

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 17.05.02

OA No.377/2001

Badan Singh s/o Shri Kishan Lal r/o Himmatpur, Post Chikasana, Distt. Bharatpur last employed on the post of DC Gangman, Western Railway, Kota Division, Kota.

..Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Assistant Engineer, Western Railway, Shyamgarh, Kota Division, Shyamgarh.
3. Senior Divisional Engineer (South), Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar - counsel for the applicant.

Mr. S.S. Hasan - counsel for the respondents

CORAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial)

Hon'ble Mr. H.O. Gupta, Member (Administrative)

ORDER

Per Hon'ble Mr. H.O. Gupta, Member (Administrative)

The applicant is aggrieved of the order dated 8.2.2001 (Ann.A2) whereby penalty of removal from service has been imposed on him. He has prayed for quashing the said impugned order alongwith the chargesheet dated 10.2.99 (Ann.A1). It has been further prayed that he may be reinstated in service with all consequential benefits.

2. The case of the applicant as made out, in brief, is that:



2.1 While working on the post of Gangman, he fell sick. He was served with a chargesheet dated 10.2.99 on the allegation that he is absent from duty w.e.f. 2.3.98 without any prior information and that he remained unauthorisely absent in the year 1996 for 187 days, in the year 1997 for 149 days and in the year 1998 for 328 days.

2.2 Vide letter dated 22.1.2001 (Ann.A3) issued by the respondent No.3, he was informed that he is absent w.e.f. 2.3.98 unauthorisely and that he has not given any information to his office. It was advised that he may resumed his duty with proper authority letter, failing which disciplinary proceedings will be conducted against him under Railway Servants (Discipline and Appeal) Rules, 1968. Before he could obtain sick certificate, he was removed from service by respondents vide order 8.2.2001 (Ann.A2) i.e. just after 15 days of issuance of the order dated 22.1.2001 (Ann.A3) by the respondent No.3. He filed an appeal Ann.A4, but the same has not been decided although more than six months has elapsed, and hence this OA.

3. The main grounds taken by the applicant are that:-

3.1 So far as the absence of the year 1996 and 1997 is concerned, he was sick and was under treatment of a private Doctor. After examining the relevant facts, the Railway Doctor gave him fit certificate based on the certificate given by the private Doctor. The said absence for 187 and 149 days was adjusted against the leave admissible to him. Thus, the same cannot be taken into consideration in the chargesheet. The applicant cannot be

said to be unauthorisedly absent for these periods. Therefore, the chargesheet is illegal, arbitrary and the same deserves to be set-aside.

3.2 Regarding his absence from 2.3.98, the applicant remained sick and there was no person to help him so that he could have given information to the administration. The sickness was beyond his control. He was not absent wilfully but due to the circumstances which were beyond his control and, therefore, no information could be given.

3.3 The 3rd respondent vide his order dated 22.1.2002 informed him that he is absent w.e.f. 2.3.98. He was directed to report for duty on receipt of the said letter with proper authority failing which disciplinary proceedings were to be conducted against him. Before he could have joined, the 2nd respondent removed him from service vide order 8.2.2001 just within 15 days from issuance of the letter dated 22.1.2001. Thus, the order of the Disciplinary Authority dated 8.2.2001 is illegal, arbitrary and deserves to be quashed.

3.4 The respondents have not conducted any inquiry in the matter. He has not been given any opportunity to defend his case. He has only received the letter dated 22.1.2001 by which he was advised to resume his duty. Thus, the respondents have not conducted any inquiry and no opportunity has been given to him to defend his case. The removal order has been issued without proper procedure established by law. Without prejudice to the above grounds, if it is assumed that an ex-parte inquiry has been conducted, copy of the inquiry report was not supplied to him before passing the removal order which has

adversely prejudiced the case of the applicant.

3.5 The order of the Disciplinary Authority dated 8.2.2001 is a non-speaking order which has also taken extraneous matter into consideration. The Disciplinary Authority has taken absence for the year 1996-97 into consideration. There was no charge of absence regarding the year 1999-2000 but the Disciplinary Authority has taken this period into consideration by passing the impugned order. Once the chargesheet has been issued on 10.2.99, it cannot be said that the applicant is absent. The Disciplinary Authority has taken total period from 1996 till the removal order was passed, as absence. In the order of the Disciplinary Authority there is no whisper of any evidence. The order of the Disciplinary Authority is not based on any evidence which has been considered. This order does not show that any witness has given any statement against the applicant. There was no evidence against him to prove the charge. The applicant has not been supplied copy of the statement of witness and copy of documentary evidence which was against him. Therefore, the whole exercise and the impugned order is illegal arbitrary and deserves to be set-aside.

4. The respondents have contested this applicant and submitted that the applicant was unauthorisedly absent and he has neither given any information regarding his absence nor he has produced medical certificate of his absence from the Railway Doctor. Even if the applicant remained under treatment of a private Doctor, he should have informed the railway administration within 48 hours but the applicant failed to do so. In the chargesheet it

has been mentioned that in the year 1996-97 also, the applicant remained absent for 187 days to show that he is a habitual and unauthorised absentee. The chargesheet was received by the applicant, but he did not give any reply/information to the railway administration or to the Inquiry Officer. The Inquiry Officer has informed the applicant thrice to appear before him but the applicant failed to appear. The Inquiry Officer informed the applicant on 18.6.99 and 5.8.99 to remain present before him and in spite of receipt of these letters too by the applicant, he failed to appear before the Inquiry Officer. The applicant was lastly informed vide letter dated 22.1.2001 to remain present before the Railway Administration, but the applicant failed to present before the Railway Administration and the Inquiry Officer. Therefore, there was no option before the Disciplinary Authority except to pass a speaking order removing the applicant from service. The applicant has not mentioned any date of filing of the appeal. The railway administration has not received any appeal from the applicant so alleged to have been filed. The applicant has mentioned wrong fact of filing of appeal. Since no appeal was filed, there was no question of deciding the same. The applicant was informed by the Inquiry Officer to be present before him but he remained absent, as such there was no option before the Inquiry Officer but to conduct the inquiry ex-parte and to submit the report. The Disciplinary Authority has rightly passed the order of removal after taking into consideration the relevant material on record.

