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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A. No. 1179/93

31.12.1996

Date of Decision: ~~6.12.1996~~

BETWEEN:

B. Suryanarayana Murthy .. Applicant

AND

1. Senior Divisional Mechanical Engineer/L/
South Central Railway,
Vijayawada.
2. Divisional Railway Manager,
South Central Railway,
Vijayawada - 520 001.
3. Chief Mechanical Engineer,
South Central Railway,
Rail Nilayam, Secunderabad. .. Respondents

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Counsel for the Applicant: Mr. G.V. Subba Rao

Counsel for the Respondents: Mr. C.V. Malla Reddy

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CORAM:

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

THE HON'BLE SHRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

.....

JUDGEMENT

(Oral order per Hon'ble Shri B.S. Jai Parameshwar: Member (J)

In this OA the applicant has prayed this Tribunal to call for records and proceedings No. B/P/5/III/85/28 Dt.8.8.86 passed by the respondent No.1 and records and proceedings in No.B/P/90/III/92/5, Dt.28.1.93 passed by the respondent No.2 and recordds and proceedings in No.P/ 90/BZA/BSNM/1653 Dt.9.7.93 passed by the respondent No.3, and to declare the said proceedings as arbitrary, illegal and violative of Articles 311(A) and 14 & 16 of Constitution of India with a consequential relief to reinstate him into service.

The case of the applicant, in brief, is to the following effect:

That he was selected as an apprentice mechanic by the Railway Service Commission and was appointed as such on 5.12.88, that, subsequently he completed 3 years training, that he was absorbed as Chargeman in the Mechanical Department against working post in Vijayawada Division, that while working as such he had an attack of Tuberculosis resulting in hospitalisation in a private nursing home at Dhowleswaram, that the treatment for his ailment prolonged for a sufficiently long time due to complications that he was advising the authorities about his sickness from time to time, that, ultimately, on 5.5.92 he reported for duty before the Loco-foreman, Loco-Shed, Rajahmundry, that the Loco-Foreman directed him to approach the Sr. Mechanical Engineer or the Sr. Divisional Personnel Officer for permission to resume duty, that he addressed a letter to the Senior Divisional Mechanical Engineer Vijayawada on 10.5.92 and that on 30.5.92 he sent representation to the Divisional Railway Manager. During the personal

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hearing of the appeal he explained his case, that by order Dt.28.1.93 the appellate authority rejected the appeal that later he submitted a revision petition dated 15.2.93 under Rule 25 of the DAR procedure to the Chief Mechanical Engineer, Secunderabad, that his revision petition was rejected on 9.7.93. The impugned orders are not according to law on the grounds that the order of his removal from service is contrary to law, that the charge memo for his unauthorised absence from 10.1.85 to 15.4.85 was prepared without any basis that the inquiry report Dt.20.11.85 was cancelled as the same was not in order that a fresh inquiry was conducted against him on 23.1.86 without his knowledge that the reasons for the same were not furnished that one Mr. John who was not cited as a witness in the charge memo and who was also not a dealing clerk was examined as a witness on behalf of the disciplinary authority that the nomination of the inquiry officer was made without receiving any written explanation from him, that the mandatory provisions of the Rules 9 & 12 were not followed during the inquiry, that there was no prohibition against the railway servant undergoing treatment at a private Nursing Home that when a railway servant approaches with a proper private medical certificate he is deemed to have been put back to duty within 24 hours pending production of a fitness certificate from the Railway Doctor that the authority had not made any inquiry about his sickness, that there were several instances where similarly situated employees were reinstated to service, that he has been singled out for removing from service on a charge of unauthorised absence that the appellate and Revision authorities have not applied their mind to the



facts of the case while formulating the punishment of removal from service, that the penalty of removal from service is disproportionate to the misconduct alleged, that mere unauthorised absence for a period may not be viewed for severe punishment as it has taken away his right from continuing in service.

The respondents filed their counter affidavit stating that the applicant remained unauthorisedly absent from duty from 10.1.85 to 15.4.85 that a major penalty charge sheet was issued by his controlling officer - the respondent No.1 that the applicant continuously remained absent and that the charge sheet was sent to ^{the} last known address of the applicant, that the charge sheet ^{was} returned by the postal authorities undelivered that and charge sheet was notified on the notice board at the workspot i.e. Loco-shed, Rajahmundry duly witnessed by 2 persons, that besides the charge sheet was sent to other address of the applicant through registered post Ack. Due that the applicant acknowledged the said charge sheet on 25.7.85 that the applicant did not submit his explanation to the charge sheet that therefore the Assistant Mechanical Engineer, Rajahmundry, was appointed as an Inquiry Officer to conduct an inquiry into the charge against the applicant and to submit a report, that the inquiry officer had sent a notice of hearing to the applicant to enable him to attend the inquiry fixed on 4.11.85 that the said notice was returned by the postal authorities undelivered that the inquiry officer re-fixed the date of inquiry on 20.11.85 and sent a fresh notice to the applicant, that the notice was duly acknowledged by the applicant that the applicant did not participate in the proceedings that, the inquiry officer was left with no alternative but to submit his report ex-parte holding the charge levelled against the applicant as proved that the respondent No.1 directed the inquiry officer

