

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-1417/2012
MA-3143/2014**

Reserved on : 04.03.2016.

Pronounced on : 14.03.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Jawahar Lal Upadhyay aged about 54 years
Son of late Ramesh Chandra Upadhyay,
Clerk Chief Train Lighting Clerk,
DRM's Office, Northern Railway,
Delhi Division, New Delhi
R/o : 309, Shubham Apartment,
Agra, District AGRA, UP.

.... Petitioner

(through Sh. H.P. Chakravorti, Advocate)

Versus

1. The Union of India through
The General Manager,
Northern Railway, Baroda House,
New Delhi-1.
2. The Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi-55.

..... Respondents

(through Sh. VSR Krishna and Sh. Shailendra Tiwary, Advocates)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This O.A. had earlier been allowed by us vide our order dated 26.09.2013. The respondents, however, filed review application, which was allowed on 22.08.2014 and O.A. was restored for re-hearing. The O.A. was re-heard and was dismissed vide our order dated 28.04.2015. The applicant challenged the aforesaid order before Hon'ble High Court of Delhi vide Writ Petition (Civil) No. 11318/2015. Hon'ble High Court of Delhi vide their order dated 07.12.2015 have

remanded this case for fresh hearing. The facts of the case are given in our original order dated 26.09.2013 and for the sake of convenience are reproduced below:-

"2. The facts of the case, as stated by the applicant, are that he joined the Delhi Division, Northern Railway as a Junior Clerk on 4.10.1982 and he was posted in Workshop, Tuglakabad, New Delhi. In February, 1984, he fell ill and he informed his office accordingly. Even then, the Respondents treated his absence as unauthorized leave. Later, on his way to office on 3.4.1984, he fell down from the train and became unconscious and went in coma. In his state of unconsciousness, he was carried by some persons and got him treated till such time he recovered and could identify himself. As his wife was unaware of his whereabouts, she lodged a missing person report at Police Station Hariparwat, Agra on 05.04.1984 with a copy to DRM Northern Railway, New Delhi. As there was no information about him, his wife submitted further applications on 03.11.1984, 3.11.1985 and 3.3.1987 to the Station In-Charge, Police Station Hariparwat, Agra. But, without taking into consideration of all the aforesaid facts, the Divisional Personnel Officer **vide** the impugned letter dated 16/29.8.1984 treated his absence from 22.02.1984 to 06.07.1984 as unauthorized absence and held that he deemed to have resigned from service under Rule 723 ibid. The aforesaid period was also treated as Leave Without Pay. However, the applicant was finally traced in an unsound state of mind on 30.3.1987 from village Dehat, near Gwalior Lashkar town and his wife took him to his native place in Agra and started treating him under Dr. K.C. Dubey, the Consulting Neuro Psychiatrist and Human Behaviour Disorder Centre, Agra. She had also intimated the aforesaid position to respondent no.4 vide application dated 5.3.1987. He remained under his treatment from March, 1987 to Feb. 2009. During this period also, she sent periodical intimations along with copies of the medical certificates to the respondent no.2. Copies of the intimations and the copies of the medical certificates sent by her on 7.3.1987, 4.3.1988, 3.9.1988, 4.4.1989, 03.10.1989, 4.3.1991, 11.11.1991, 04.03.1993, 15.10.1993, 04.03.1994, 03.09.1994, 22.03.1995, 21.06.1995, 21.01.1996, 21.08.1996, 03.03.1997, 04.11.1997, 04.03.1999, 03.07.1999, 04.03.2001, 03.10.2001, 07.07.2002, 02.11.2002, 04.03.2003, 27.09.2003, 10.08.2005, 16.11.2005, 06.02.2006, 03.06.2006, 06.01.2007, 30.05.2007, 06.12.2007, 05.04.2008, 15.09.2008 and 05.02.2009 have been annexed with this OA. Finally, the applicant was declared medically fit by the medical authorities of Mental and Behaviour Development Centre, Goverdhan Market, Delhi Gate, Agra vide its certificate dated 11.2.2009 addressed to D.R.M. (P), New Delhi. According to said certificate, the applicant was under treatment from 6.2.2006 to 11.2.2009 for "Bipolar Mood Disorder (mental illness) and he is now mentally and physically fit to join his duties." On reporting for duty with the aforesaid letter, the office of the Divisional Railway Officer (Personnel), New Delhi did not allow him to join duty. However, later, vide its letter dated 17.4.2009, they asked the applicant to provide information with regard to the following points:-

"1. Appointment date

2. Post at the time of appointment
3. Date of accident
4. Copy of Police FIR
5. Treatment related all the documents
6. Whether information regarding accident was provided by your family to the office or not? If yes, then give proof.
7. Documents relating to Railway servant.
8. Document relating to information given by you to your office".

