

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No:

1029/98

Date of Decision: 20.8.02.

Sou. Sunita V. Pole

Applicant.

Advocate for
Applicant.

Versus

Union of India & ors.

Respondent(s)

Shri V.S. Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.N. Bahadur - Member (A)

Hon'ble Shri. S.L. Jain - Member (J)

- (1) To be referred to the Reporter or not? ☒
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ☒

BS
(B.N. Bahadur)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Tuesday the 20th day of August, 2002

Coram: Hon'ble Shri B.N.Bahadur - Member (A)
Hon'ble Shri S.L.Jain - Member (J)

O.A.1029 OF 1998

Sou.Sunita Vinayak Pote,
R/o First Lategalli, Shirur,
District Pune.

- Applicant

Versus

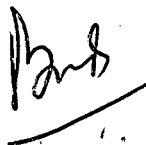
1. Union of India
through the Secretary,
Railway Ministry,
Rail Bhawan, New Delhi.
2. The Assistant Engineer,
South Central Railway,
Pune Station, Pune.
3. The Divisional Engineer (North),
Hubli Division, South Central, Hubli,
Karnataka.
4. The Divisional Railway Manager,
Hubli Division, Hubli,
Karnataka.
(By Advocate Shri V.S.Masurkar)

- Respondents

ORAL ORDER

By Hon'ble Shri B.N.Bahadur, Member (A) -

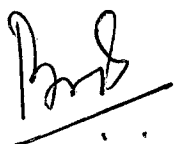
The Applicant in this OA is aggrieved by the order of her removal from service. Three orders are impugned viz. the order of removal by the Disciplinary Authority dated 24.4.1979 (page 19), the order made on appeal dated 15.10.1997 (page 18) and the order in revision dated 7.7.1998 (page 17). At the outset it may be stated that as far as the Applicant's case are concerned, we are going on the basis of record available etc. The reason for this is as follows. The Applicant's counsel has not



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been appearing. In fact on 31.7.2002 he first conveyed a request for arguing the same in the afternoon and later again asked for an adjournment. We had noted on Roznama that his request was "highly improper". On the next date viz.19.8.2002,(yesterday) Shri Kishore Warunjikar, Advocate had appeared on record when we had told him that we were hearing the Respondents' counsel and in the interest of justice again provided him another opportunity for being heard today. None is present for the Applicant today. Hence we proceed to decide the case on merits.

2. The Applicant makes out a case in the OA as follows. The charge against her is that she was absent from duty between the period 29.3.1994 and 24.4.1996 without any sanction by the competent authority or by production of a medical certificate through a Railway doctor. The Applicant was initially appointed on temporary basis in 1979 in Aurangabad, and, in 1991, she was regularised and posted in Hyderabad Division at Umbri. After her marriage in 1987 she had made a representation for a posting to Shirur where her husband was working. It is her contention that there was no reply received to this request, and hence she came up in Writ Petition to the High Court which petition was transferred to the Tribunal. This was decided in July, 1993 (TA 17/92) where a direction was given for allowing the Applicant to make a representation which was to be duly disposed of (Annexure-D). Applicant accordingly made a representation and she was transferred to Ghorpadi (Pune). Applicant said that she joined



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as Gangwoman and at the time she was living at Shirur. However, she then describes her personal difficulties stating that she was finding it difficult to commute long distances, and therefore suffered from Lumbar spondolysis and had produced medical certificates from a family doctor. She also indicates in para 4.4 that the DMO, Central Railway declared her unfit by giving her two medical certificates. She simultaneously gave medical certificates from the family doctor and informed Assistant Engineer, Pune Station. The main stand thus is that the family doctors statement through certificates has not been taken as valid. An enquiry was conducted against her. The short point that emerges on checking up the crucial facts regarding enquiry is that she had been informed about the enquiry and admittedly as indeed argued by Respondents' counsel it is nowhere the case that she was not aware of the enquiry. Notices had been served. However, she did not participate in the enquiry and hence alleges that the order of removal is passed without reasonable opportunity being provided. Further facts of her making the appeal and revision are then described. In this connection it may be noted that in her memorandum of Assistant Engineer, South Central Railway, Pune dated 3.7.1995 (Annexure-R-1) the Applicant has enclosed receipt of Memorandum dated 31.8.1994 which is receipt of the charge sheet and has asked time for submission of reply.

