

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 17th day of March, 2010.

OA No.172/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADM.V.)

Riyaz Mohd.
s/o Shri Mohammed Safi,
r/o Khidki-Aga Post Fatehpur Sikri,
Distt. Agra c/o Mehaboob Kha
s/o Shakur Kha, Railway Colony,
Block No.33-E,
Gautam Nagar, Jamuna Bridge, Agra,
Last employed Senior PP,
Shyampura Railway Station,
West Central Railway, Kota Division,
Kota.

Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through General Manager, West-Central Zone, West-Central Railway, Jabalpur.
2. Additional Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Senior Divisional Operating Manager, West Central Railway, Kota Division, Kota.
4. Divisional Operating Manager, West-Central Railway, Kota Division, Kota.

5. Assistant Operating Manager, West Central Railway, Kota Division, Kota.

.. Respondents

(By Advocate: Shri N.C.Goyal)

ORDER (ORAL)

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

- i) That entire record relating to the case be called for and after perusing the same revising authority order dated 5/7/2005 (Annexure-10, appellate order dated 28/12/2004 (Annex.A/2) with the punishment order dated 6.9.2004 merge in the appellate order (Annexure-A/3) be quashed and set-aside with all consequential benefits.
- ii) That the charge memo dt. 17/11/2003 (Annex.A/4) be quashed, as the same is not justified as per facts and circumstances with the inquiry proceedings with all consequential benefits.
- iii) Any other order/directions of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- iv) That the costs of this application may be awarded.

2. Briefly stated, facts of the case are that the applicant was initially appointed as Gangman on 4.4.1981 and thereafter in the year 1995 after passing the prescribed test, he was allowed higher scale of Rs. 800-1150 and posted in Traffic Department as P.P. under Station Superintendent, Shyampura Station, Kota. It is not disputed that the applicant was sanctioned leave for the period from 2.9.2000 to 5.9.2000. Thereafter the applicant did not report for duty. Accordingly, a major penalty chargesheet was issued vide memorandum dated 17.11.2003 (Annex.A/4) whereby gravamen ^{of charges} against the applicant was that while function on the post of P.P.

under Station Superintendent, Shyampura. He remained unauthorisedly absent from duty w.e.f. 6.9.2000 onwards. The charge was proposed to be proved on the basis of list of documents mentioned in Ann.III and list of witnesses mention in Ann.IV. Copy of the chargesheet was sent by Registered AD at the last known address of the applicant. Since the applicant did not participated in the enquiry proceedings, the enquiry was held ex parte. Subsequently, the applicant was removed from service vide order dated 6.9.2004. The applicant filed appeal and the Appellate Authority dismissed the appeal. He further filed revision petition before the Revising Authority and the revision petition was rejected vide order dated 5.7.2005 (Ann.A/1). It is these orders which are under challenge before this Tribunal.

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts as stated above have not been disputed. In the reply the respondents have categorically stated that the applicant was sanctioned leave for a period from 2.9.2000 to 5.9.2000 but he was not given permission to leave the head office. According to the respondents, this fact has also been corroborated by Shri R.K.Meena, witness in his statement during the course of enquiry that after the period of sanctioned leave i.e. from 6.9.2000 the applicant had not given any information regarding his absence. It is further stated that even there is no application of the applicant in the record regarding leaving of head office. Since the applicant had left the head office without permission and was unauthorisedly absent, which is in violation of the Railway Servants

