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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A. No. 541/92.

Dt. of Decision : 26-7-94.

Mr. A. Prasada Rao

.. Applicant.

Vs

1. The General Manager,
SC Rly, Rail Nilayam,
Secunderabad.
2. The Divisional Railway Manager,
SC Rly, Vijayawada - 1.
3. The Sr. Divisional Mechanical
Engineer (LOCO),
SC Rly, Vijayawada.

.. Respondents.

Counsel for the Applicant : Mr. J.M. Naidu

Counsel for the Respondents : Mr. D.Francis Paul, SC for Rlys.

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN : MEMBER (JUDL.)

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

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O.A. No. 541/92.

ORDER:

¶ As per the Hon'ble Sri A.V. Haridasan, Member (Judl.) ¶

The applicant while working as a Loco Khalasi under the Loco Foreman, Rajahmundry was served with a charge sheet dt. 19.5.86 alleging that he was unauthorisedly absent from duty. An enquiry was held. On the basis of the report of the enquiry officer, the 3rd respondent issued the impugned order dt. 26-12-86 finding the applicant guilty of unauthorised absence for the various periods mentioned in the order extending to 269 days and awarding the applicant a punishment of removal from service with immediate effect. Aggrieved by this order the applicant filed an appeal to the 2nd respondent who by order dt. 23.3.87 rejected the appeal. Feeling aggrieved by the appellate order the applicant approached this Tribunal earlier by filing OA No. 464/89. The Tribunal felt that the appellate authority has not considered all the grounds mentioned in the appeal memorandum and remitted the matter to the appellate authority for a fresh disposal bearing in mind the observations made in the order. Pursuant to the direction, contained in the judgement of the Tribunal, the 2nd respondent, again vide his order dt. 13.10.1991 dismissed the appeal. It is in these circumstances that the applicant has filed the application U/s 19 of the A.T. Act impugning the order dt. 26.12.1986 of the 3rd respondent as well as the appellate order dt. 30-10-1991 issued by the 2nd respondent.

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2. The factual background in which the proceedings were initiated against the applicant can be briefly stated thus. The applicant had gone to Alluru to visit his old parents and he was said to have fallen ill while at Alluru. He was under the treatment of Dy. Civil Surgeon, Government Hospital, Alluru from 30-10-85 to 13-5-86. While the applicant recovered he reported for duty with a fitness certificate issued by the Dy. Civil Surgeon, a copy of which is available at Page-13 of the paper book. It is seen from the certificate that the applicant was under treatment of Dr. P.V. Krishna Reddy, Dy. Civil Surgeon from 13-10-1985 to 13-5-86 for ~~infectious~~ *Hepatitis* (Jaundice). However, the Loco Foreman did not permit the applicant to rejoin duty but sent him to the D.M.O. for proper certificate. The D.M.O. did not give him any certificate. Thereafter the charge sheet was issued and the enquiry held.

3. The grounds on which the impugned order is assailed are that (i) either in the Article of Charge or in the Statement of Imputation there is no allegation of any misconduct, and (ii) that the punishment awarded is shocking of disproportionate to the alleged misconduct.

4. We have heard Shri J.M. Naidu, learned counsel for the applicant and Shri D.F. Paul, learned standing counsel for the railway administration. Sri Naidu invited our attention to the Memo. of charge and submitted that the imputations do not constitute a misconduct deserving action under D.A.R. Annexure to the standard Form No.5 which contains the article of charge and the statement of imputation forming the basis of the charge is reproduced below for the purpose

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of the reference.

Annexure I

Statement of articles of charge framed against
Shri A. Prasada Rao.

Article I

That the said Sri A. Prasada Rao while functioning
as Loco Khalasi T.No.1178 (Rjy.) absented himself
unauthorisedly, without proper sanction of leave or
observing Railway Medical Attendance rules, for the
following periods.

..... Total 269 days
..... (Two hundred sixtynine
..... days only)

Annexure II

Statement of imputations of misconduct or misbehaviour
in support of the articles of charge framed against
Shri A. Prasada Rao, Loco Khalasi, T.No.1178 (Rjy.)

Article I

Unauthorisedly absented himself without proper sanction
of leave or observing Railway Medical Attendance rules,
for the following period.

..... Total 269 days
..... (Two hundred sixtynine days
..... only)

It is seen that the essence of the allegation against
the applicant was that while functioning as Loco Khalasi
he absented himself unauthorisedly without proper sanction
of leave, or observing the Railway Medical Attendance
Rules for a certain period. Sri Naidu submits that the fact that
applicant has remained absent for the period in question
and that leave was not sanctioned for this period is
not disputed by him, but his contention is that the absence

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of the applicant was on account of his illness which preventing^{ad} him from reporting for duty and not on account of any wilful intention on his part to refrain from reporting for duty. Sri Naidu submitted that even if during the period in question the applicant wished to report for duty he could not have done so for reasons beyond his control viz. serious ailment for which he was bed ridden and under treatment. According to the learned counsel, proceedings under the Disciplinary Appeals Rules and consequent punishment, if guilt is established is justified only in case where the railway servant has exhibited misconduct i.e., a conduct unbecoming of railway servant or an act or omission amounting to lack of devotion to duty. Being sick and bed ridden, according to the learned counsel is neither a conduct unbecoming of government servant, nor on account of lack of devotion to duty. On this premises, the learned counsel with considerable tenacity argues that the entire action on the part of the respondents in accusing the applicant finding him guilty and awarding to him the capital punishment of removal from service is absolutely unkind, unjust and unsustainable. We find considerable force in this arguments. Even in the judgement of the Bench in O.A. No. 464/89, a copy of which is available in the appeal at page 14, it was observed that it was an admitted fact that the applicant fell sick and was admitted in a private hospital and was under treatment disabling him from reporting for duty. The fact that the applicant was under treatment for a serious illness, was not seriously in dispute. The gravement of the charge is that he did not report sick in a railway hospital and did not follow the Railway Servants.

