

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCHO.A.NO.: 304 OF 2006

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M.A.NO.: 291 OF 2008[Patna, this *Wednesday* the *20th* Day of January, 2010]C O R A M

HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER [J]

HON'BLE MR. SUDHIR KUMAR, MEMBER [A]

Madan Dhari Singh, Ex- Head Clerk, age 50 years 3 months, S/o Late Shri Saheb Singh, R/o village – Katari, P.O.: Ekbalganj, Nirserpura, Via. Lai, Distt. - Patna [Bihar], Pin – 801 112, last employed as Head Clerk under Sr. Divisional Mechanical Engineer [Power]/ East Central Railway/Dhanbad-826 001 [Jharkhand].

.....APPLICANT.By Advocate :- N o n e [Applicant appearing in person]

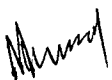
Vs.

1. Union of India through General Manager/East Central Railway, Hajipur, Distt. : Vaishali [Bihar].
2. Chief Mechanical Engineer/ East Central Railway, Hajipur, Distt. : Vaishali [Bihar].
3. Additional Divisional Railway Manager/ East Central Railway, Dhanbad/Jharkhand – 826 001
4. Sr. Divisional Mechanical Engineer [Power]/East Central Railway, Dhanbad/Jharkhand – 826 001.

.....RESPONDENTS.By Advocate :- Shri A.Haider, ASC.O R D E R

Justice Anwar Ahmad, M[J] :- This OA has been filed by the applicant, Shri Madan Dhari Singh, for reinstatement in service with all service benefits w.e.f. 17.01.2005, all service benefits for the period from 12.06.2003 to 16.01.2005, i.e., the period the applicant was declared medically fit for duty, and order for promotion to O.S.Gr.II from the date of restructuring of the cadre.

2. As per the pleadings, the applicant obtained permission for leaving headquarter for availing official rest on 08.12.2001 to 09.12.2001 but




he fell ill from 10.12.2001 to 06.06.2003. Information was given to OS/PA/ECR/DHN on 10.12.2001 regarding his illness by post. The applicant reported to Divisional Mechanical Engineer/Power [for short, DME/P] ECR/DHN on 09.06.2003 for joining his duty after his recovery from the illness but he was referred to the Railway Doctor/ECR/DHN for medical fitness. Sr. Divisional Medical Officer after medical examination declared him fit for duty on 12.06.2003 but asked him to get the medical certificate countersigned by the CMS/ECR/DHN. Thereafter he went to the CMS for counter signature on the medical certificate but the CMS did not countersign the medical certificate for ulterior motive. The applicant thereafter reported back to DME[P] but he did not allow him to join the duty. Thereafter he represented to the higher authorities but no action was taken. After the complaint dated 23.09.2003 made by the applicant to higher authorities, exparte inquiry was made on wrong charge-sheet against him and thereafter he was removed from railway service by the Sr. DME[P] from 17.01.2005 vide Annexure-A/1. He made an appeal before the ADRM/ECR/DHN dated 29.01.2005 vide Annexure-A/10 by registered post against the order of removal from service. His appeal was not decided, and hence after more than six months he sent a legal notice dated 05.08.2005 to ADRM and thereafter the ADRM, Dhanbad rejected his appeal on 26.07.2005 [Annexure-A/2]. Thereafter he filed a revision petition dated 26.08.2005 [Annexure-A/12] before the CME/ECR Hajipur by registered post. His revision petition was not decided, and hence he sent a legal notice dated 20.03.2006 vide Annexure-A/14 requesting for immediate disposal of the revision petition within a week



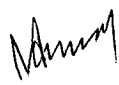
failing which he would be compelled to take legal action but the revision petition was not decided. In the present OA the Tribunal directed the Revisional Authority to take a decision on the revision application within two months of receipt of the order dated 13.08.2007 and thereafter the CME passed the order dated 25.10.2007 in the revision application and dismissed the same.