(Conduct) Rules, ~~as such~~. The respondents have categorically denied that the applicant was under treatment of Government Hospital and private hospital. It is further stated that the certificate of medical practitioners submitted by the applicant in revision petition, the said medical practitioner has certified that such certificate has not been issued by them and, as such, they are forged one. The respondents have placed on record copy of the letters of the Doctors addressed to the DRM, Kota dated 1.6.2005 and 9.6.2005 as Ann.R/1 and R/2. It is further stated that the averments made by the applicant in the OA that he has informed Shri R.K.Meena of his absence has been denied by the witness during the course of enquiry. The respondents have also categorically stated that copy of the chargesheet dated 17.11.2003 was sent by Registered AD at the last known address which was received on 8.3.2004. The respondents have also stated that the Enquiry Officer during the course of enquiry informed the applicant every time at the last known address and a copy of this information letter was also affixed on the notice board of the working place of the employee in the presence of two witnesses. It is further stated that the order of removal was also affixed on the notice board of the working place of the applicant by the Station Superintendent, Shyampura. It is also stated that the applicant received copy of the NIP dated 27.9.2004 and AD receipt has been placed on record as Ann.R/4. The respondents have also categorically stated that the Revising Authority in the case of the applicant is Senior Divisional Operating Manager who has given

opportunity of personal hearing to the applicant on 12.4.2005. Thus, the contention of the applicant that Senior Divisional Operating Manager is not competent revising authority is factually incorrect.

4. The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. As can be seen from the material placed on record, case of the applicant is that he was not aware about the disciplinary proceedings, which were conducted ex-parte. The applicant has stated that he could not join the duty because he was under treatment of Dr. Pradeep Gupta, Director, Homoeopathic Research Centre, Agra who after thorough examination and certain tests recognized the applicant being suffering from Jaundice. According to the applicant he was not in a position to move and Dr. Pradeep Gupta also advised him to consult Dr Ashok Kumar Sharma, Medical Officer Incharge (Homoeopathy) District Hospital, Agra who found him to be suffering from Arthritis and started due treatment. It is stated that he remained under the treatment of Dr. Shashi Kumar w.e.f. 31.7.2004 to 22.9.2004 and when he was found quite normal and fit to resume duty, he reported the DMO, Bundi with fit certificate to issue him a duty certificate, but DMO, Bundi instead of issuing a duty certificate, referred the applicant to Divisional Railway Hospital, Kota for investigation and further necessary action. It is stated that when he approached the Station Superintendent Shyamapura, he was informed that he is not on his

roll. Thus, according to the applicant, it was because of his illness that he could not report for duty. Further defence of the applicant is that his revision petition has not been decided by the competent authority.

7. We have given due consideration to the submissions made by the learned counsel for the applicant and perused the record. From the material placed on record, it is evident that the applicant was sanctioned leave for a period w.e.f. 2.9.2000 to 5.9.2000. It is also admitted fact that the applicant did not report for duty and as per own showing of the applicant he reported for duty only after he was declared fit by the Doctor when his name stood already struck from the rolls of the department i.e. after the applicant was removed from service vide impugned order dated 6.9.2004. The applicant has not placed any contemporaneous record either before the authorities concerned or before this Tribunal to show that he sent intimation to the appropriate authority regarding his illness, sickness certificate or any information regarding his illness from time to time which was the requirement under the law. Facts remain that the applicant remained continuously absent from duty w.e.f. 6.9.2000 without any intimation to the departmental authorities whereas as per procedure laid down in the Indian Railway Medical Manual, the applicant was required to sent intimation periodically even if he was under treatment of private Doctor. Thus, the defence so put up by the applicant cannot be accepted and deserves outright rejection. The contention of the learned counsel for the applicant that the applicant was not aware about the

departmental proceedings cannot be accepted in view of the contemporaneous record placed by the respondents before this Tribunal, perusal of which shows that copy of the chargesheet was sent on the permanent address of the applicant and the same was taken on behalf of the applicant by one Shri Chand Mohd. It is not a case of the applicant that copy of the chargesheet was not received by any adult member of the family. That apart, intimation regarding proceedings was also given to the applicant from time to time. The applicant was remaining unauthorisedly absent from duty w.e.f. 6.9.2000 whereas the chargesheet was issued to the applicant on 17.11.2003 after a lapse of about 3 years and removal order was passed on ⁶ 27.9.2004 after about a period of 10 months from the date of issuance of the chargesheet. Thus, it cannot be inferred that the applicant was not aware about the proceedings against him.

