

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR****ORIGINAL APPLICATION NO. 402/2007**Date of Order:

27/01/2010

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

Bhagwan Singh S/o Late Shri Bedarya Lal, by caste Koli, aged about 38 years, R/o Mohalla Patpara, Bhoi Para Old City Dholpur.

....Applicant

Mr. P.N. Jatti, counsel for applicant.

VERSUS

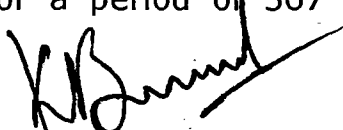
1. Union of India through the General Manager, Central Railway - Bombay.
2. Additional Divisional Railway Manager, Central Railway, Bhusawal.
3. Divisional Engineer (North) Central Railway, Bhusawal.
4. Assistant Divisional Engineer, Central Railway, Khandwa.
5. Senior Section Engineer (P-Way), North Central Railway, Burhanpur.

....Respondents,

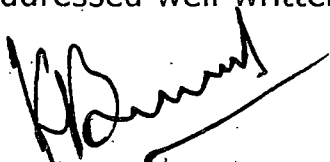
Mr. V.S. Gurjar, counsel for respondents.

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

On compassionate appointment, the applicant has appointed as Gangman of the Railways vide order No.22/1999 but it would appear that he assumed his duties on 16.09.1999, and the next day he applied leave for two days i.e. 17.09.1999 to 18.09.1999 and after three days, the applicant remained absent unauthorisedly for a period of 367 days. When he was found unauthorisedly

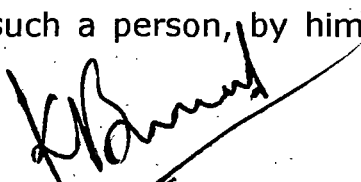


absent from duties, a charge sheet was issued to him and after holding an enquiry, apparently, a lenient view was taken and penalty of withholding of increments for a period of 02 years was imposed on the applicant. It is not clear what were the reasons, so as to compel the authority to take a lenient view, is not available on record. But apparently, vide an order dated 05.08.2002 he was reinstated back in service, this order was apparently sent by registered letter acknowledgement due No.1037 on 13.08.2002 and received by Burhanpur Railway Station on 17.08.2002 and thus transmitted to the applicant. Applicant would say that on receipt of this letter he had addressed a communication to the Section Engineer to the effect that a job allocation and posting order may also be given to him, apparently, this letter was sent under postal certificate. Whether the letter is received or not, is not clear yet, it is also to be noted in this connection that the Annexure-A/6 and the speaking order thereof dated 05.08.2002 from is also a bit vague. It appears that the applicant's letter dated 20.08.2002 which he has reproduced as Annexure-A/7 is not replied to. The Railway would say that the applicant is to join his old place of posting at Burhanpur but the applicant would say that he went to the old place of posting but then he was denied work. Thereupon, we specifically enquired that who among the officers had denied the applicant to be engaged in the post but he was unable to give a reply. The applicant would say that thereafter he had addressed Annexure-A/8 letter, which is also under certificate of posting on 23.01.2003 i.e. after the gap of five months. It would appear that at various intervals he had addressed well written letters and among them are Annexure-A/11

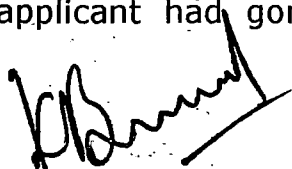


and Annexure-A/12, which are sent under registered post. Annexure-A/13 is again under postal certificate. The case of the applicant is that to none of his letters would the Railway has reply and thereupon, a former Member of Parliament has written on behalf of the applicant to seek to set aside the punishment imposed; in the meanwhile on the applicant following the enquiry conducted against him and to enable the applicant to rejoin his position once again. This time the unauthorised absence is 439 days and following an enquiry, of which the applicant would claim that he has no knowledge and juncture an ex-parte enquiry, was held and disciplinary authority being satisfied with the report had imposed major penalty on him. The applicant would contend that he received a copy of the said order/enquiry report only in the year 2004 and he claims that he was thus, denied a chance to represent.

2. The Railway authority pointed out that as per the available Rules, they had served each and every notice required by law was served on him on the address, which is available with them. Apparently, the applicant was not residing at his proclaimed address. They also raised clouds of suspicion on the letters allegedly sent by the applicant under certificate of posting and attention was invited to the structure of these and according to the letters which appears to be lucid and explanatory one has to think that the letters were drafted under proper guidance and expertise. The enquiry relating to the educational status of the applicant resulted in information that it is of low level. It is pointed out that such a person, by himself could not have addressed such letters.