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3. The Respondents have filed a detailed written statement resisting the claim of the Applicant and raising the point regarding limitation. Details regarding the career of the Applicant are then provided, as also facts regarding the earlier litigation. It is alleged that the Applicant had been unauthorisedly absent for this long period from 29.3.1994 and that she has neither taken permission/sanction of competent authority nor has she produced medical certificates from a Railway doctor regarding the absence. It was therefore necessary to hold major penalty proceedings. The respondents have further stated that all formalities regarding service of charge sheet etc. have been completed, and no explanation has been received from the Applicant except a request for withdrawal of charge sheet due to her sickness. Respondents have stated that all intimation regarding dates of enquiry were provided to the Applicant (Annexure-R-3). Hence, there was no other option but to conduct the enquiry ex-parte since ample opportunity had been provided. The Respondents further attempt to meet all the averments made in the OA in their written statement.

4. Learned counsel for the Respondents argued the case in some detail basically relying on the written statement and taking us over the facts of the case. It was stated by him that the Respondents had, in fact, been very considerate to the Applicant and had even approved her posting from Hyderabad Division to a place near Pune. It was pointed out that she was in a position like a Gangman and not in a clerical position and hence ~~she~~



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she could not be provided a posting to her total satisfaction, since public interest and safety were important considerations. Learned counsel made the point that all formalities of procedure were fully completed. Intimation about the enquiry has been given adequately, charge sheet copy provided and there was no technical or other infirmity in the conducting the enquiry. Attention was also drawn to the letter at Annexure - R - 2 dated 10.7.1995 from the Applicant.

5. We have considered all papers in the case, especially the pleadings made in writing by the Applicant and the argument made by learned counsel for Respondents. In the first place we have carefully looked at the aspect regarding procedure being followed or not in the enquiry. We have carefully seen all papers and find that throughout the course of the enquiry, the Applicant was aware of its being conducted. She has chosen not to participate in the enquiry and this factor certainly goes against her in the sense that she cannot say that the enquiry has not been conducted properly. We have no doubt that the enquiry does not suffer from any procedural or other infirmity. We would certainly not like to place ourselves as an appellate body and reassess evidence.

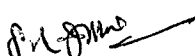


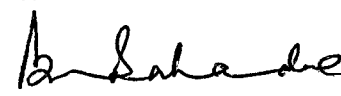
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6. We have also gone through the orders made in appeal and in revision and find that there is ample evidence of application of mind by these two authorities. On this count also there is no weakness established against the Respondents.

7. The Applicant has taken the stand throughout that she had been ill. We have also gone through the medical certificates of the family doctor that have been enclosed. We find that it is a case of lumbago. On the one hand it is true that she could have definitely gone to a Railway doctor and obtained treatment from the facilities that are available in the Railways to a larger extent, compared to other departments. It is a period of over 16 months and she does not seem to have appeared before any Railway doctors or to explain her position adequately. We are not convinced that she was in such a helpless condition over this long period.

8. In view of the discussions made above, we are not convinced that any case is made out for interference in the matter. The OA is therefore dismissed with no order as to costs.


(S.L. Jain)
Member(J)


(B.N. Bahadur)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.1029/98

Date of Decision: 29.10.2004

Smt. S.V. Pote.

Applicant

Shri S.P. Saxena.

Advocate for Applicant/s

Versus

Union of India & Ors.

Respondents

Shri V.S. Masurkar.

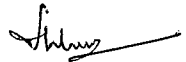
Advocate for Respondents

CORAM

HON'BLE SHRI A.K. AGARWAL
HON'BLE SHRI MUZAFFAR HUSAIN.

