

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O. A. No. 413 of 1992

Between

K. Krishna S/o Sri K. Kesavulu, aged 42 yrs.,
Peon, Office of the
Controller of Stores,
South Central Railway,
VI Floor, Rail Nilayam,
SECUNDERABAD.

... Applicant

and

1. Assistant Mechanical Engineer(R&L),
Headquarters Office, Power Branch
Rail Nilayam, South Central Railway,
SECUNDERABAD

2. Chief Mechanical Engineer(Power)
South Central Railway,
Rail Nilayam,
Secunderabad.

3. General Manager,
South Central Railway,
Rail Nilayam,
SECUNDERABAD.

... Respondents

APPLICATION UNDER SECTION 19 OF THE CENTRAL ADMINISTRATIVE
TRIBUNALS ACT, 1985.

I. PARTICULARS OF THE APPLICANT:

The particulars of the applicant are as mentioned
in the above cause title.

The address of the applicant for purpose of service
of process etc., is that of his counsel M/s G.V. Subba Rao
and N. Ethirajulu, Advocates, H.No. 1-1-230/33, Chikkadapalli,
Hyderabad.

II. PARTICULARS OF THE RESPONDENTS:

The particulars of the respondents are as mentioned
in the above cause title.

u.s.

III. PARTICULARS OF ORDERS AGAINST WHICH THIS APPLICATION IS MADE:

1. Memorandum No. TP 115/DAR/KK dated 3-6-1991 imposing the penalty of removal from service on the applicant by the Assistant Mechanical Engineer, (R&L), South Central Railway, Rail Nilayam, Secunderabad. P. 14+15

2. Chief Mechanical Engineer (Power), South Central Railway, Secunderabad Memorandum No. TP 115/DAR/KK dated 21-8-91 rejecting the appeal of the applicant against the penalty. P. 16+17

3. General Manager, South Central Railway, Secunderabad order No. P-90/Hq/KK/1443 dated 22-01-92 appointing the applicant as peon as fresh entrant. P. 18

IV. JURISDICTION:

The applicant humbly declares that the subject matter of the orders against which he wants redressal is within the jurisdiction of this Hon'ble Tribunal under rule 44(i)(a) of the Administrative Tribunals Act, 1985 as the applicant was removed from service while working as Peon in the South Central Railway at Secunderabad.

V. LIMITATION:

The applicant further declares that the application is well within the limitation as prescribed under Rule 21(i)(a) of the Administrative Tribunals Act 1985 in as much his appeal was rejected by the appellate authority on 21-8-1991. P. 16+18

NS

(12)

VI. FACTS OF THE CASE:

The applicant humbly submits that while working as a Peon in the Office of Chief Operating Superintendent, Power South Central Railway, Secunderabad applied for 1 1/2 days Casual leave due to indisposition and he fell sick from 22-6-1989 to 15-12-1989. The applicant was not provided with Railway quarter and he was residing outside in private quarters which is away by more than 2.5 KMs radius from the Railway Hospital. The rules permit that staff who are residing far away from the Railway Hospital are permitted to undergo private treatment and they should report regarding the same to the controlling officer within 48 hours from falling sick. The applicant who was suffering from giddiness and his relatives took him to Dr. K. Satyanarayana, Neuro Surgeon, Gandhi Medical College Hospital who is a Specialist and also a Consulting Neuro Surgeon to the Railway Hospital, Lalaguda. As there was no bed available at that time he was treated as an out patient and advised rest. The medical certificate recommending for rest and on the out patient ticket was submitted to the controlling officer. The applicant was sick upto 15-12-1989 and for the intervening period supporting certificates were submitted to the Controlling Officer to the fact that the applicant was sick and undergoing treatment in the Gandhi Hospital at Secunderabad. It is evident that the Gandhi Hospital is a recognised Government Hospital of the State Government which is superior in all respects than the Lalaguda Railway Hospital and the certificates issued by the Gandhi Hospital should be treated as valid certificates in support of the applicant's sickness ~~from~~ for the period from 22-6-89 till he reported for duty under proper certification. The Controlling Officer ought to have marked the applicant sick on the strength of the



13

certificates produced from time to time. On the contrary it is not understood on what basis he was deliberately marked as absent which act constitutes wilful, arbitrary, illegal and unconstitutional way adopted by the Controlling Officer to victimise the applicant in a pre-determined manner. On 15-12-1989 the applicant was directed by the Assistant Mechanical Engineer to the ADMO, Kachiguda with a letter stating "that Sri Krishna Peon was born on the books of this office. He is absent from 22-6-89 to till date". This letter clearly establishes that fact that the Assistant Mechanical Engineer who was in receipt of the Medical Certificate issued by the Gandhi Hospital wilfully suppressed the fact and issued the letter stating that the applicant was absent from 22-6-89 to till date, for reasons best known to him which is nothing but a malefide action on the part of the Assistant Mechanical Engineer Sri M.B. Ukunde. The applicant was given a duty certificate in the absence of supporting medical certificate which were not enclosed along with the letter addressed to the ADMO, Kachiguda. The applicant resumed duty on the strength of the duty certificate issued by the Railway doctor. P.24

