

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 851/91.

Dt. of Decision : 25-8-94.

Syed Gulam Rabbani

.. Applicant.

Vs

1. General Manager,
SC Rly, Secunderabad.
2. FA & CAO (C)
SC Rly, Secunderabad.
3. Dy. FA & CAO (C)
SC Rly, Secunderabad.
4. Sr. Accounts Officer (Construction)
SC Rly, Secunderabad. .. Respondents.

Counsel for the Applicant : Mr. V. Krishna Rao

Counsel for the Respondents : Mr. V. Bhimanna, Addl. CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

O.A.No.857/91.



Pre-delivery Judgment in the above OA typed as per
Hon'ble Sri R.Rangarajan, Member(A) for concurrence
please.

H.M. (A)

HVC

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JUDGEMENT

(As per Hon'ble Shri R.Rangarajan, Member(Admn))

Applicant herein joined the Railway Service on 7.2.1957 and was posted to work in Workshop Accounts Office, Lallaguda. He was promoted as Sr.Clerk Gr.I and was posted to work in the office of the Sr.Accounts Officer, Construction, Secunderabad during 1957. He was issued with a charge-sheet on 25.7.1989 for ~~unauthorised~~ absence during the period from 1.2.1977 to 30.6.1977 and from 4.8.1977 to 25.7.1989 (Annexure I). An enquiry was conducted following the Railway (Disciplinary & Appeal) Rules and the enquiry officer had held him guilty and for unauthorised absence. He was given a copy of the enquiry proceedings along with the report of the enquiry officer. After receiving his remarks on the enquiry report, the Disciplinary Authority, R-3, removed him from service forthwith by the Memorandum No.A/AO/CN/SC/126 dated 26.2.1991. His appeal was also rejected by the respondent No.2 by the memorandum No.AAO/CN/SC/126 dated 31.7.1991.

2. This OA is filed assailing the removal order dated 26.2.91 issued by the respondent No.3 and the order ^{of} rejecting his appeal, issued by respondent No.2, dated 31.7.1991.

3. The main contentions of the applicant in assailing the above orders are-

- i) The order of the Disciplinary authority removing him from service is a mechanical one, and the order of the appellate authority ((R-2) has failed to pass order as per Rule 22(2) of the Railway Servants/ (Disciplinary & Appeal) Rules, 1968.
- ii) The applicant ought to have been taken on duty on production of medical certificate from the railway hospital, Lallaguda, before initiating disciplinary action. In as much as, it was not done, the status of the applicant was not determined and hence issuing of charge sheet and proceeding with the enquiry is illegal.



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iii) The non-production of personal file, which is a vital document and crucial document, has affected the defence of the applicant adversely.

iv) He was not advised of the non-sanctioning of his leave for the period from 1977 to 1987.

4. The disciplinary authority can pass the order of punishment on the basis of the findings of the enquiry officer. There is no need for him to give any speaking order. Hence, the contention that the order of the disciplinary authority is a mechanical ~~one~~ cannot be upheld. The memorandum dated 31.7.1991 issued by respondent No.2, the appellate authority, is also a speaking one and hence, the contention that it is also a mechanical one, fails.

5. It was strenuously contended that the applicant should have been taken on duty when he produced the 'Fit' certificate in 1987 and then only he can be proceeded against as per Railway (Disciplinary & Appeal Rules). Since, he was not taken back on duty, nor was he suspended, on production of the fit certificate, he cannot be issued with the charge-sheet and proceeded further, as the status of the applicant cannot be treated as a Railway servant. For this contention, he relied on the Judgement of this Tribunal in TA No.1206/86 decided on 1.1.1991 and also, the Serial Circular No.16/70 dated 20.1.1970.

6. When an employee is unauthorisedly absent, and he comes back to duty with a fit certificate and in case he is not admitted to duty, the course left to him is, to demand salary for the period from the date he presented himself with the fit certificate. In case the administration refuse to pay him the salary for the period mentioned above, he has to approach the competent court/Tribunal for non-payment of salary. Not taking him back on duty on production of fit certificate after the unauthorised absence period, in no way bars the administration to proceed against him for un-

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rised absence by issuing a charge sheet. The employer,- employee relation is in no way broken because of not admitting the employee onduty. The Judgement of this Tribunal in DA 1206/86 and the serial circular 16/70 of 20.1.1970, in no way conveys the meaning that an employee cannot be proceeded against by issuing a charge-sheet for unauthorised absence if he is not taken back on duty after he reports for duty with a fit certificate after unauthorised absence. As the applicant had not taken recourse to approach a legal forum for salary for the period after he reported with a fit certificate, he cannot, at this point of time, complain for non-payment of salary, and also, cannot contend that he cannot be proceeded against for unauthorised absence. In view of what is stated above, this contention also fails.

7. As the charge is unauthorised absence for a specific period, production of service register will in no way come to his rescue for defending his case. Unless the applicant produces proof of sending his leave application and approval of the same by the competent authority, he cannot have a satisfactory defence for his case. In this case, there was no proof of having sent the sick certificate for the period 1982 to 1987. Mere production of fit certificate with, in no way, prove that, he was real sick during the preceding period of absence. Hence, we see no merit in this contention also.

8. Lastly, he complains of not informing him by the respondents, regarding non-sanctioning of his leave. In the additional affidavit dated 22.8.1994 filed by the respondents, it has been stated that "the applicant did not give any scope to the administration to contact him as he did not inform them about his whereabouts." During

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the hearing, we specifically asked the learned counsel for the applicant whether he wants to file a rejoinder to the additional counter affidavit filed by the respondents. The learned counsel for the applicant replied in negative. As the additional counter affidavit filed by the respondents clearly states that the whereabouts of the applicant ~~was~~ ^{www} not known to the administration, he could not be advised of the non-sanctioning of his leave, had to be accepted, in the absence of any rejoinder to the additional counter affidavit of the respondents. Hence, the inability of the respondents to inform the applicant regarding the non-sanctioning of the leave cannot be a reason for setting aside the punishment orders.

9. In the result, we see no merit in this OA and hence, it is dismissed. No costs.


(R. RANGARAJAN)
Member (Admn)


(V. NEELADRI RAO)
Vice-Chairman

Dated: 25th August 1994

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Anbu 26/8/94
Deputy Registrar (J) CC

To

1. The General Manager, S.C.Rly, Secunderabad.
2. The F.A. & C.A.O (C) SC Rly, Secunderabad.
3. The Deputy F.A. & CAO (C) SC.Rly, Secunderabad.
4. The Sr. Accounts Officer (Construction)
S.C.Rly, Secunderabad.
5. One copy to Mr. V. Krishna Rao, Advocate, CAT.Hyd.
6. One copy to Mr. V. Bhimanna, SC for Rlys, CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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