

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 192/93.

Dt. of Decision : 12.7.1994.

Mr. P.J. Kondala Rao

.. Applicant.

Vs

1. The Asst. Personal Officer(G&C),
S.C. Rlys, Office of the Divisional
Railway Manager, Vijayawada Division,
Vijayawada, (A.P).
2. The Chief Personnel Officer,
Head Quarters Office, SC Rlys,
Personnel Branch, Secunderabad.
3. Chief Signal Telecommunications
Engineer, (SC Rlys,), Rail Nileyam,
Vijayawada (A.P). .. Respondents.



Counsel for the Applicant : Mr. M. Dilip Rao

Counsel for the Respondents : Mr. K. Ramuloo, SC for Rlys.

CORAM:

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

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

25/7/92

though he joined duty on 26-4-90 again absented from duty, that on 1-10-90 a letter was written to him stating that as his periodical absence was not in the interest of service, he was given a last and final opportunity to report to duty on 15-10-90 and that if he failed to report for duty on that date his apprenticeship would be terminated, that in that letter it was made clear that if he again fell sick he would have to report to the nearest Railway Hospital, under intimation to the office, that private medical certificate would not be accepted and that as he remained absent even thereafte from 1-11-90 till the date of impugned order i.e. 6-6-91 without any justifiable reason, the Respondents had no alternative but to terminate his apprenticeship, issued the impugned order. They are contended that inspite of giving several opportunities to take the apprenticeship seriously, the applicant having not done that, the action of the Respondents in terminating the apprenticeship cannot be faulted.

3. In the rejoinder, the applicant stated that as private medical certificates were being accepted by the Respondents, the action of the Respondents in terminating his apprenticeship for the simple reason that he did not report sick in a Railway Hospital is unsustainable.

4. We have perused the pleadings and the documents with meticulous care and also heard the learned counsel for the

cation under section 19 of the A.T.Act, 1985, seeking to quash the impugned order at Annexure-3 and 4. The applicant has alleged that the termination of his apprenticeship without issuing a notice and giving him opportunity to show cause is against the principles of natural justice and therefore unsustainable in law. He has further alleges since his absence during different spells on account of reasons beyond his control viz., illness was condoned and as medical certificates from a private doctor were being accepted by the Respondents it is not open for the respondents to turn around and say that the attendance of the applicant being poor is performance during the apprenticeship period was not satisfactory. The applicant has also alleged that the allegation that he has attended the Training only for 17 days being factually incorrect, the impugned order at Annexure A-3 is liable to be struck down as it was passed without application of mind.

2. The Respondents have filed a detailed reply statement. The material contentions are, that eversince the applicant was inducted to undergo training he was absenting himself of and on without producing any certificate issued by the Railway Doctor, that ultimately he was by a letter dt.12-3-90 directed to report for duty on 15-3-90, that this letter having received by the applicant only on 19-3-90 he sent a telegram seeking permission to join duty on 26-4-90, that

38dP
A2

....4.

application the applicant has given the details of dates on which he performed his duty as apprentice and for which he was paid stipend. This is not disputed in the reply statement and therefore the number of days the applicant has functioned as apprentice is more than 17; but the question is not whether the number of days of work is more or not but whether the impugned order was issued bonafidely or whether it is vitiated for colourable exercise of power. It is common case that the applicant has been absenting himself from apprenticeship on the ground either of illness or of the illness of some close relatives and that private medical certificates were being produced by him of and on. It is not in dispute that the Railway Administration had condoned all these lapses and had offered a final opportunity to the applicant to report for duty or to report sick to Railway Hospital by letter dt.1-10-90. The applicant again remained absent according to him from 14-11-90 onwards till the date of the impugned order was served on him. He claims that he was sick and was under treatment of a private doctor. While the applicant was informed by the letter dt.1-10-94 (Annexure R-5) that in case of sickness, he should report sick in the nearest Railway Hospital under intimation to the office and that on private medical certificate would be accepted under any circumstances, if he was really sick he would have gone to the Railway Hospital. His claim that he

parties. The learned counsel for the applicant with considerable tenacity argued that the termination of the apprenticeship of the applicant without giving an opportunity to show cause is against the principles of natural justice and is opposed to provisions of Article 311 (2) of the constitution. Since the applicant was not holder of Civil post and was only an apprentice, the provisions of Article 311(2) of the constitution do not come into operation. Now the question is whether the principles of natural justice required giving him an opportunity to show cause. It was under the terms mentioned in the letter No.B/P.563/V/2/Vol.4 dt.20-7-89 of the Divisional Railway Manager, Vijayawada, that the applicant was offered apprenticeship. This letter contains the terms and conditions which provide interalia that the apprenticeship could be terminated giving 14 days notice. It is in exercise of this right that the impugned order has been issued. So, the terms under which the applicant was inducted as apprentice does not provide for show cause notice but only 14 days notice before the termination, and therefore it is idle to contend that the applicant was entitled to a show cause notice.

5. Going to the merits of the case, the learned counsel for the applicant submits that the impugned order dt.6-6-91 is bad for non application of mind as while the applicant has worked for about 38 days; in the impugned order it is stated that he had not worked for more than 17 days. In the

paragraphs, we dismiss the application leaving the parties to bear their own costs.

CE ~~IFIED TO BE TRUE COPY~~
Date 26/7/93
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

Copy to:

1. The Asst. Personnel Officer, (G&C)
South Central Railways, O/o the Divisional Railway Manager,
Vijayawada Division, Vijayawada.
2. The Chief Personnel Officer, Head Quarters Office,
South Central Railway, Personnel Branch,
Secunderabad.
3. The Chief Signal Telecommunications Engineer,
South Central Railways, Railhileyam,
"ijayawada (A.P). *Malakpet, Municipal colony,*
4. One copy to Mr. M. Dilip Rao, Advocate, *Hyderabad - 36.*
5. One copy to Mr. K. Ramuloo, SC for Railways, CAT, Hyderabad.
6. One copy to Library, CAT, Hyderabad.
7. One spare copy.

YLR.

2nd copy
for 25th July

C	DA: 192/93
R	- 12-7-94
C	1-8-94