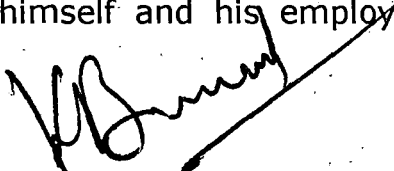
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Applicant would point out then that the letter dated 05.08.2002 issued as speaking order is hardly speaking as it does not explain nor comment the applicant to join any particular place. But the Railways would represent that it is understood by all that he has to report only to his original place of posting and not to other. It is also pointed out that he had in fact addressed all the letters to the concerned Section Engineer under whom he had worked earlier. Therefore, as early as on 20.08.2002 he knew that he was to report to Section Engineer only. The Railway would insinuate that the applicant he had some or other difficulty in channeling his energy into the work allotted to him or that it may be that he may be employed elsewhere or had other alternate engagement to attend to. It is discussed at the bar that which might be reason, why the applicant was absent for 367 days continuously immediately on joining on first appointment and even after taken back once again to compel him to be absent. They would also say that by then as he had already undergone one process of charge sheet, enquiry and was able to convince the disciplinary authority, that a lenient view should be taken in his case and seen to a minor punishment to have been imposed upon him. The railway would submit that by then the applicant had reasonable knowledge about methodology of disciplinary proceedings. He would thus to be able to differentiate on the focal point arising therein and, therefore, in normal case such a second incident should not have happened at all. Even after receiving an offer of reappointment or reinstatement other than sending letters on intervals. The interval being nearly 06 months he had not done anything else. The applicant had gone and personally met the concerned officers,



according to his pleadings, only after the imposition of punishment on him. It is stated at the bar that the intention of the applicant might have been to protract his joining work as long as possible; as he might have had some or other more lucrative proposal before him. The applicant object to this version as it is not supported by the pleadings of the respondents. But at the same time while exercising discretion, a pertinent question arises as to what was the intention of the applicant, after the letters allegedly written by him were carefully perused. In the structuring and composition of those letters a level of expertise and discipline pointing to some degree of advice being gathered by applicant to seems possible. Therefore, when the Railways would suggest, even out of contextual pleadings, that some other lucrative proposition awaited his immediate attention which prevented him from joining duty; it may not be easy to discard all those things. Thereupon, we have questioned the counsel for the applicant on this specific absence in the pleading of the applicant and we had specifically asked him for the name of the officer who had denied him joining as he had alleged whom he has personally met. But he alleges to have met several officers and he was unable to identify any of them. We had asked the applicant as to why he did not approach superior officers of the Section Engineer, if the Section Engineer was not addressing to his situation, there was no reply.

3. Given the scope and content of the letter issued by the applicant the same and similar nature of intelligence would have pointed out that by being continuously absent he is prejudicing himself and his employer. But still we could not elicit a reply,

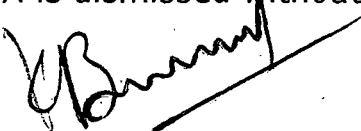


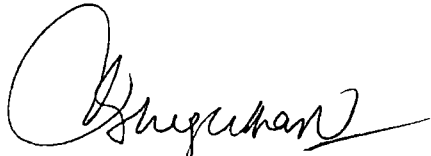
therefore, in the light of the situation, he would allege two grounds:

(1) He was not specifically appointed to join one particular place but since he appears to have received by the speaking order passed on 05.08.2002 and was registered on 17.08.2002, he claims that he had sent a letter to the Section Engineer on 20.08.2002 it is clear that he knew which office he has to join. In any case, normally it is the previous office where he was working on reinstatement, so this complaint of the applicant may not be relevant.

(2) He also claims that the charge memo was not given to him and had he known about it he would have participated to the enquiry and would shown that his absence is not wilful. But it appears that it took him 439 days and more to evidently personally meet on officer of the Railway.

4. After considering the entire gamut of the matter, we are convinced that there is no merit in the allegations and contentions of the applicant. Therefore, this Original Application fails and it is dismissed. Since, the applicant is already out of employment, we have decided not to impose any costs against him. Therefore, the OA is dismissed without any costs.


(Dr. K.B. Suresh)
Member Judicial


(Dr. K.S. Sugathan)
Member Administrative