VICE CHAIRMAN
MEMBER (J)

1. To be referred to the Report or not x
2. Whether it needs to be circulated to other Benches of the Tribunal? x
3. Library. ✓


(MUZAFFAR HUSAIN)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 1029/98

Daed this the 29th day of October, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Sou. sunita Vinayak Pote,
aged adult, occupation:
presently NIL, residing at
Firt Lategalli, Shirur,
Dist. Pune.

... Applicant

By Advocate Shri S.P. Saxena.

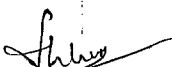
Versus

1. The Union of India, through
Secretary, Railway Ministry,
Rail Bhavan, New Delhi.
 2. The Assistant Engineer,
South Central Railway,
Pune Station, Pune.
 3. The Divisional Engineer (North)
Hubli Division, South Central
Hubli, Karnataka.
 4. The Divisional Railway Manager,
Hubli Division, Hubli,
Karnataka.
- ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant in this OA is challenging the order dated 24/27.4.1996 passed by the Disciplinary Authority removing him from service as well as the order dated 16.10.1997 passed by the Appellate Authority and the order dated 07.7.1998 passed by the Revisional Authority upholding the punishment, she seeks her reinstatement with all consequential benefits.



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2. The facts of the case stated by the applicant in the OA are as follows. the applicant was initially appointed as Technical mate in 1979 at Aurangabad under Divisional Engineer (Construction) in Hyderabad Division. It is also stated that due to heavy exertion of the travelling, applicant suffered from acute lumbar spondylosis and therefore, by giving her medical certificates issued by her family doctor, she went on medical leave from 29.3.1994. In the meantime, the D.M.D. Central Railway had also declared the applicant as unfit by giving medical certificates dated 30.11.1994 and 27.12.1994. Simultaneously the applicant was giving medical certificates issued by her family Doctor regularly and she was informing to Assistant Engineer, Pune Station, Pune. In the year 1994 the applicant joined service at Jejuri once again though she was not feeling well. She was regularly undergoing medical treatment at Railway Dispensary in the year 1994. Similarly, she had given certificates given by her family doctor dated 15.12.1995, 13.11.1996, 10.01.1996 and 02.02.1996. It is further stated that the applicant on the issue of absenteeism due to grant of medical unfitness a memo of proposed charge was served upon the applicant on 23.5.1996. She gave a reply to the same. It was alleged that she remained absent from 29.3.1994 to 24.4.1996 without previous permission. The charge sheet dated 31.8.1994 was received by applicant on 28.6.1995. Before the applicant could take steps to



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appear in the inquiry, the inquiry was conducted and an order dated 27.4.1996 was passed by the respondent No.2 removing her from service with effect from 02.5.1996. The said order was received by the applicant on 23.5.1996. It is further submitted by the applicant that all these letters were received by her very late. Copy of inquiry proceedings were not supplied to the applicant. The show cause notice which is mandatory before passing the final order was also not served on the applicant. Similarly, the respondent No.1 has not considered the medical certificates given by the applicant. Even the appointment of inquiry officer was not intimated to the applicant. Though she had informed to CPWI Ghorpadi and D.M.O. regularly, about her medical fitness, the same were not considered by Respondent No.2 at the stage of passing the order. In another words, the order of removal is passed without giving any reasonable opportunity to explain the charge levelled against the applicant. In gross violation of principles of natural justice, the order was passed by Respondent No.2. It is also stated that Appellate Authority did not pass speaking order as directed by the Tribunal.

3. The respondents have filed reply supporting the action taken by them in holding disciplinary action and imposing the punishment of removal from service on the applicant. They have stated that the applicant while