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to conduct inquiry afresh properly following the procedure and rules, that during the fresh inquiry proceedings the inquiry officer caused a notice fixing the inquiry on 12.1.1986 that the said notice returned undelivered that the inquiry officer concluded the inquiry ex parte and submitted his report, that the respondent No.1 considered report of inquiry officer and imposed the penalty of removal from service on the applicant that the applicant failed to respond to the penalty advice upto 1992, that during May 1992 he appeared before his official superior and made a representation to the respondent No.2 to take him back to duty enclosing a private medical certificate from a doctor of Dowleswaram for the alleged medical treatment from 20.1.85 to 5.5.92 (for 7 years 4 months) and that, by then, the applicant had already been removed from service. He was, accordingly, informed furnishing a copy of the penalty notice.

Thereafter the applicant submitted an appeal to the appellate authority. The appellate authority rejected the appeal. Against the order of the appellate authority, the applicant submitted a revision petition to the respondent No.3. The respondent No.3 rejected the revision petition.

The applicant was very well aware of the disciplinary proceedings initiated against him since he had acknowledged the charge sheet on 25.7.85. He did not submit any ^{ex} explanation to the charge sheet. The applicant acknowledged the notice fixing the date of hearing on 13.11.85. The applicant did not participate in the proceedings. Therefore, the disciplinary proceedings were concluded ex parte, that the disciplinary authority noticing some technical defect ordered on 13.12.85 to conduct fresh inquiry. Accordingly, the inquiry officer

fixed the date of inquiry on 4.1.86 that re-inquiry was conducted on 23.1.86. The applicant did not participate in the re-inquiry proceedings and hence the inquiry officer submitted the report ex parte. The medical certificate issued by a private doctor said to have been handed over to the applicant was not produced before them, ^{that} Tuberculosis disease is not a serious disease as to incapacitate the applicant from visiting the railway hospital, Rajahmundry, which was not far off from Dowleswaram where the applicant claimed to have taken treatment for many years.

The applicant received the chargesheet at his Visakhapatnam address, that he acknowledged the inquiry notice Dt. 4.11.85 at his Rajahmundry address. That these circumstances clearly indicate that the applicant was in the habit of roaming from place to place. The objection of the applicant that in the list of witnesses it was mentioned that a ^{clerk} maintaining the muster rolls was to be examined in the inquiry proceedings was baseless as Shri M. John, Head Clerk in the office of the Mechanical Engineer, ^{who is a material witness} Rajahmundry, was ~~relevant~~ and was examined on 23.1.86 as a witness. That the applicant himself ^{has} to be blamed for not submitting the explanation to the charge sheet and for not participating in the disciplinary proceedings that there is no illegality or irregularity in the inquiry conducted against the applicant and that there ~~are~~ ^{are} no grounds to interfere with the imposed orders and that the application be dismissed with costs.

Heard Shri G.V. Subba Rao, learned counsel for the applicant and C.V. Malla Reddy learned counsel for the respondents.

In view of the various contentions ^{raised} ~~raised~~ during the hearing the following points arise for our consideration

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- (a) Whether the applicant proves that he was medically incapacitated between 10.1.85 and 5.5.1992.
- (b) Whether the inquiry held ~~ex parte~~ against the applicant is irregular or defective?
- (c) Whether the impugned orders call for interference by this Tribunal?
- (d) To what order?

Our Findings:

- (a) No
- (b) No
- (c) No
- (d) As under

REASONS:

From the chronological events it is clear that the respondents concluded the disciplinary proceedings ~~ex parte~~ against the applicant and imposed the penalty of removal from service with effect from 12.8.86. The ~~penalty~~ Order is dated 8.8.1986.

Between 12.8.86 and 4.5.92 the applicant did not raise his little finger. There is no material on record to show that the applicant was under treatment for the alleged tuberculosis disease right from 10.1.85 to 4.5.92. There is no material/record to show that the applicant had informed his immediate official superior about his state of health at any time during the said period. Even the applicant has not produced anything except the medical certificate to believe that he was under treatment during the said period. The applicant claims to have been under treatment at Dowleswaram. At that time, he was working as Chargeman-B at Rajahmundry. It is

that Dowleswaram is not a far off place ~~of~~ from Rajahmundry.

