from service with all consequential benefits including salary etc.

[III] That the respondents be further directed to treat the intervening period before removal from service dated 14.10.2004 by treating the same as on duty or by regularising the same against medical leave with all benefits.

[IV] Any other relief or reliefs may be allowed in favour of the applicant to which he is legally entitled to."

2. The case of the applicant is that he was initially appointed as substitute Bungalow Peon under Shri Amritanshu, Chief Transportation Manager [P] [in short CTM] on 20.12.2002. On and from 24.07.2003, the applicant, due to his illness, was absent from duty. He was charge-sheeted with major penalty charge-sheet dated 13.01.2004 [Annexure-A/1] on the allegation of unauthorized absence since 24.07.2003, without any intimation to the office and on the basis of two letters dated 12.12.2003 and 09.09.2003 issued by Shri Amritanshu, CTM[P] under whom the applicant was working at the material time. The counsel for the applicant submitted that after receiving the charge-sheet the applicant sent a representation on 27.01.2004 [Annexure-A/2] asking for dropping of charge-sheet. As per the applicant, the respondent no.5 appointed Shri S. Haldhar, TI/Plg. CCM Office, Kolkata as Enquiry Officer, though he is subordinate to the CTM [P]. Thereafter, the Enquiry Officer sent a letter dated 19.02.2004 granting ten days time to the applicant for engaging defence helper. The applicant vide his reply dated 28.02.2004 made certain objections. He also submitted a representation dated 24.03.2004 [Annexure-A/3] along with the PMC dated 24.03.2004 [Annexure-A/4] informing about his illness and other difficulties stating that it would not be possible for him to attend the inquiry. According to the

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applicant, in the meanwhile, he sent another letter dated 24.04.2004, along with medical certificate dated 23.04.2004 [Annexures-A/5 & A/6 respectively]. The counsel for the applicant further submitted that though the Inquiry Officer fixed the date of inquiry but no Railway pass was sent to the applicant and in the meanwhile another date was fixed on 01.07.2004. He appeared and made a representation before the authority on the same date. Again, vide letter dated 16.07.2004 the next date of enquiry was fixed on 10.08.2004. The applicant, along with his defence helper, attended the inquiry and statement was recorded on that date. The Inquiry Officer submitted his report on 10.09.2004 [Annexure-A/10] wherein the applicant was found guilty of charges of unauthorised absence w.e.f. 24.07.2003 without any authority. After receiving the inquiry report the applicant had submitted his reply on 10.10.2004 [Annexure-A/13] in which he had pointed out some infirmities in the report.

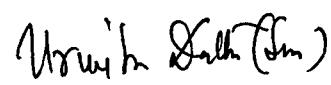
3. However, vide order dated 14.10.2004 order of removal was issued vide Annexure-A/14. The applicant submitted an appeal to respondent no.4 on 29.11.2004 [Annexure-A/15]. Thereafter, the applicant was called for personal hearing on 27.12.2004 and he submitted his representation also. Thereafter, the respondents rejected the appeal on 28.12.2004. Being aggrieved, the applicant again submitted the revision petition on 03.03.2005 to the respondent no.3, which was rejected vide order dated 21.03.2005. Being aggrieved with order dated 21.03.2005, the applicant has preferred this instant application.

4. The counsel for the applicant has submitted that the

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appointment of Inquiry Officer is bad in law since he is subordinate to the CTM[P] as per whose letter the charge-sheet was issued. He also submitted that since the applicant was ill and out of station, he could not join or inform the authority within time and subsequently submitted medical certificate issued by private Doctor. He further submitted that the impugned order are cryptic and unreasoned thus liable to be quashed.