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working as Gangwoman in under CPWI/GPR remained unauthorisedly absent from duty w.e.f. 29th March 1994 till the date of issue of charge sheet on 30.8.1994. She has neither taken prior permission / sanction of the competent authority nor did she produce any medical certificates from Railway Doctor covering the period of such unauthorised absence. Therefore, a major penalty charge sheet was issued to the applicant for unauthorised absence vide letter dated 31.8.1994 by the Disciplinary Authority along with relied upon documents and the list of witnesses. As the applicant continued to remain unauthorisedly absent even subsequent to 31.8.1994 the charge sheet was sent to the last known address under Registered Post AD which the applicant acknowledged on 27.6.1995. It was made clear to the applicant as stated in the charge sheet that representation if any, should be made to the Disciplinary Authority within 10 days from the date of receipt of charge sheet. Despite the charge sheet having been acknowledged by the applicant, she did never submit any explanation instead she sent a letter dated 03.7.1995 by which she requested time of 15 days. However, thereafter, by her letter dated 10.7.1995 she submitted a representation wherein she stated that her absence is due to sickness and requested to withdraw the charge sheet. The explanation was charging the administration that the Respondents were harassing her by issuing charge sheet and that she was following rules



by submitting private sick certificate informing her sickness time to time. In fact the rules very much prescribe that the railway servant can be away from duty only on prior sanction of competent authority or covered by a Railway Medical Certificate otherwise, it is a case of unauthorised absence. The contention of applicant that she followed the rules is baseless and not in conformity with rules.

4. It is also submitted that the Inquiry officer had intimated the applicant the dates of inquiry well in advance. Even the applicant has received the information of the Inquiry Officer as can be seen from the applicant's letter dated 05.8.1996. the applicant did not attend the inquiry on the stipulated dates i.e. on 19.01.1996, 02.02.1996 and 19.02.1996, hence the Inquiry Officer conducted inquiry ex-parte after giving ample opportunities to employee to attend the inquiry. The inquiry officer examined the listed witnesses and after examining relevant documents, considering the evidence adduced during the inquiry and available on records had held charges as proved. Even the inquiry report and show cause notice dated 18/23.3.96 was sent to applicant by registered post. However, the applicant refused to receive the same as can be evidently seen from endorsement of postal authority on the cover. It is also submitted that in as much as the applicant was aware of the dates of the proposed inquiry and she

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refused to accept the registered cover containing the inquiry report and show cause notice, she can not turn around and allege that the nomination of inquiry officer and conduct of inquiry proceedings are not known to her. Hence the averments of the applicant that she was not informed about the inquiry and not supplied with inquiry report are baseless, particularly in view of her letter dated 05.8.96 and the refusal of registered cover. The Disciplinary Authority after considering the inquiry report and the findings of the Inquiry Officer imposed the penalty of removal from service from 02.5.96 after applying his mind and duly passed speaking order as mentioned therein by order dated 27.6.1994. The Appellate Authority has considered the applicant's appeal and confirmed the penalty imposed by the Disciplinary Authority vide letter dated 16.10.1997. The revision preferred by the applicant has also been rejected.

6. Learned counsel for the applicant Shri S.P. Saxena assailed the impugned order on various legal grounds including perverse finding, procedural lapses in the inquiry, non-speaking order passed by the authorities, non-granting of personal hearing by the Appellate Authority and the penalty imposed is disproportionate to the alleged misconduct. He has also stated that the charge sheet dated 31.8.94 was received very late on 21.6.95 and there was no occasion to deal

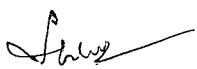


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with other aspects mentioned in the charge sheet. No proper opportunity was given to cross examine the witness. learned counsel has also placed reliance on the following decisions:

- i) 1998 I CLR 1280 (Karnataka) - Radhakrishna Setty Vs. D.G.M. Indian Overseas Bank.
- ii) 2004 AIR SCW 2288 - Bhagwan Lal Arya Vs. Commissioner of Police, Delhi.
- iii) Judgement of High Court in W.P. No.7054/99 - Gajanan Babu Patil Vs. State of Maharashtra.
- iv) (1987) 3 ATC 947 (cuttack) Abdul Rehman Vs. Union of India.
- v) 2003 (3) Mah.L.J. - Anil Amrut Atre Vs. District & Sessions Judge.