2. Under extant medical rules the Controlling Officer has to regularise the period of sickness covered by private medical certificate as ~~max~~ leave when the period is not covered by Railway medical certificate. In the case of the applicant production of private certificate does not arise in view of the fact that the period of absence is covered by the certificate issued by the recognised Government Hospital. The Controlling Officer has to regularise the period in view of the fact that the certificates were submitted in time and acknowledged. There was any doubt regarding the genuineness of the certificate issued covering the period of sick absence, the responsibility should have been for the authorities

to have got it investigated by deputing either a Railway Doctor or its subordinate regarding the ~~maxim~~ genuineness of the certificates issued by the Government Hospital and also got the applicant examined by a Railway doctor as per rules. It is obvious that none of the procedures were followed and it has to be concluded that the certificate in respect of the sickness of the applicant are undisputed as long as long the contrary is not proved. On the face of the established sickness which is not controverted the respondents are bound to regularise the period of sick absence as leave due to him. They have failed to regularise the period as leave as per rules but on the contrary have resorted to DAR action against the applicant which is not justified by any principles of law.

3. The applicant was served with a false charge of unauthorised absence. An enquiry was conducted violating principles of natural justice and the enquiry officer held the main charge of unauthorised absence has not proved and at the same time held the applicant guilty of not having the period covered by leave sanctioned by the competent authority which is absurd as long as the main charge is not proved. The second part of the charge is consequential to the main charge which is held to be not proved and has no independent existence.

4. The disciplinary authority imposed the penalty of removal on the applicant disagreeing with the finding ~~with the findings~~ of the enquiry officer. The appellate authority rejected the appeal. A revision petition was filed by the applicant at the instance of the Chief Personnel Officer on a representation to the Railway Minister to the General Manager and the General Manager vide his letter dated 22-1-1992 as the revising P. 18 authority imposed the penalty of wiping out his entire service by reappointing him on the minimum scale of Rs. 750/-.

W.S.

Aggrieved by the said penalty the present O.A. is filed raising among other things the following legal grounds.

G R O U N D S

- i) The Assistant Mechanical Engineer is not competent authority to initiate disciplinary proceedings and to impose the penalty of removal.
- ii) According to rules the Senior Mechanical Engineer should have been the appellate authority and the appeal was asked to be filed to the CPME which is contrary to DA Rules.
- iii) The charge is vague and not specific in as much as it lacks the essential ingredients. It states " the ~~applicant~~ said Sri Krishna remained absent in an unauthorised manner from 22-6-89 onwards. This period is neither covered by regular medical certificate issued by a Railway Doctor nor covered by leave sanctioned by the competent authority." This charge is sought to be proved by musters.
- iv) The charge is baseless and unfounded as the material facts have been suppressed in spite of the fact that the applicant complied with the Railway Medical Rules and he has produced the medical certificates issued by the Government Hospital which have been duly acknowledged by the authorities. It is for the department to regularise the period of sick absence by sanction of leave due to him. Without complying with the provisions of rules pertaining to the grant of leave by competent authority in case of sickness not covered by the issue of medical certificate by the Railway Doctor the appropriate authority arbitrarily charged the employee with unauthorised absence which is nothing but arbitrary and illegal.



16

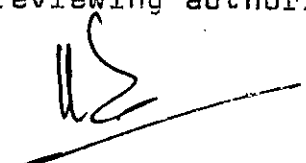
- 7 -

v) In the Annexure II of the charge sheet states that the sick period is neither covered by a medical certificate nor covered by leave sanctioned by the competent authority. The memo issued by the Out Patient department are not accepted as he should have gone to the Railway Hospital for treatment.

vi) There is no binding rule that the applicant or any Railway employee should go only to a Railway Hospital. Employees are permitted to seek medical treatment in other than a Railway Hospital and as long as there is no prohibition against undergoing private treatment under a Private practitioner, the question of violating any rules by the applicant does not arise and the charge itself is untenable. During that period there is no order issued by the competent authority prohibiting outside treatment.

