

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.988/92

Date of order: 19.12.1995

Francis Xavier

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. D.P.Garg

: Counsel for the applicant

Mr.S.S.Hasan

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

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

PER HON'BLE MR.O.P.SHARMA, MEMBER (ADM.)

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Francis Xavier has prayed that orders Annx.A1, A2, A3 and the notice imposing penalty dated 14.9.84 may be set aside and it may be declared that the applicant continues in service with the Railways as Fitter and is entitled to full salary and other allowances from the date of removal to the date of reinstatement and other benefits as Fitter.

2. The applicant's case is that he was appointed as a Fitter in C & W Shops, Ajmer in October 1975. On 28.8.92 the applicant fell sick and continued as such for about 4 years. When he reported back for duty he was informed that he had been removed from service. The applicant did not receive any charge sheet nor any advice regarding date of enquiry nor any show cause notice or notice for imposition of penalty till date. In view of the advice received by him, he submitted a revision/ review petition dated 20.10.86 to the General Manager, Western Railway, Bombay, but the General Manager rejected it on the ground that the applicant did not file any appeal to Addl.C.M. E.(W), Ajmer or review petition to C.M.E, (Annx.A3 dated 31.12.86). Therefore, the applicant preferred an appeal on 22.12.87 to Addl.C.M.E (Workshop), Ajmer



(Annx.A5). The aforesaid appeal was rejected by the Addl.CME(W) Ajmer vide letter dated 11.1.88 (Annx.A2) by which the applicant was informed that his petition dated 20.10.86 has already been considered by the General Manager and it has been rejected, as conveyed to him vide letter dated 5.1.87. He was further informed by this communication that there is no provision for consideration of the second appeal. However, the applicant was informed that he could file a revision petition to the President. Accordingly, the applicant submitted a review petition dated 'April 88' to the President (Annx.A6). Vide letter dated 30.6.88 (Annx.A7), the Dy.CME (C&W) Ajmer advised the applicant that his review petition to the President had been forwarded to the Head-quarters for further action. Vide letter dated 6.1.88 (Annx.A1) the Dy.CME(C&W) Ajmer, replied that the CME had rejected the review petition. The applicant's case is that no charge sheet was served on him. No date of enquiry was intimated to him, no show cause notice was given to him and even the NIP dated 14.9.84 was not delivered to him. The holding of ex parte proceedings is neither legal nor just nor reasonable. The provisions of the Railway Servants (Discipline & Appeal) Rules and Articles 21 and 311 of the Constitution have been violated. A person's sickness is beyond one's control and absence due to sickness cannot be treated as unauthorised. The orders passed by the General Manager and the Dy.CME(C&W) are nonspeaking orders.

3. The respondents in their reply have taken a preliminary objection that the applicant was removed from service on 14.9.84 but he has filed the present O.A in 1989 and therefore, it is barred by limitation. The applicant continuously absented himself from duty unauthorisedly w.e.f. 29.7.82, without any intimation and prior sanction of leave for which a charge sheet was served on him on 4.4.84 through

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registered post. Enquiry Officer was appointed and he fixed the on 31.5.84. Due intimation thereof was sent to the applicant by registered post which was received by him. Further, the Enquiry Officer again fixed 22.8.84 as the date of enquiry and once again intimation thereof was sent by registered post AD to the applicant but the applicant refused to accept the said intimation nor did he appear during the enquiry. Hence the Enquiry Officer conducted the proceedings exparte. The order removing the applicant from service was sent through registered post AD in accordance with Rule 26 of the Railway Servants (Discipline & Appeal) Rules, 1968.