7. Learned counsel for the respondents on the other hand refuted the contentions raised by learned counsel for applicant and stated that the applicant was charge sheeted for unauthorised absence and she continued to remain unauthorisedly absent even subsequent to 31.8.94. The charge sheet was sent to the last known address under registered post, which was acknowledged by the applicant. The applicant never submitted any explanation, but she sent a representation stating that he absence was due to sickness. Inquiry Officer had intimated the date of inquiry but she did not attend the inquiry on the stipulated date. The show cause notice was given by registered post. the applicant refused to receive the same. Therefore, sufficient opportunity has been given to the applicant



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to defend her case and there is no procedural lapses. By referring to the inquiry report, he contended that sufficient reasons have been recorded by the inquiry officer by holding the applicant guilty of the charge and once the same is agreed to, the order does not suffer from any legal infirmity.

8. We have heard learned counsel for the parties and gone through the material placed on record.

9. The main contention raised by learned counsel for the applicant is that the Appellate Authority has not provided personal hearing to the applicant, whereas the applicant has specifically asked for an opportunity to explain during personal hearing. Learned counsel has also contended that the applicant submitted appeal dated 05.8.96 in which she has taken several grounds and the Appellate Authority has not considered the grounds taken by the applicant and rejected the appeal by non-speaking order. He has also contended that the Revisional Authority has also did not consider the points raised by the applicant. Applicant has reiterated the necessity of passing speaking order in case of imposing penalties of dismissal, removal or compulsory retirement and laid emphasis on the Railway Board order that the order imposing the penalties of dismissal, removal or compulsory retirement should invariably indicate the specific charges that stand substantiated and the same

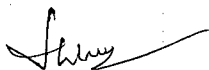
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procedure should be adopted by the Appellate Authority while deciding the appeal. The Appellate Authority while disposing of the appeal of the applicant passed the following order:

"The appeal of the D.E. has been considered carefully including the additional information provided as called for and decided to sustain the penalty imposed by Disciplinary Authority."

A perusal of the order passed by the Appellate Authority indicates that the Appellate Authority has not considered any of the grounds stated in the appeal dated 05.8.96. Recording reasons gives transparency of the order. The detail contention taken by the applicant in Appeal Annexure-E has not at all been mentioned, discussed or considered. The order is absolutely mechanical as well as non-speaking without containing any reasons in support. This does not conform to the mandatory provision laid down under the rules.

10. The Appellate Authority has also rejected the appeal without granting personal hearing to the applicant. It has been held by the Full Bench of Bombay High Court in the case of Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad 2002 (3) Mh.LJ 750 that Appellate Authority is required to apply its mind and pass speaking order after affording personal hearing to the delinquent. In Ramchander Vs. Union of India AIR



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1986 SC 1123: 2002 (2) AISLJ 249 the Apex Court has held as under:

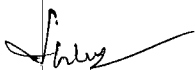
"It is of utmost importance after the 'Forty Second Amendment' as interpreted by the majority in Tulsiram Patel's case [(1985) 3 SCC 398] that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fairplay and justice also require that such a personal hearing should be given."

In view of decisions of Apex Court we are of the opinion that the Appellate Authority should have granted the personal hearing to the applicant before passing final order on his appeal, but it has not been done.

11. The Revisional Authority while disposing of the revision of the applicant passed the following order:

"I have considered the revision petition and carefully gone through the case. The D.E. remained away from duty for a very long period without either sanctioned leave or sick certificate from the railway doctor who is available at GPR itself. She intimated about treatment of a private doctor but should have got covered by a railway doctor as per the rules."

So far as the order of Revisional Authority is concerned, the same is no better than the order of the Appellate Authority. Though detail contentions have




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been taken by the applicant, the same have not been considered.

12. In the circumstances, we quash and set aside the order dated 15.10.1997 of the Appellate Authority and the order dated 07.7.98 of the Revisional Authority and the matter is remitted back to the Appellate Authority with a direction to grant personal hearing to the applicant and after taking into consideration all the grounds taken by applicant in her appeal, pass detailed, reasoned and speaking order within a period of two months from the date of communication of this order. In the result, the OA is partly allowed. No order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(A.K. AGARWAL)
VICE CHAIRMAN

Gajan