During the course of his arguments the learned counsel for the applicant submitted that the wife of the applicant ^{had} furnished the health condition of the applicant to the official superior. Nothing has been placed on record to show that the wife of the applicant had ever informed the health condition of the applicant between 10.1.85 to 5.5.92. ~~to the~~

~~authorities~~

He has not chosen to furnish the affidavit of his wife or the affidavit of his doctor who allegedly treated the applicant for such a long period. It is to be noted that the applicant claims to have been suffering from tuberculosis during the said period. Tuberculosis ^{disease} is not such a serious disease so as to incapacitate the applicant either for reporting the fact personally to the official superior or to appear before the railway hospital at Rajahmundry.

Therefore, we feel that the theory of sickness of the applicant from 10.1.85 to 5.5.92 is not acceptable. The applicant has not placed any convincing material to ~~make~~ come to the conclusion that he was really under treatment ^{or for any disease} for tuberculosis ~~from~~ from 10.1.85 to 5.5.92. Hence we hold point (a) against the applicant.

(2) Point (b):

The respondent-2 initiated disciplinary proceedings against the applicant for his unauthorised absence from duty from 10.1.85 to 15.4.85. A major penalty charge-sheet was issued to him for the said misconduct. It is stated by the respondents that the charge sheet sent to the applicant through registered post, was returned undelivered. The applicant remained absent from duty from 10.1.85 to 5.5.92. Therefore, there was no possibility for the respondents to serve the charge sheet personally on the applicant. Hence

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The respondent sent the charge sheet through registered post. The charge sheet was sent to the last known address of the applicant. Besides the copy of the charge sheet was notified on the Notice Board at the work spot of the applicant. The workspot of the applicant ~~is~~ was locoshed, Rajahmundry.

Subsequently a chargesheet was also sent through Registered post. The charge sheet was sent to the applicant to the following address:

Railway Quarter No.452/B,
MSM Colony, Gnanapuram,
Visakhapatnam - 530 004.

The charge sheet was accepted by the applicant on 25.7.75. He did not submit his reply to the charge sheet. Annexure R-3 to the counter affidavit is the postal acknowledgement under which the charge sheet was served on the applicant.

Therefore, there was no other alternative to the disciplinary authority but to nominate the inquiry officer. Accordingly, the Assistant Mechanical Engineer, Locoshed, Rajahmundry was nominated as the inquiry officer. The inauiry officer sent the notice fixing the date of inquiry to 20.11.85. This inquiry notice was sent to the applicant at the following address.

Mangalara Peth,
Door No.15-26-158
Near Mimana Talkies
Rajahmundry

Annexure R-3 is the acknowledgement under which the applicant accepted the inquiry notice.

Annexure R-4 is the copy of the punishment order
Dt.8.8.86.

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The inquiry officer served the charge memo on the applicant. In fact under the postal acknowledgement Dt.25.7.85 (under Annexure R-II) the applicant acknowledged articles of charges. Further the inquiry officer served a notice of hearing fixing the date of hearing of the inquiry on 20.11.85. Annexure R-III is the acknowledgement under which the applicant accepted the notice. Admittedly the applicant failed to submit his explanation to the charges memo and failed to appear before the inquiry officer on the date fixed for hearing.

In fact the inquiry was conducted at Rajahmundry. The applicant was at Dowleswaram. He has not stated or placed any material to show that either on 25.7.85 or 20.11.85 he was not in a position to move about or his alleged tuberculosis disease was in aggravated stage. Besides the applicant has not filed any reply to the counter affidavit either denying the averments.

In this background, there was no other alternative to the inquiry officer but to conclude the disciplinary proceedings ex-parte against the applicant. The another strong circumstance which goes against the applicant is that even though the disciplinary authority imposed the punishment of removal from service by his order Dt.8.8.86(Annexure R-4) the applicant did not raise a little finger till 5.5.1992 i.e. for a period of about 6 years. He slept over his rights for a period of nearly 6 years and only on 5.5.1992 he appeared before his official superior with an alleged private medical certificate.



Now the applicant attempt to contend that the notice of penalty was not served on him. Rules 10 and 26 of the Railway Servants' Disciplinary and Appeal Rules are relevant for the purpose of considering this contention. Admittedly the applicant was not on duty and the disciplinary authority was not in a position to serve the order of penalty personally on the applicant. Therefore they followed the procedure contemplated in Rule 26 of the Railway Servants (D&A) Rules, 1968.

