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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 982/94

Dated this Wednesday, the 2nd day of September, 1998.

Suresh Pandurang Petitioner.

Shri S. P. Halwasia Advocate for the
Petitioner.

VERSUS

Union Of India & Others Respondents.

Shri R. R. Shetty, Advocate for the
Respondents.

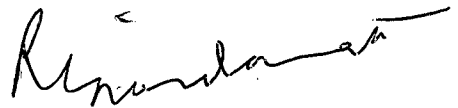
CORAM :

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(i) To be referred to the reporter or not ? *no*

(ii) Whether it needs to be circulated to
other Benches of the Tribunal ? *no*


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Suresh Pandurang,
Bungalow Peon under
DGOS BSL, residing at
Ambika Housing Society,
Behind Golani Complex,
Varangaon Road,
Bhusawal - 425 203.

... Applicant

(By Advocate Shri S.P. Halwasia)

VERSUS

1. Mr. D. S. Rathod,
Enquiry Officer,
Movement Inspector,
Central Railway,
Bhusawal.

2. Mr. S. K. Tyagi,
Disciplinary Authority,
D.O.M. Central Railway,
Bhusawal.

3. The Sr. D.O.M.,
Central Railway,
Bhusawal.

... Respondents.

4. The Additional Divisional
Railway Manager, (A.D.R.M.),
Central Railway, Bhusawal.

5. Union Of India.

(By Advocate Shri R. R. Shetty).

: OPEN COURT ORDER :

| PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN |

In this case, the applicant is challenging the order of removal from service passed by the Disciplinary Authority dated 29.03.1993. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.



2. The applicant was working as Peon in the Central Railway at the relevant time. He was charge-sheeted for misconduct on two grounds. Then an enquiry was held. Then the Disciplinary Authority passed the impugned order dated 29.03.1993 removing the applicant from service. The applicant's appeal to the Appellate Authority came to be dismissed on 13.04.1993. The applicant's revision petition came to be dismissed by the competent authority on 27.05.1993. Being aggrieved by these orders, the applicant approached this Tribunal challenging the order of removal from service. He has taken number of grounds in the application challenging the order of removal from service.

3. On the other hand, the respondents have filed reply justifying the action taken against the applicant. They have said that the enquiry has been held as per rules and the action taken is fully justified.

4. ^{AK} The the time of argument, we find that the two charges against the applicant are that :

- (i) He did not produce the medical certificate, inspite of memo issued to him, from 16.01.1991 to 31.01.1991.
- (ii) That the applicant remained unauthorisedly absent from 09.05.1992 to 29.07.1992,

5. After hearing both sides and perusing the material on record, we find that the two ^{charges} grounds are not sustainable even on admitted facts. As far as the first charge is concerned, the applicant gave explanation at the earliest point of time itself stating that he had lost the memo issued to him for medical certificate

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and requesting one more memo for under-going medical examination. Even granting for a moment that the applicant did not produce medical certificate during that period, it is not a misconduct at all and it is open to the respondents to discharge the applicant from service on the ground that he is not approved to be medically fit. Therefore, non-production of medical certificate, on the face of it, is not a misconduct so as to take disciplinary action. If the applicant did not produce medical certificate, he could have been discharged or his regularisation would not arise at all, but it cannot be a ground to hold a disciplinary enquiry and then removing him from service.

6. As far as the second charge is concerned, the allegation is that, he remained unauthorisedly absent for the period from 09.05.1992 to 29.07.1992. The applicant's explanation is that, he was prevented from attending duty and he was not taken on duty and therefore, he could not work. This stand of the applicant is admitted and confirmed in the letter written by the D.S.O., Bhusawal, dated 05.05.1992 which is at page 29 of the paperbook. This was in reply to the applicant's request asking a fresh memo for undergoing medical examination. In this letter dated 05.05.1992 it is mentioned in para 4 as follows :

"Please note that unless you submit your explanation and medical certificate, you will not be taken on duty."



Since the letter reads that applicant will not be taken on duty unless he produces medical certificate, it is not open to the respondents to say that applicant remained unauthorisedly absent from 09.05.1992. But, it is the case of applicant willing to join duty but he was not taken on duty on the ground of non-production of medical certificate.

7. ^{has} It is also come on record that subsequently the department issued a fresh memo for medical examination and the applicant underwent the medical examination and he is subsequently appointed as a Peon in January, 1993 and continued in that service till the date of impugned order of termination of service.

8. Having regard to the admitted facts and circumstances of the case, we feel there is no merit in the two charges framed against the applicant and the departmental enquiry is liable to be quashed. There is no necessary to order any fresh enquiry, since even on admitted facts the two charges have no legs to stand. The Learned Counsel for the applicant, taking instructions from his client, submitted that his client will not press for back wages in case he is ordered to be reinstated. In these circumstances we hold that respondents should not hold any fresh enquiry on the basis of two charges mentioned in the impugned charge-sheet.

The Learned Counsel for the applicant
of the applicant
submitted that the break in service may be regularised
and he should be reinstated forthwith. Though we are

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holding that the applicant is not entitled to back-wages, he will be entitled to continuity in service from 29.03.1993 till the date he joins duty and he is also entitled to notional fixation of pay and increments, but he will not be entitled to any actual backwages till he joins duty and he will be entitled to financial benefits prospectively and not retrospectively.

9. In the result, the application is allowed. The impugned order of the disciplinary authority dated 29.03.1993 and confirmed by the Appellate Authority and Revisional Authority are hereby quashed. The respondents are directed to reinstate the applicant on duty on or before 12.10.1998. The applicant will not be entitled to back-wages from the date of removal from service till the date of reinstatement. However, he is entitled to continuity of service and entitled to fixation of increment but not any monetary benefits prior to the date of joining duty. It is made clear that the respondents are barred from holding any fresh enquiry in respect of the charges mentioned as per the impugned charge-sheet.

In the circumstances of the case, there will be no order as to costs.

(D. S. BAWEJA)
MEMBER (A)

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.