5. Further according to the respondents, the applicant had submitted a representation dated 20.10.86 to the General Manager, Western Railway, which was decided by the General Manager and his decision was duly conveyed to the applicant by registered post vide letter dated 15.1.87 but its delivery was avoided by the applicant as seen from the remarks of the Postal authorities that the addressee is not available and his 'coming' is not known. They have also denied that he preferred any appeal dated 22.12.87 to the Addl.CME (Workshop). According to them the applicant had again preferred his second appeal dated 22.12.87 to the General Manager and it was in response to this appeal that the applicant was informed by registered letter dated 11.1.88 that his petition dated 20.10.86 had already been considered by the General Manager and rejected. The respondents have maintained that the charge sheet was sent to the applicant by registered post in accordance with the rules, he was informed about the dates of enquiry but the applicant did not come forward to cooperate during the enquiry and therefore, there was no alternative but to complete the enquiry exparte. It is not necessary to give a Railway servant an opportunity to make representation

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regarding the penalty proposed to be imposed on him. They have denied that their actions are violation of any of the provisions of the Railway Servants (Discipline & Appeal) Rules or any of the provisions of any of the Articles of the Constitution.

6. During the arguments, the learned counsel for the applicant drew attention to Annx.A3 dated 31.12.86 which is a communication from the General Manager, Western Railway, to the applicant by which the General Manager has rejected the applicant's representation/prayer for taking him in service again. However, by this communication, the General Manager also informed the applicant that although the applicant had been removed from service in 1984, he had failed to submit any appeal to the Addl.CME(W), Ajmer or revision petition to the CME and had submitted the above petition to the General Manager. Taking a cue from the above communication, he preferred an appeal Annx.A5 to the Addl.CME(W). But this appeal was rejected by order Annx.A2 stating that the applicant's earlier petition dated 20.10.86 has already been rejected by the General Manager, and therefore, the applicant had preferred a second appeal. On the one hand the representation made by the applicant to the General Manager was rejected on the ground, amongst others, that he had not filed appeal to the appellate authority and on the other hand when he preferred an appeal, he was informed that it was his second appeal and therefore not liable to be entertained. Therefore, there has been no proper consideration of his appeal on merits. He also reiterated the other grounds mentioned in the application on which orders passed against the applicant have been assailed.

7. The learned counsel for the respondents stated that the appellate authority had in fact not received the appeal

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dated 22.12.87 as already stated in their reply. There was, therefore, no question of consideration of the applicant's appeal.

8. We have heard the learned counsel for the parties and have perused the records. On 25.4.95 the Tribunal had directed the respondents to produce the records relating to the disciplinary proceedings. These were produced today during the hearing and have been perused by us.

9. As regards the preliminary objection taken by the respondents that the application is time barred, it may be stated that order Annx.A1 by which his revision petition has been rejected has been received by the applicant on 6.12.88 whereas the O.A has been filed on 27.6.89. Having regard to this fact and in the interests of justice, we entertain this application for consideration on merits.

10. At this stage it does not appear necessary for us to give any finding as to whether notices were properly served on the applicant and whether the enquiry was properly conducted. The respondents have maintained that appeal dated 22.12.87 (Annx.A5) was not received by the Appellate Authority. Annx.A2 dated 11.1.88 by which the applicant has been informed that this was his second appeal shows that this appeal was addressed to the General Manager. However, Annx.A5 dated 22.12.87 which is the applicant's appeal is addressed to Addl. CME(W) who according to the communication Annx.A3 dated 31.12.86 is the appellate authority for the applicant. It has not been disposed of on merits on the ground that it is his second appeal. In fact, earlier the applicant had only submitted a representation to the General Manager, which was disposed of by the latter vide Annx.A3 dated 31.12.86 stating, inter alia, that the applicant had not preferred appeal to the appellate authority. Now that an appeal had been preferred by

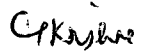
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the applicant, it was the duty of the respondent appellate authority to consider the appeal on merits and in terms of the provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules 1968. In these circumstances, after hearing the counsel for the parties, we direct that the appeal Annx.A5 preferred by the applicant shall be considered on merits by the appellate authority, respondent No.3, the Chief Works Manager, Western Railway, Ajmer, within a period of 4 months from the date of the receipt of a copy of this order. For this purpose, orders Annxs.A1 dated 6.12.88, A2 dated 11.1.88 and A3 dated 31.12.86 are set aside.

11. The O.A. is disposed of accordingly with no order as to costs.

  
(O.P.Sharma)

Member(Adm.)

  
(Gopal Krishna)

Vice Chairman.