

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 249/2007
With
MISC. APPLICATION NO.164/2007**

Date of Order:

29/01/2010

CORAM:

**HON'BLE Dr. K.S. SUGATHAN, ADMINISTRATIVE MEMBER
HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER**

Jagdish Kumar S/o Shri Bhagirath Meena R/o behind GRP Police Station, Near Shiv Mandir, Shyamgarh (Madhya Pradesh).

....Applicant

Mr. Rajesh Sharma, Counsel for applicant.

VERSUS

1. The Union of India through its General Manager, West Central Railway, Jabalpur (M.P).
2. Additional Divisional Railway Manager, West Central Railway, Kota.
3. Senior Divisional Electrical Engineer (S), West Central Railway, Kota.

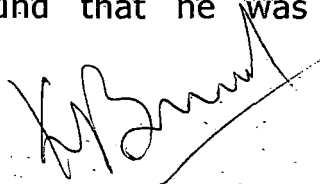
....Respondents.

Mr. Hawa Singh, counsel for respondents.

ORDER

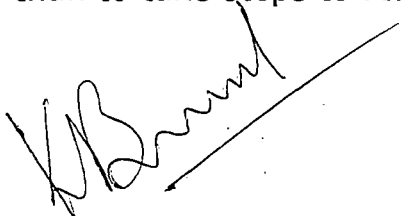
(Per Hon'ble Dr. K.B. Suresh, Judicial Member)

The applicant who remained absent for 133 days was removed from service. The claim of the applicant is that he was ill and he reported to the Railway Hospital and apparently their diagnosis was T.B. which frightened him and having mistrusted his physician, he went to a private Doctor to get a treatment who found that he was suffering from disease of typhoid and

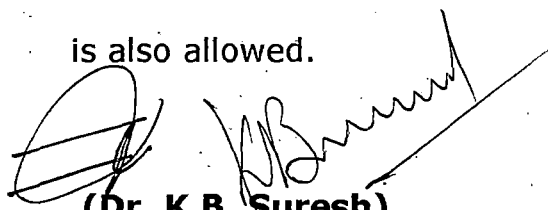


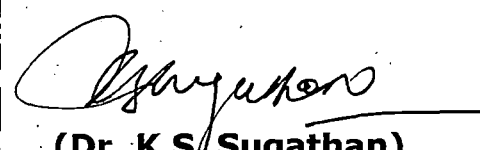
apparently after attaining good health he reported back to service only to find himself dismissed from service. He did not question the modalities involved in the proceedings against him but would crave for mercy as his absence was not willful and on account of his illness it would appear that the Railways are also not serious in disputing the factum of illness but they would say that he ought to have taken treatment at the Railway Hospital, which was established just for this purpose and having not done so they are not entirely satisfied with his bonafides.

2. The prayer of the applicant is that he has young children and unmarried daughters and with about 20 years of service behind him he feels that gravity of his absence has to be considered as a lesser degree than at present. He would rely on several rulings of Hon'ble Supreme Court to substantiate his point. The Railway had given a detailed reply and would state that the process and procedure adopted by them are proper. They held a departmental enquiry and during specific questioning he has stated that the Railway Doctor had not treated him properly but it is not apparently correct. Accordingly to sick certificate No.407224 he was admitted the Railway Hospital and treated up to 06.02.2004 and after that it is not known to the authorities from where he got the treatment. And thereafter he had obtained a fitness certificate from a Railway Doctor and it was produced and, therefore, they would say they had no other go than to take steps to remove him from service.

A handwritten signature in black ink, appearing to be 'K. B. Srinivas', is written over a diagonal line that extends from the bottom left towards the center of the page.

3. After detailed discussions at the bar, we are of the view that justice must always be tempered with mercy, it may be that the applicant is liable for some punishment for being absent without proper notice and may be his mistrust of the Railway Doctor was misplaced. But at the same time since he was ill, admittedly and his absence apparently not willful, he did not merit the punishment of the extreme variety and we quash Annexure-A/1, A/2 and A/3 as it is made without application of mind and without substantial evidence. We direct that the applicant reinstated back in service within a period of 03 months on receipt of a copy of this order. But we make it clear that it will not stand in the way of Railway administration from imposing upon him a punishment commensurate with humanity and the gravity and the effect of his laxness and we also make clear that this reinstatement shall be without any payment of back wages. But at the same time he shall be entitled to all other notional consequences as the law allows him as if he has continued in service. The O.A. is allowed but without any order as to costs. M.A. for condonation of delay is also allowed.


(Dr. K.B. Suresh)
Member Judicial


(Dr. K.S. Sugathan)
Member Administrative