8. That apart, it has come on record that the defence taken by the applicant that he was taking treatment from a private Doctor stand belied with the medical certificate so issued by Dr. Ashok Kumar Sharma. Dr. Ashok Sharma has specifically stated vide his letter dated 9.6.2005 (Anh.R/2) that he has not issued any certificate for the period from 6.1.2001 to 30.7.2004, as according to him, he was not posted in any hospital at Agra in the year 2001 to 2004 whereas he was posted in Mathura during this period. It is further stated in that certificate that he was working as medical officer in District Hospital, during the year 1985 to 1996. Thus, from the material placed on record, it is evident that the applicant in order to prove

his case that he was under the treatment of private doctor and as such could not join duty is factually incorrect and as such the contention raised by the applicant in this OA that he could not join duty on account of unavoidable circumstances cannot be accepted. We wish to clarify here that this observation has been made by us solely on the basis of the findings recorded by the Revising Authority whereby he has given additional grounds for maintaining penalty imposed by the Disciplinary Authority as well as by the Appellate Authority. Be that as it may, even if this aspect of the matter is ignored, facts remains that admittedly the applicant remained absent from duty continuously w.e.f. 6.9.2000. The applicant has not even produced any document/material before the Appellate Authority or before this Tribunal to show that he has given periodical intimation regarding his illness to the authorities which was pre-requisite condition under the service rules, even if a person is genuinely under the treatment. In view of this admitted fact whether the enquiry was conducted *ex parte* or not is immaterial and the explanation given by the applicant for his absence cannot be accepted at all. Further, in view of these admitted facts, no useful purpose will be served by remitting the case of the Enquiry Officer for conducting fresh enquiry.

9. The view taken by the respondents that the applicant remained unauthorisedly absent without any intimation to the authorities cannot be said to be a perverse view. At this stage we wish to quote decision of the Apex Court in the case of State of Rajasthan and Another vs. Mohd. Ayub Naz, 2006 SCC (L&S) 175

whereby the respondent before the Apex Court remained absent from duty for 3 years. The High Court interfered with the order of dismissal passed by the authorities. The Apex Court held that High Court could not have interfered with the order of dismissal. Yet in another case of L&T Komatsu Ltd. vs. N.Uday Kumar, (2008) 1 SCC (L&S) 164, the Apex Court held that dismissal from service for unauthorised absence of long period ought not to have been treated to be harsh and interfered by the Labour Court and the High Court.

10. The learned counsel for the applicant has drawn our attention to the decision of this Tribunal in the case of Kishan Lal B. vs. Union of India and Ors., OA No.236/2005, decided on 29.6.2009 whereby the applicant who was working as Assistant Driver was issued chargememo for remaining absent from duty for 214 days in broken period. This Tribunal after considering the judgment of the Apex Court and taking into account the fact that the applicant has rendered 18 years of service held that the order of removal from service should be treated as order of compulsory retirement. The learned counsel for the applicant submits that similar order may also be passed in the instant case. We do not agree with the submissions so made by the learned counsel for the applicant. As can be seen from the judgment, the chargesheet was issued to the applicant in OA No.236/2005 for remaining absent from duty for 214 days in broken period as mentioned in the chargesheet and it was not a case for remaining absent continuously. In the instant case the applicant remained continuously absent from duty for more than 3

years till the order of removal was passed in his case. Thus it is not a case where the applicant remained absent in different spells but it is a case of grave misconduct where the applicant had abandoned the duties voluntarily and willfully by neither giving intimation to the authorities nor reporting for duty. Thus, the applicant cannot take any assistance from the judgment so rendered in the case of Kishan Lal B (supra). According to us, the ratio as laid down in the case of Mohd. Ayub Naz (supra) is squarely applicable in the facts and circumstances of this case. Therefore, the present OA being bereft of merit is dismissed with no order as to costs.



(B.L.KHATRI)

Admv. Member



(M.L.CHAUHAN)

Judl. Member

R/