

J A I P U R.

G.A . No. 856/92

Date of decision: 28.10.94

CHHITAR SINGH

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. J.K.Kaushik

: Counsel for the applicant.

Mr. K.N. Shrimal

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Judicial Member

Hon'ble Mr. O.P. Sharma, Administrative Member

PER HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER:

Chhitar Singh, in this application U/S 19 of the Administrative Tribunals Act, 1985, has prayed that the order dated 27.7.90, Annexure A-1, be declared illegal and the applicant be restored to his job w.e.f. 27.11.89. He has further prayed that the applicant be declared as on duty from 27.11.89, the date when he submitted the duty fit certificate issued by the Railway Medical Officer. He has further prayed that he may be awarded full wages from 27.11.89 till he is put on his job with all consequential benefits.

2. The applicant's case is that he joined as a substitute Coalman on 15.5.80 and was granted temporary status w.e.f. 29.10.83. He fell sick on 9.5.87 and remained unwell till 11.11.89 during which period he was under the treatment of a private doctor. On becoming fit for resuming duty he obtained a duty fit certificate from the Railway Medical Officer, Achhnera on 15.11.89. On 27.11.89, Fitter Incharge Achhnera to whom the applicant reported for duty informed the ADMO, Achhnera that the fitness certificate produced by the applicant had been lost and, therefore, a copy thereof be issued so that the applicant can be taken on duty. However, the applicant has not been taken on duty till date for no fault of his.

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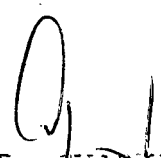
3. The respondents in their reply have accepted that the fitness certificate produced by the applicant was lost in the office and duplicate duty certificate was obtained. However, it was not within the competence of the concerned officer to take him on duty as the applicant was a person who had remained absent from duty without grant of leave by the higher authorities. They have further stated that the applicant had remained absent from duty and had thereby violated the service rules and accordingly departmental proceedings are being instituted against him for his unauthorised, long absence of nearly two years.

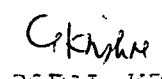
4. We have heard the learned counsel for the parties and have gone the records.

5. The learned counsel for the applicant produced before us the original of the charge-sheet dated 23.3.93 issued to the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, on the ground of unauthorised absence from duty from 9.5.87 till date. Thus, the disciplinary proceedings for alleged unauthorised absence from duty have already been initiated against the applicant. The question now is whether the respondents are justified in not taking the applicant on duty from the date in November, 89 when he reported for duty on the basis of duty fit certificate issued by a Railway Medical Officer. The applicant had acquired temporary status on 29.10.83 (Annexure A-2) and for all practical purposes he was a regular railway servant. If he had committed ^a misconduct, such as that of absence from duty unauthorisedly, the respondents were within their rights in initiating appropriate disciplinary action against him. However, it is not clear under what rules the respondents refused to allow the applicant to rejoin duty when he produced a duty fit certificate issued by a Railway Medical Officer. If eventually it is found that the applicant was absent from duty without any justified reasons, the respondents would

naturally be free to impose on him an appropriate penalty after the charge against him is established. However, their ~~not~~^{allowing} the applicant to join duty in the present circumstances is unjustified. We direct the respondents that they should take the applicant on duty on the day he reports for duty in pursuance of this order. On the applicant's submitting an affidavit to the effect that he was not gainfully employed during the period during which he was kept away from duty for no fault of his, the respondents shall make inquiry and if they find the applicant had in fact not been gainfully employed during this period, they shall grant him pay and allowances for the aforesaid period. If the applicant is aggrieved by any order passed by the respondents, refusing him pay and allowances for the period of absence from duty from 1.12.89 onwards, the applicant shall be at liberty to file a fresh application. The respondents ~~shall pass~~^{appropriate} order regarding payment of pay and allowances within a period of four months from the date of submission of the affidavit by the applicant.

6. The O.A. stands disposed of accordingly, with no order as to costs.


(O.P. SHARMA)
Administrative Member


(GOPAL KRISHNA)
Judicial (Member)