

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 12-10-04

OA 519/2001 with MA 411/2001

Ninwa Ram s/o Shri Badri Ram r/o 38/128, Rustam ji ki Sarai, Idgan, Katghar, Agra (UP).

... Applicant

Versus

1. Union of India through General Manager, Western Central Railway, Jabalpur.
2. Chief Works Manager, Kota Workshop, Western Railway.
3. Production Manager O/o Chief Works Manager, Wagon Workshop Kota, Western Railway.
4. Asstt. Works Manager O/o Chief Works Manager, Wagon Workshop, Kota Western Railway.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant

... None

For the Respondents

... Mr.R.G.Gupta

ORDER

PER HON'BLE MR.A.K.BHANDARI

The applicant has filed this OA thereby praying for the following relief :

"That the impugned order dated 7.1.93 (Ann.A/1) NIP for penalty of removal of service, appellate order dated 11.9.2000 (A/12) rejection of revision may please be declared illegal, arbitrary and the same may be quashed with all consequential benefits."

2. Brief facts of the case are that applicant was initially appointed as Khalasi in 1978. He became permanent in 1979 and due to personal and domestic circumstances remained absent. He remained sick during period 26.3.90 to 6.6.91 and submitted medical certificate for this period and duty certificate was issued to him on 8.6.91 (Ann./3), on the basis of which he resumed duty. He was, however, issued a charge-sheet for major penalty vide order dated 7.5.91, copy of which could not be enclosed because he does not possess the same but the

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period of absence for which this charge-sheet was served is 26.3.90 to 7.5.91. The applicant again fell sick from 7.9.91 to 9.9.92. As a mental patient he was treated by one Dr.Singh. A certificate dated 9.9.92 issued by him in this behalf is filed as Ann.A/4. During the latter sickness, the disciplinary authority appointed inquiry officer for the above charge-sheet, who started the inquiry ex parte. Applicant was supplied inquiry report vide letter dated 24.8.92 (Ann.A/5). After becoming fit, he submitted a representation dated 16.9.92 (Ann.A/6) to the disciplinary authority explaining the reasons of continued medical problems for which he has been sent to Bombay for medical checkup. He was sent to Jagjivan Ram Hospital, Bombay, and was referred back to Chief Medical Superintendent, Kota, who vide letter dated 30.9.92 directed respondent No.2 to allow the applicant to resume duty but follow certain procedural cautions (Ann.A/7). He was also declared fit to resume duty on 30.9.92 (Ann.A/8). It is further stated that he has still not been taken back on duty as he is still receiving treatment, proof of which is Sr.DPO's letter dated 12.1.93 (Ann.A/9). In the meantime, respondent No.4 vide letter dated 7.1.93 (Ann.A/1) issued NIP inflicting penalty of removal from service. Obviously, the medical certificate (Ann.A/3) covering the period from 26.3.90 to 6.9.91, the date on which he was taken on duty, has not been considered. Applicant submitted an appeal vide letter dated 22.2.93 (Ann.A/10). The same has however been rejected without passing a speaking order. He also filed a revision petition vide letter dated 24.6.93 (Ann.A/11), but no reply was received. It is further stated that applicant filed an OA No.37/95 before this very Bench of the Tribunal, which was decided on 18.7.2000 (Ann.A/13). In this, the Tribunal gave direction to respondent No.2 to decide the revision petition on merits by a reasoned and speaking order within a period of two months from the date of receipt of a copy of the order, if the same is not already disposed of. Liberty to approach the Tribunal again was reserved to the applicant. In compliance of this order, respondent No.2 decided the review petition vide order dated

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11.9.2000 by rejecting it. Hence this OA.

3. In the grounds it is stated that action of the respondents is illegal because the impugned order is based on wrong facts and certificate covering the period of sickness from 26.3.90 to 6.6.91 has not been considered, although he joined duty on 8.9.91. That appellate authority has not taken the judicial notice of relevant provisions of Rule 22(2) of Railway Servants (Discipline & Appeal) Rules, 1968 (for short, Rules, 1968) inasmuch as speaking order has not been passed. Similarly, the revision petition has been rejected without application of mind and the same is arbitrary because the punishment is disproportionate to the charge levelled against the applicant.