vii) The charge is sought to be proved by muster. The Asst. Mechanical Engineer marked the applicant absent from 22-6-89 in spite of his being in the knowledge of the applicant undergoing treatment in the Gandhi Hospital Hyderabad. The reasons for marking him absent are not furnished in the muster and the applicant also was not notified the regarding the unusual practice of marking absent in spite of a medical certificate. The AME who certified the muster the concerned officials who received the medical certificate and suppressed the facts were not permitted to be examined at the enquiry in spite of a specific request by the applicant to examine them to prove the charge is baseless. As such he was denied reasonable opportunity to defend his case properly and thereby Article 14 has been ~~xxxxx~~ violated vitiating the entire process of enquiry.

xiii) The Enquiry Officer was biased from the very beginning and the Disciplinary Authority who is the author of the charge sheet has misrepresented the fact to the reviewing authority

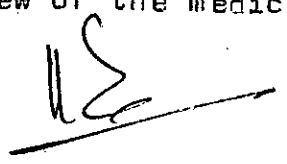


to whom a representation regarding denial of reasonable opportunity and also for conducting a fresh enquiry were not properly considered which clearly show that they have a closed mind in the matter and the enquiry which was conducted is nothing but an empty formality to impose the penalty of removal from service.

ix) The Enquiry Officer in his report stated " since the delinquent employee is residing outside the jurisdiction of the Railway Medical Officer (1.5. 2 1/2 KMs away he has submitted out-patient tickets from the Gandhi Hospital. The out patient ticket submitted by the delinquent employee was not accepted by the competent authority and the orders were given by the competent authority to mark him absent".

This observation establishes the fact that from 22-6-1989 onwards he was marked absent in violation of medical rules. The reasons for such marking are not disclosed.

x) The Enquiry Officer also observed that these outpatient tickets have been examined for their continuity and correctness and it is found that they cover the full period of his absence from duty. Since he has given his residential address 2 1/2 KMs away from Railway Medical Officer is justified in submitting the sick Memo. other than Railway Hospital within 48 hours to the competent authority as per Medical Manual. Therefore, there is no unauthorised absence and the very charge by the admission of the Enquiry Officer fails. The Disciplinary authority, the Reviewing Authority had already come to the conclusion to remove the applicant from service as it could be seen from the observation made by the Enquiry Officer in his report that both of them directed the Enquiry Officer to proceed with the finalisation of the enquiry proceedings notwithstanding the fact the applicant's submissions to examine the case afresh in view of the medical



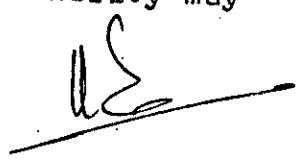
(18)

certificates produced him.

xi) The Enquiry Officer is not aware of the fact that the Government Hospitals do not give sick and fit certificate in case of patients who are not admitted in the hospital. They recommend the rest for the patient during the period of treatment as out patient. That itself has to be treated as a case for recommendation of leave on medical grounds which implies that the ~~maxxxx~~ patient undergoing treatment is not fit to perform duties as distinct from the procedure followed for the employees by the Railway Hospital wherein if the employee is not able to perform duties a sick and discharge certificate is given when medical leave is recommended. In all other cases they are treated as out patients. This distinction has not been understood by the Enquiry Officer when he observed that the applicant did not produce sick and duty certificate from the Government Hospital is purely a technicality which does not testify anything contrary to the fact that the applicant was sick and advised medical leave.

xii) Even ^{cc} according to Railway Medical Rules the mere grant of sick and fit certificates would not entitle the employee to get the period of absence treated as leave unless he has got leave to his credit. The same logic will hold good in the case of the applicant ~~that~~ the period of absence should be treated as leave due to him or in the alternative as ~~xx~~ leave not due. The respondents have not fulfilled the mandatory instructions of the medical manual as well as the Railway Board instructions in the matter.

xiii) The Enquiry Officer has also observed " in such circumstances the Disciplinary/Competent Authority should have arranged for verification of the out patient tickets conducted by the Railway Medical Officer. Only after such verification by the Railway Medical Officer the competent authority may



reject the medical documents.

In this case the Disciplinary/Competent Authority didnot arrange for the above verification and as such the validity of Government Out-patient ticket submitted by the delinquent employee has not been proved as unacceptable.

These condietions protected the period of absence and confirm the sickness of the delinquent employee duly governed by some medical documents which were not verified for their genuineness by the Railway Doctor."