Admittedly the applicant remained away from duty from 10.1.85 to 4.5.1992. The punishment order was passed on 8.8.86. On that day, the respondents had no other option but to publish or notify the order of punishment at the workspot i.e. at the office of the Rajahmundry where the applicant was last working. Rule 26 of the Rules 1968 prescribe that "every order, notice and other process made or issued under these rules shall be served in person on the railway servant concerned or communicate to him by a registered post." The mode of service contemplated is service in person or through registered post.

Further instructions were issued where the authorities could not serve the order or process in the case of Railway servants remaining absent. It is stated that in case where last noted address of the employee who proceeded on leave is much justified. Proper mode of service is to send the order/notice on the address of his home town or village by registered post and the question of pasting it in workplace does not arise. As regards the service of notice of imposition of penalty, instructions are also issued. The applicant did not participate in the disciplinary proceedings. The disciplinary proceedings initiated against the applicant were concluded ex parte. The communication of notice of imposition of penalty in case where the railway servant remains absent from duties or in case the railway servant refuses or evades to accept the same, the Board consider such an eventuality and issued instructions that the authority should explore all possibilities of serving the order or notice as indicated below:

Rule-30 CCS (CCA) Rules

Service of orders, notices etc.

Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post.

GOVERNMENT OF INDIA'S INSTRUCTIONS

(1) Service of orders at residence of subordinate staff not to be made by Gazetted Officers.- It has come to the notice of the Director-General that in certain cases gazetted officers have gone to the residence of subordinate staff with a view to serve orders, notices, etc. which the officials were trying to avoid for one reason or the other. The Director-General considers that the practice of deputing gazetted officers to serve such notices/orders on subordinate staff at the latter's residence is highly objectionable, besides being embarrassing to the Gazetted Officer concerned.

This question has since been considered that wherever, an officer is satisfied that a subordinate is wilfully evading the acknowledgement of a document, he should record all the facts within his knowledge which lead him to this conclusion on the file, and having done so, the document should be sent to the official concerned by Registered Post, Acknowledgement Due at the last known address of the employee. If the document sent by Registered Post, Acknowledgement Due is not accepted by the addressee and is returned by the Post Office to the sender, further action may be taken as if the document has been served and due notice has been given to the employee concerned.

It may also be impressed on all the employees that if any one fails to turn up to accept a document intended for him, when required to do so, he is liable to be treated as absent from duty without leave and will suffer all the consequences of such absence.

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In a rare case where it may be absolutely necessary to depute an official for delivering a document at the residence of an employee, a Gazetted Officer should, in no case, be deputed for this purpose, and an official, not higher in rank than Inspector of Post Officer/Town Inspector/Phones Inspector etc., be deputed for this purpose, if necessary. "

Thus the authorities explored all the possibilities to serve the order of punishment dt.8.8.86 on the applicant. Thus so far as the applicant is concerned the order Dt.8.8.86, removing him from service, became ~~official~~ as the applicant did not choose to assail the same till May 1992.

On appearance of the applicant on 5.5.92 the authorities also served the punishment order on the applicant. Thereafter, the applicant preferred an appeal against the order of punishment to the appellate authority. The appellate authority gave a personal hearing to the applicant wherein the applicant submitted his ~~return~~ ^{written} brief and availed an opportunity to advance his case before the appellate authority. In fact the appellate authority was lenient enough to hear him after a lapse of nearly 5 years and 9 months and consider his appeal. The appeal was dismissed on 23.7.92.

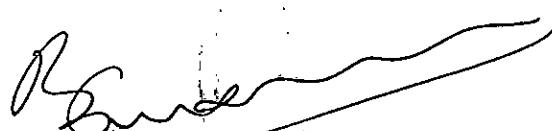
Thereafter the applicant preferred a revision petition Dt.15.2.93. The revising authority considered the revision petition and rejected the revision petition on 9.7.93.

Having regard to the facts and circumstances we feel no irregularity and illegality has been committed while conducting the disciplinary proceedings exparte against the

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applicant. The applicant, even though accepted the charge memo on 25.7.85 failed to submit ^{any} the explanation. The applicant even though accepted the notice of hearing, fixing the inquiry on 20.11.85, under Annexure-R-4, the applicant did not participate in the disciplinary proceedings. Hence the applicant himself has to be blamed for his ~~indolence~~ ^{nonchalant} attitude.

Hence we feel there are no merits in this OA and the same is liable to be dismissed. Accordingly the OA is dismissed. No order & to costs.

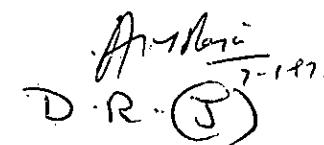


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

3.1.97



(R. RANGARAJAN)
MEMBER (ADMN.)


A. R. (J)

Date: 3rd Jun 1997

KSM