4. The applicant has also filed an MA for condonation of delay in which serious sickness of applicant's counsel daughter necessitating prolong hospitalisation and applicant's own personal problems were taken as grounds for condonation of delay of nearly a months in fling the OA.

5. The respondents have submitted a detailed reply, including reply to MA for condonation of delay, thereby denying the facts of the applications. They have also raised preliminary objection regarding limitation. For the Former, it is stated that no proof of counsel's daughters sickness or specifics about his own personal problems have stated due to which MA for condonation of delay deserves to be rejected. In reply to OA, it is stated that Ann.A/3, which is said to be medical certificate for the period 26.3.90 to 6.6.91, was never received in the officer of answering respondents. That applicant reported on duty on 13.6.91 at 12.45 p.m. with duty certificate dated 8.6.91 but no authentic sickness/fitness certificate was produced and the one he produced was from private doctor and was not accepted. Copy of duty certificate dated 8.6.91 from Railway Hospital Kota is cited as Ann.R/1. Respondents have filed copy of charge-sheet dated 7.5.91 as Ann.R/2 and

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it is stated that it is incorrect to say that charge-sheet was for unauthorised absence from 26.3.90 to 7.5.91. In fact, the allegation in the charge-sheet was for unauthorised absence from 27.3.90 till the date of issuance of the charge-sheet i.e. 7.5.91. It is also stated that the period of absence as in charge-sheet is not covered by even the private doctor's certificate and this fact has been mentioned by the disciplinary authority in NIP (Ann.A/1). Application vide Ann.A/6, which is after the receipt of inquiry report, was received by the respondents but his visit to Jagjivan Ram Hospital was much after the inquiry had been concluded. Therefore, the fact of his subsequent sickness, which does not concern the period of absence of the charge-sheet, cannot be considered in this OA. Similarly, when doctor's certificate dated 12.1.93 was received, NIP dated 7.1.93 imposing the penalty of removal from service had already been issued. Therefore, this medical certificate is also of no consequence. Facts of receipt of appeal and rejection thereof and OA (No.37/95) filed by him and decided on 18.7.2000 are matter of record. It is denied that the reviewing authority passed order of rejection without application of mind.

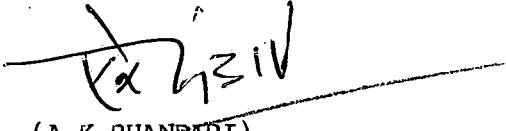
6. Reply to the grounds, it is stated that the procedure for departmental inquiry has been scrupulously followed. All reasonable opportunity was given to him but the departmental action had to be concluded ex parte because applicant did not participate in it inspite of notice given to him. The decision of the disciplinary authority, appellate authority and the authority deciding the revision petition, is as per law because the period of sickness is not covered by medical certificate issued by unauthorised authority could not be considered for medical leave. Similarly, period of private doctor's certificate cannot be accepted as per Medical Leave Rules.

7. After careful consideration of all facts of the case, it is felt that there is no ground for our interference in this matter of

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punishment. Normally, we are required to see compliance of relevant rules and that principles of natural justice of giving reasonable opportunity before awarding punishment are followed. We find no fault by the respondents on this count. Besides, Railways have elaborated medical facilities and infrastructure of hospitals and array of Specialist Doctors capable of treating all kinds of sickness. Because of this, Medical Leave Rules require treatment of Railway employees by the doctors in these hospitals. Respondents have rightly not entertained the medical certificates issued by Sant Ravidas Dharmarth Ayurvedic Aushdhalaya Sangh (Ann.A/3), on which the date of its issuance has not been mentioned and the year of period/days of sickness has also not been stated. In our view, no Government organisation, least of all Indian Railways, could consider this certificate fit for granting medical leave. For obvious reasons (when year of sickness is not mentioned) this certificate does not cover the period of alleged absence as per the charge-sheet . True, the applicant attended the Railway hospital for his treatment subsequently and to an extent we agree that applicant was sick during the relevant period but those documents which pertain to period subsequent to the alleged unauthorised absence could not be considered relevant while taking decision for the period in question. We see full and timely compliance of this Tribunal's order dated 18.7.2000 passed in OA 37/95 by respondent No.2, the authority who decided the revision petition.

8. In view of what has been stated above, the OA is dismissed with no order as to costs.


(A.K.BHANDARI)

MEMBER (A)


(M.L.CHAUHAN)

MEMBER (J)