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Medical Attendance Rules.

5. Now let us examine whether the non-compliance with the Medical Attendance Rules would amount to misconduct for which a railway servant can be proceeded under the Disciplinary and Appeal Rules. Para 518 of Indian Railway Establishment Code Vol.I Fifth Edition-1985 reads as follows:

"Absence after the expiry of leave--

(1) Unless the authority competent to grant leave extends the leave, a railway servant who remains absent after the end of leave is entitled to no leave salary for the period of such absence and that period shall be debited against his leave account as though it were leave on half average pay, to the extent such leave is due, the period in excess of such leave due being treated as extraordinary leave.

(2) Wilful absence from duty after the expiry of leave renders a railway servant liable to disciplinary action.

6. Sri D.F. Paul, the learned counsel for the railway administration submits that it is under the Sub-para (2) of Para 518 that the conduct of the applicant in this case has rendered himself liable for disciplinary proceedings. A reading of Sub-para (1) and Sub-para (2) of Para 518 carefully would make it clear that if a railway servant ^{himself} ~~absents~~ without due sanction of leave he would not be entitled to any leave salary for that period and that if such absence is wilful, he would expose himself to disciplinary proceedings under the rules. There is justification for this difference because there can be cases in which a person even with

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utmost devotion to duty could not report for duty (if he was ill) and the leave was not granted by the competent authority. There may be cases where a railway servant wilfully abstains from duty. The second conduct is definitely unbecoming of railway servant. It is manifestation of lack of devotion to duty while the first absence is for reasons beyond his control.

7. In this case, there is no allegation in the charge sheet or in a statement of imputation, nor even in the reply statement filed by the respondents that during the period in question the applicant's absence was wilful. We are of the considered view that mere absence from duty, though not authorised by grant of leave cannot be treated as a misconduct so as to attract disciplinary proceedings. A Bench of the Punjab and Haryana High Court, has in 1991(4) SLR 539 held that mere absence from duty is not a grave misconduct. We are in respectful agreement with the view expressed in that ruling. If the applicant had failed to comply with the Railway Servants Medical Attendance Rules, the consequences that should follow is that he would not be eligible for grant of leave salary for the period in question. He would expose himself to disciplinary proceedings only if his absence was wilful thereby showing that he had exhibited lack of devotion to duty. Further, in the charge sheet there is no allegation, *that the applicant willfully absented from duty* or that the applicant is guilty of lack of devotion to duty or that he exhibited conduct unbecoming of a railway servant. Thus, we are of the considered view that no misconduct as such has been established against the applicant for awarding to him the punishment of removal from service.

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The Appellate Authority should have reconsidered the case in the light of the observations made in the judgement of the Tribunal in OA. 464/89 wherein this aspect of the case has been discussed fairly at length. Even that did not act as an eye opener to the Appellate Authority ^{who} ~~which~~ approached the question with a closed mind. Therefore, we do not find any justification to uphold the impugned order of punishment or the Appellate order. Therefore we quash the impugned orders and hold that as misconduct has not been established the applicant is not liable for any penalty.

8. The result of the finding, recordings in the paragraph supra is that the applicant is entitled to be reinstated forthwith in service ~~treating that he~~ continued in service despite the impugned order of removal from service. However, we are of the considered view that the applicant cannot be given the entire pay and allowances for the period during which he was kept out of duty because there has been laches on his part also. If the applicant had intimated the fact of his illness to his immediate superior or reported sick in the railway hospital at the earliest opportunity when he could do so, the railway administration would not have acted in the manner in which ~~they did.~~ So, for the unfortunate episode the contribution of the applicant is also considerable. Taking into account of this background, we restrict the back wages to a consolidated sum of Rs.10,000/- (Rupees ten thousand only). In the result, the OA is disposed of with the following declarations and directions:

- (i) The impugned order of the 3rd respondent imposing on the applicant a penalty of removal

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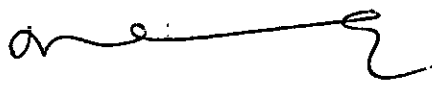
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from service dt.26-12-86 (Annexure-A1) and appellate order of the 2nd respondent dt.13-10-91 rejecting the appeal are set aside.

(ii) The respondents are directed to reinstate the applicant ^{in service} forthwith, at any rate not later than within a period of one month from the date of receipt of this order and to pay him within the said period a sum of Rs.10,000/- towards back wages.

(iii) The period during which applicant was kept out of service shall count for all purposes excepting for grant of ^{arrear} pay and allowances which is limited to Rs.10,000/- (Rupees Ten thousand only) as stated above.

The O.A. is ordered accordingly with no order as to costs.


(R. Rangarajan)
Member (A)


(A.V. Haridasan)
Member (J)

Dt. 26-7-1994
Open Court Dictation


DEPUTY REGISTRAR(J)

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Copy to:

1. The General Manager, South Central Railway, Railnilayam, Secunderabad.
2. The Divisional Railway Manager, South Central Railway, Vijayawada.
3. The Senior Divisional Mechanical Engineer, (LOCO) South Central Railway, Vijayawada.
4. One copy to Mr.J.M.Naidu, Advocate, CAT, Hyderabad.
5. One copy to Mr.D.Francis Paul, SC for Railways.
6. One copy to Library, CAT, Hyderabad.
7. Copy to the Reporters as per standard list of CAT, Hyd.
8. One spare copy.
9. one copy to D.R(LS), CAT, Hyd.

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