These observations lend further support to the contention of the applicant that the ~~disciplinaxy autherixxy~~ Asst. Mechanical Engineer while sending the applicant to AMO Kachiguda acted beyond his jurisdiction in suppressing the fact and directing him with a letter stating that he was absent from duty with effect from 22-6-89.

no

xiv) There is/more further proof required to substantiate the fact that the Asst. Mechanical Engineer started marking the applicant as absent in the muster right from 22-6-89 in spite of the fact that a sick certificate was sent as per medical rules. This muster was only document which was produced as exhibit before the Enquiry Officer without citing the witnesses to depose ~~xx~~ regarding receipt of the Medical Certificates . It has to, therefore, be concluded that there is no evidence that the applicant was unauthorisedly absent which is also stated by the Enquiry Officer in his report. The Enquiry Officer in his findings held the applicant not guilty of the charge of unauthorised absence. By the very same verdict of the charge not proved the subsequ ent observation becomes irrelevant as it is the off shoot of the very first charge which cannot be split up into two parts. The Enquiry Officer's findings with regard to the

15

second aspect of the charge are perverse and do not stand to reason. It appears that this finding is given ~~to~~ only to please his superior officer.

xv) The disciplinary authorities ought to have given notice to the applicant when he wanted to disagree with the findings of the Enquiry Officer. Without following the procedure as per law he straight away imposed the punishment of removal.

xvi) The appellate authority also mechanically disposed of the appeal without following the procedure laid down in the DA Rules.

xvii) The Reviewing Authority viz. the General Manager while disposing of the review cancelled the order of removal and forfeited the previous service by appointing the applicant afresh. This is not one of the punishments enumerated in the list of minor and major penalties and imposition of such a punishment is without jurisdiction.

xviii) The ~~entire~~ disciplinary proceedings right from the issue of charge sheet are vitiated as they are violative of principles of natural justice which deserved to be quashed.

VII. RELIEF SOUGHT FOR:

In view of the facts mentioned in para VI of the O.A. the applicant herein humbly prays that this Hon'ble Tribunal may be pleased to direct the respondents to produce the entire records pertaining to the impugned orders and quash the penalty advice Memo. No. TP.115/DAR/KK dated 3-6-1991 of the Assistant P14-15
Mechanical Engineer(R&L), S.C.Railway, Secunderabad, Memo.
No. TP. 115/DAR/KK dated 21-8-91 of the Chief Mechanical Engineer P.16-17
(Power) S.C.Railway, Secunderabad rejecting the appeal of the applicant against the penalty and Order No. P.90/MQ/KK/1443

15

21

dated 22-01-92 of the General Manager, S.C.Rly, Secunderabad appointing the applicant as peon afresh, by declaring them as arbitrary, illegal and unconstitutional violative of Articles 14, 16 and 311(2) of the Constitution and direct the respondents to give him all consequential benefits such as treating the entire period of sick absence covered by proper certificates as leave to which he is entitled, arrears of salary, increments, promotion etc.

VIII. INTERIM RELIEF:

The applicant humbly prays this Hon'ble Tribunal may be pleased to fix an early date for final hearing of the case.

IX. XXXXXXXXXXXXXXXXX REMEDIES EXHAUSTED:

The applicant declares that he had availed all the remedies available to him under the service rules, in that his ~~xxxxxx~~ appeal was rejected and the reviewing authority modified the punishment.~~xxxxxxx~~

X. MATTERS NOT PENDING WITH ANY OTHER COURT ETC.:

The applicant declares that the matter regarding which the application is made is not pending with any court of law or any other authority or any Bench of the Tribunal.

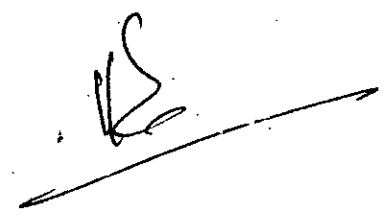
XI. DETAILS OF PAY ORDER:

Pay Order No. 273408 dated 8.5.92 for Rs.50/- drawn in favour of the Registrar, Central Administrative Tribunal Hyderabad is enclosed.

I.P.O./B.C./D.D./Removed

XII. DETAILS OF INDEX:

An index containing the details of the documents to be relied upon is enclosed herewith.



XIII. LIST OF DOCUMENTS

- (a) Pay Order No. 273408
dated 8.5.92 for Rs. 50/- .
- (b) Index containing the list of documents
to be relied upon.

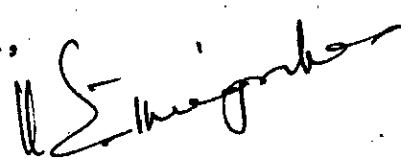
V E R I F I C A T I O N

I, Krishna son of Sri K.Kesavulu, aged 42 years working as Peon in the Office of the Controller of Stores, South central Railway, Rail Nilayam, Secunderabad resident of Hyderabad do hereby solemnly affirm and verify that the contents of para I to XIII of the O.A. are true and correct to the best of my knowledge and belief and that I have not suppressed any material facts of the case.

Hence verified on this the 30th day of April, 1992 at Hyderabad.

To
THE REGISTRAR,
Central Administrative Tribunal,
Hyderabad Bench,
HYDERABAD.

K. Krishna
APPLICANT


Counsel for the Applicant.