The applicant immediately, **vide** his letter dated 11.6.2009, furnished all the requisite documents to the respondents. As there was no further response from the Respondents, he made another application on 30.7.2009 requesting them to allow him to join duty. It was followed by yet another representation dated 16.9.2010. Finally, the Respondents, vide its second impugned letter dated 18.10.2010, informed him that he was no more required by them. The gist of the said letter is that he was appointed as Clerk in pay scale of Rs.260-400 on 4.10.1982 under Workshop Superintendent, Northern Railway, Tuglakabad. Thereafter, vide order dated 01.10.1983, he was transferred to CTLC, New Delhi. He was informed **vide** letter dated 17.7.1984 that he was unauthorizedly absenting from duty w.e.f. 22.2.1984 to 6.7.1984. Therefore, invoking Rule 723 of IREC Vol.I he deemed to have resigned from the post and as the matter is very old, i.e., 26 years, he is no more required by the Railways. The Applicant and his wife again submitted their representations on 09.11.2010 and 17.3.2011 against aforesaid order dated 18.10.2010 but they were rejected by the third impugned order dated 11.4.2011 addressed to the Applicant's wife stating that her husband Ex.LDC remained unauthorizedly absent for a long time, therefore, in accordance with Rule 723 of IREC, he stood resigned from service and he was already informed about it vide their letter dated 18.10.2010."

2. The reasons for remand by Hon'ble High Court of Delhi are given in their order dated 07.12.2015. This order being a short one is reproduced below:-

"1. OA filed by the petitioner before the Central Administrative Tribunal was initially allowed by an order dated 26.09.2013. Subsequently, a review petition filed by the respondents herein was allowed on 22.08.2014 and the OA was dismissed.

2. The facts which have given rise to the filing of the OA were that the petitioner had joined the respondent as a Junior Clerk in the year 1982. He claims to have met with an accident on 03.04.1984 as he fell from the train and became unconscious and was carried by some persons. His wife lodged a missing report at Police Station Hariparwat, Agra on 05.04.1984.

Thereafter, it is claimed that the wife of the petitioner was getting him treated from the mental hospital at Agra. The respondents passed an order by which the petitioner was deemed to have resigned from service on 16.08.1984.

3. The counsel for the petitioner submits that no show cause notice was issued by the respondents. The respondents failed to take the representation made by the wife of the petitioner and she had informed the W.P.(C) No.11318 /2015 Page 2 of 2 Railways that on account of his accident, he was suffering from mental disorder and she was getting him treated at Agra. Learned counsel submits that in the review petition, the respondents had placed on record the rule as per which an employee would be deemed to have resigned in case of long absence. Counsel submits that Rule, sought to be relied upon by the respondent would not be applicable as the leave of the petitioner was not unauthorised.

4. In this case, no show cause notice was issued to the petitioner, no inquiry was initiated and the respondents did not take notice of his illness and his accident. Counsel for the petitioner submits that at the time of hearing of the review petition these, amongst other grounds raised by the petitioner, were not decided.

5. Issue notice to the respondents to show cause as to why Rule nisi be not issued. Notice in the stay application as well. Learned counsel for the respondents accepts notice.

6. Having regard to the facts that in the order by which the OA of the petitioner stands rejected, the learned Tribunal has failed to take notice of all the grounds sought to be urged by the petitioner, we deem it appropriate to remand the matter back for rehearing the matter on the merits. Parties agree to rely on the pleadings already placed on record.

7. The writ petition and CM.APPL 29693/2015 stand disposed of.

8. List before the Tribunal on 12.01.2016."

3. In compliance of the aforesaid directions of Hon'ble High Court of Delhi, we have heard both sides and have perused the material on record. It is agreed upon by both sides that the applicant was removed under Note-2 below Para-732 of IREC, which reads as follows:-

"Where a temporary railway servant fails to resume duty on the expiry of the maximum period of extraordinary leave granted to him or where he is granted a lesser amount of extraordinary leave than the maximum amount admissible and remains absent from duty for any period which altogether with extraordinary leave granted exceeds the limit upto which he could have been granted such leave under sub-rule (1) above, he shall be deemed to have resigned his appointment and shall accordingly, ceased to be a railway employee".