3. Applicant, appearing in person, emphatically asserted on the sole point that he was declared medically fit by the Sr. Divisional Medical Officer, and hence he must be allowed to join his post but he was not allowed to join and this action on the part of the respondents is illegal, and hence the OA be allowed.

4. Learned counsel for the respondents submits that Shri S.Sharma, OS/PA reported under his letter dated 29.11.2002 that the applicant [Madan Dhari Singh] was absent from 10.12.2001 in an unauthorised manner after availing rest on 08.12.2001 & 09.12.2001. A major penalty charge-sheet dated 27.12.2002 was issued but no response was given. He submitted that the applicant thereafter reported to the office on 09.06.2003 with a PMC dated 06.06.2003. He was sent for medical examination. He was examined by Sr. DMO/DHN on 12.06.2003 and on being found fit he was asked to get counter-signature of CMS as period of sickness exceeded one year but he quietly fled away. On 23.09.2003 the applicant wrote a letter to the CMS and Sr.DME[P] to permit him to join. He was asked to present himself for medical examination by CMS 15.07.2004 but he did not turn up. Again he met Sr. SME[P] on 23.09.2004 and he was advised to see CMS/DHN but he did not



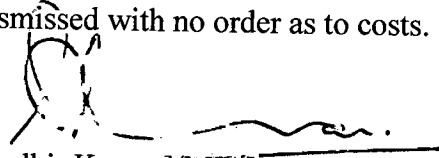
meet him. He was again advised by a letter dated 23.11.2004 to meet the CMS, Dhanbad with G-37 memo but he failed to turn up. Learned counsel further submitted that the applicant knowingly and wilfully defaulted. He further submitted that the applicant never intimated about his illness. He, therefore, submitted that in the circumstance Shri U.K.Paul, Loco Inspector, Dhanbad was appointed Inquiry Officer under order dated 04.11.2003. The applicant was noticed about the inquiry but he did not appear in the inquiry. Consequently, the inquiry was held exparte and order was passed in the inquiry holding him guilty of unauthorised absence from 10.12.2001 to 08.06.2003. The Disciplinary Authority after considering the whole case and the inquiry report found the applicant guilty and imposed the penalty of removal from service from 17.01.2005 under order dated 14.01.2005 vide Annexure-A/1. Thereafter the applicant filed appeal dated 20.01.2005. The Appellate Authority considered his appeal and gave him a personal hearing. He found no merit in the appeal and, accordingly, dismissed the appeal vide Annexure-A/2. The applicant was given liberty to file revision application within 45 days of the order through proper channel. He submitted that the applicant filed the revision application dated 26.08.2005 directly to the CME and not through proper channel as ordered in the appeal. So his revision application was not considered. The applicant, therefore, gave legal notice for disposing of the revision application failing which he would take legal action. He submitted that on the direction of the Tribunal in this OA, the pending revision application of the applicant was considered and the Revisional Authority under order dated 25.10.2007 rejected the revision application.

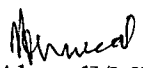


5. The learned counsel for the respondents, therefore, submitted that the applicant remained absent from duty for a long period in an unauthorised manner and he was given ample opportunity to submit the medical certificate of fitness counter-signed by the CME, Dhanbad but he did not submit the same. He submitted that the authorities have considered his case sympathetically but on account of his non-compliance attitude, the impugned orders were passed. He submitted that there is no illegality in the impugned orders, and hence the OA is fit to be dismissed.

6. Considered the facts and circumstances of the case, pleadings, together with the submissions of the applicant and the learned counsel for the respondents and the impugned orders. We are of the view that the impugned orders are quite good and no interference is required. We, therefore, find no merit in the OA.

In the result, this OA, along with the M.A 291 of 2008, is dismissed with no order as to costs.


[Sudhir Kumar]/M[A]


[Anwar Ahmad]/M[J]

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