5. No rejoinder has been filed.

6. Heard the learned counsel for the parties and perused the record.

6.1 The chargesheet was issued to the applicant for being unauthorisedly absent from duty without prior information w.e.f. 2.3.98 continuously and that in the year 1996, 1997 and 1998, he remained unauthorisedly absent for a period of 187 days, 149 days and 328 days respectively. It is further mentioned that it is clear that the applicant is habitual of being unauthorisedly absent without prior information causing disturbance to the railways.

6.2 The learned counsel for the applicant has submitted that in the year 1996 and 1997, applicant was under treatment of a private Doctor and after examining him and relevant facts, the Railway Doctor gave him fit certificate. Based on this certificate, he joined his duty and his absence was regularised against the leave admissible to him. Therefore, he cannot be said to be unauthorisedly absent and, therefore, the inclusion of this period in the chargesheet as unauthorised absence and then charging him for habitual offender is illegal. The averment of the applicant that during 1996 and 1997, the applicant joined duty after he was declared fit by the Railway Doctor and that the said period of absence was adjusted against leave as admissible to him, has not been denied by the respondents in their reply. Based on unauthorised absence in the year 1996 and 1997, as contained in the chargesheet, it appears that the respondents have alleged that the applicant is habitual of remaining unauthorisedly absent from duty. In view of

aforesaid facts, the inclusion of being unauthorisedly absent during the year 1996 and 1997 and consequently forming a part of the charge of habitual absent from duty in the chargesheet, cannot sustain.

6.3 During the course of arguments, the learned counsel for the applicant also submitted that the ex-parte inquiry was conducted without notice to the applicant for conducting the said ex-parte inquiry as per the laid down procedure. On the orders of the Tribunal, the respondents produced the DR record. From the record, it appears that no notice was given to the applicant containing the intention to conduct ex-parte inquiry as laid down in Railway Board's letter of 18.6.69 and included in the Railway Servants (Discipline & Appeal) Rules, before conducting the ex-parte inquiry. The respondents in their reply have nowhere submitted that notice for ex-parte inquiry was given by the Inquiry Officer. It is merely submitted that since the applicant repeatedly failed to appear before the Inquiry Officer, the ex-parte inquiry was conducted. The learned counsel for the applicant further submitted that it is not an inquiry at all and the Inquiry Officer has merely given gist of the report of the administration and various alleged correspondence made in this regard. The prosecution witnesses listed in the chargesheet were not examined. In fact, no inquiry has held and this cannot be said an ex-parte inquiry. We have perused the proceedings of the Inquiry Officer, we are inclined to agree with the contention of the learned counsel for the applicant. As per laid down procedure for conducting the ex-parte inquiry, the Inquiry Officer, in the absence of the charged officer, is also required to conduct the inquiry by observing all formalities as in the

case of normal inquiry. The Inquiry Officer neither recorded the evidence of the prosecution witnesses as listed with the chargesheet nor proved the listed documents. Therefore, we are of the view that the inquiry proceedings are vitiated.

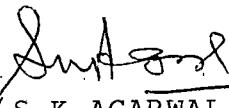
6.4 The learned counsel for the applicant further submitted that the respondents vide letter dated 22.1.2001 (Ann.A3) informed the applicant to report for duty with proper authority failing which disciplinary action shall be taken. He further submitted that before the applicant could obtain a fit certificate, the impugned order dated 8.2.2001 was issued by the Disciplinary Authority removing the applicant from service. The respondents in their reply have taken a plea that this order was issued to the applicant to be present before the railway administration but the applicant failed to appear either before the Inquiry Officer or before the railway administration. Therefore, the Disciplinary Authority passed the impugned order dated 8.2.2001. We are not convinced with the contention of the respondents. The order dated 22.1.2001 is quite clear. It cannot be taken as a direction to the applicant to report before the Inquiry Officer. Be that it may, the fact is that proper inquiry was not conducted and that the Disciplinary Authority in the impugned order does not mention about the acceptance of the inquiry report or that the order is based on the Inquiry Officer's report. It only mention that the applicant was given three opportunities in writing to be present before the Inquiry Officer, but he failed to do so and further that from 2.3.98 he has been absent unauthorisedly. It is also mentioned that during 1996, 1997 & 1998 he was also

unauthorisedly absent apart from being absent for 365 days in 1999 and 365 days in 2000.

7. Keeping in view the facts and circumstances and discussions in preceding paragraphs, the order dated 8.2.2001 passed by the Disciplinary Authority and the report of the Inquiry Officer are quashed. The applicant shall be entitled to all consequential benefits as per rules. The second portion of the charge relating to unauthorised absence in 1996 and 1997 and for being habitually absent unauthorisedly is also quashed. However, the Disciplinary Authority shall be at liberty to proceed against the applicant from the stage after the issue of the chargesheet and conduct the inquiry for the first portion of the charge of remaining continuously absent unauthorisedly from 2.3.98 without prior information and thereafter issue appropriate order as per rules. Let this order be complied within three months from the date of its receipt. No order as to costs.

  
(H.O.GUPTA)

Member (Administrative)

  
(S.K.AGARWAL)

Member (Judicial)