4. In earlier rounds of litigation the thrust of the argument of learned counsel for the applicant was that this para was not in existence on 06.07.1984 i.e. the date on which the applicant was removed from service. This has been successfully contested by the respondents while arguing their review application. They had submitted that the aforesaid para remained in the Establishment Code till 23.03.1985 on which date by a letter issued by the Railway Board this was removed from the Code. We had agreed with the respondents and had come to the finding that this para was indeed in existence in the IREC on the date on which the applicant was deemed to have resigned from the Railways and on this ground had accepted the review application of the respondents. The reasons for accepting the respondents' contention are give in our order dated 22.08.2014 passed in the review application and need not be repeated here again. Even Hon'ble High Court while considering the Writ Petition No. 11318/2015 have not interfered with this finding.

5. Learned counsel for the applicant argued that in this case no notice was issued and no enquiry was held against the applicant. Thus, there was complete violation of principles of natural justice. Per contra, learned counsel for the respondents argued that the applicant had been deemed to have resigned under Para-732 quoted above and there was no requirement of issuing a notice or conducting an enquiry under this provision. We agree with the learned counsel for the respondents. The applicant has not been dismissed or removed under disciplinary proceedings. This para provides for deeming an employee to have resigned from service if he remains absent for a long period even exceeding the period for which he could have been granted EOL. This was not a punishment order. It was an order by which factum of applicant's deemed resignation was taken note of and his links with employer were

severed. We, therefore, agree with the respondents that there was no requirement of issue of notice or conducting an enquiry in accordance with principles of natural justice in this case. In fact, it is clear from the Railway Board Circular dated 23.03.1985 by which this provision was repealed from the Code that for this very reason the Railway themselves had found this provision to be draconian and had, therefore, removed it from the Code. Nevertheless, it cannot be denied that on 06.07.1984, this provision was in existence and, therefore, could have been used by the competent authority against the applicant. It is also noteworthy that applicant has not challenged the vires of this provision. He was only disputing its existence.

6. Learned counsel for the applicant further submitted that even if it is presumed that this Rule was in existence on 06.07.1984, it could not have been applied in this case as the leave of the applicant was not unauthorized. In this regard, we have considered the facts of the case. As per applicant's own admission, he had fallen ill in February, 1984 and had sent an intimation to the department. Thereafter, on 03.04.1984, he fell down from a train and become unconscious and went into coma. His wife lodged a missing report at Police Station in Agra on 05.04.1984 with a copy to DRM. This report is available at page-14 of the paper-book. The report addressed to the Police Station says that the applicant was missing since 03.04.1984 and requests the police to trace his whereabouts. In this report, there is no mention of applicant meeting with an accident. Another report has been lodged by the applicant's wife on 03.11.1984 and a copy of the same is available on page-15 of the paper-book. There is no record of this communication being endorsed to the Railways. Thus, till 06.07.1984 as far as respondents were concerned, the only intimation available to them was that the applicant who had left his house for duty on

03.04.1984 has been missing since then and even his family was unaware of his whereabouts. By applicant's own admission, no leave application had been submitted. Thus, the respondents rightly treated this absence to be unauthorized and they cannot be faulted for coming to the conclusion that it was a fit case for use of Para-732 against the applicant. The past conduct of the applicant, which has been brought out in Para-3 under the caption preliminary objections in the counter of the respondents wherein it has been stated that even in the past the applicant had remained absent during several periods would have no doubt contributed to the decision of the respondents.

7. Next, the learned counsel for the applicant argued that the applicant had placed on record that he had fallen ill after meeting with an accident and that several applications in this regard had been submitted by the applicant's wife but this was totally ignored by the respondents. We have considered the aforesaid submission. Even if the contentions of the applicant were to be accepted, it was only on 05.03.1987 that applicant's wife first wrote to the DRM, New Delhi (page-19 of the paper-book) wherein she mentioned that her husband had been found on 03.03.1987 but was not in a position to resume duties due to his illness. Subsequent communications were all sent after this date. As mentioned above, respondents had already passed an order on 06.07.1984 deeming the applicant to have resigned and thereby severing the employer employee relationship with the applicant. Since all these applications were made many years after the aforesaid order, the respondents cannot be faulted for not taking cognizance of the same. It is not disputed that the applicant reported for duty only in the year 2009 i.e. after remaining absent for more than 25 years.

8. No other ground was pressed before us by the learned counsel for the applicant. On the basis of what has been stated above, we are of the opinion that there is no merit in this O.A. and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

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