5. The counsel for the respondents vehemently opposed the contention of the applicant and has submitted that since the Inquiry Officer is superior in rank to the charged employee, he has every authority to be appointed as Inquiry Officer. He further submitted that the applicant never intimated the authorities about his illness till the date of issuance of the charge sheet. Moreover, he had submitted medical certificate issued by the private doctor instead of any Railway Medical Officer in support of his claim. The counsel for the respondents also referred letter dated 12.12.2003 issued by the controlling authority of the employee concerned, i.e., CTM [P] wherein it has been categorically mentioned that the applicant was absent from duty since 24.03.2003 without any intimation but he took his salary from the Accounts Office for the months of July & August, 2003. He also referred to the report of the Inquiry Officer dated 13.01.2004, wherein it has been observed that the applicant never intimated his absence till a major penalty charge-sheet was served to him and only thereafter the charged employee submitted PMC. The counsel for the respondents also referred to the submissions recorded during the enquiry proceedings dated 10.08.2004 [Annexure-R/C to his written statement] wherein against question no.2, the applicant answered, inter-alia -



"Ques.2. You were seriously ill but you came to office on 31st Aug.'2003 for taking your salary but you did not meet your Boss though he was available in the office. Have you any opinion regarding this ?

Ans.2 It was not felt imperative to see my Boss under whom I am employed as his Bungalow Peon. Because of the fact that it was not known to me whether he is present in his chamber/office or not or engaged with any official business or free in his chamber."

6. The respondents' side further submitted that the orders passed by the Divisional Authority, Appellate Authority as well as Revisional Authority are not cryptic, as alleged by the applicant, but reasoned one and in support of his contention he referred Annexures-R/E & R/F of the written statement. He also submitted that there is no provision for issuance of pass in favour of the charged officer and his defence helper to attend the enquiry when a case of unauthorised absence has been made out. He also submitted that though for the long absence period the applicant submitted medical certificate from the private Doctor on the ground of his illness after a long gap of time, i.e., after issuance of charge-sheet, but it is an admitted fact that he had taken his salary himself for the months of July & August,2003 from the Accounts Office, for which period he had submitted his medical certificate.

7. No rejoinder was filed against the written statement filed by the respondents.

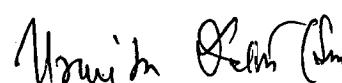
8. We have heard both the sides and perused the documents annexed with the OA as well as the written statement. The counsel for the applicant has made two fold submissions: [i] the Inquiry Officer is not the competent authority being junior to the controlling authority; and [ii] the inquiry proceeding is illegal being violative of principles of natural justice and

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thus, the impugned orders are bad in law being cryptic, non-speaking and ill motivated. As per Railway Circulars, departmental inquiry should be conducted by an officer, who is senior to the officer whose conduct is being inquired into and in the instant case since the Inquiry Officer is a Group C employee, being sufficiently senior to the applicant has authority to inquire into the matter.

9. Further from the perusal of the record, it is found that it is an admitted fact that the applicant was absent without any intimation to the office for a long period and submitted medical certificate issued by the private Doctors when he was charge-sheeted. The applicant never disputed the allegation made by the respondents that he took his salary for the months of July & August, 2003 from the Accounts Office and did not bother to meet his boss on the ground that it was not known to him whether his boss was present in the chamber/office or not, or engaged with any official business or free in his chamber. From the perusal of the removal order as well as the appellate and revisional authorities' orders, we find that the authorities have dealt with the representation by a speaking order and on the basis of the admitted facts of the case. It has been observed by us that the applicant neither bothered to inform about the cause of his absence to the controlling authority to whom he was attached with for personal duties, nor submitted any medical certificate issued by the Railway Doctor as per rules. He had also taken his salary in the meantime from the Accounts Office.

10. Further, the applicant has also not controverted the submissions made by the respondents in the written statement by filing any rejoinder.



11. In the facts and circumstances of the case and observation made above, we do not find any merit in the case so as to interfere with the impugned orders. The OA is thus dismissed being devoid of merit. No costs.

Urmita Datta (Sen)
[Urmita Datta (Sen)]/M[J]

Naresh Gu-
[Naresh Gupta]/M[A]

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