

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.1402 of 2013**

**Date of CAV: 20.08.2018  
Date of Order: 24.08.2018**

Between:

1. B. Rambabu, S/o. B. Ram Murthy,  
Aged about 60 years, Occ: Assistant Loco Pilot (Goods),  
(Under the orders of compulsory retirement),  
O/o. The Chief Crew Controller,  
South Central Railway, Rajahmundry.
2. B. Murali Mohan, S/o. B. Rambabu,  
Aged 30 years, R/o. D. No.2-48-2,  
Ambikanagar, 2<sup>nd</sup> Street, Near ILTD Railway Gate,  
Rajahmundry – 533 101.

... Applicants

And

1. Union of India, Rep. by the General Manager,  
South Central Railway, Rail Nilayam, Secunderabad.
2. The Chief Electric Loco Engineer,  
South Central Railway, Rail Nilayam, Secunderabad.
3. The Additional Divisional Manager,  
Vijayawada Division, South Central Railway, Vijayawada.
4. The Senior Divisional Electric Engineer (TRSO),  
Vijayawada Division, South Central Railway, Vijayawada.
5. The Senior Divisional Personnel Officer,  
Vijayawada Division, South Central Railway, Vijayawada.
6. The Medical Superintendent,  
Railway Hospital, South Central Railway, Rajahmundry.
7. The Assistant Divisional Electric Engineer (TRSO),  
Vijayawada Division, South Central Railway, Vijayawada.

... Respondents

Counsel for the Applicant ... Mr. KRKV Prasad, Advocate  
Counsel for the Respondents ... Mr. S M Patnaik, SC for Railways

***CORAM:***

***Hon'ble Mr. B.V. Sudhakar*** ... ***Member (Admn.)***  
***Hon'ble Mr. Swarup Kumar Mishra*** ... ***Member (Judl.)***

***ORDER***  
***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

The OA has been filed challenging the penalty of compulsory retirement imposed based on the applicant on the allegation of unauthorised absence vide order dated 03.01.2011 and upheld by the appellate authority vide letter dated 28.09.2012.

2. The prayer of the 1st applicant is that he was proceeded against while he was in the sick list and the punishment of compulsory retirement has denied him the benefits that were to accrue under the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995.

3. The case in brief is that the 1st applicant while working in the office of the Chief Crew Controller, Rajahmundry approached the Medical Superintendent, Rajahmundry for treatment of his eyes. The Medical Superintendent after due observation has put him in sick list on 14.05.2008. Thereafter, he has referred the 1st applicant to the Sr. Medical Superintendent (OPH), Vijayawada for further course of treatment, who, in turn directed the 1st applicant to the Sr. Medical Superintendent (OPH), Lalaguda, Secunderabad for treating the 1st applicant. The Sr. Medical Superintendent, Lalaguda after due examination of the ailment of the 1st applicant, referred him to LV Prasad Eye Institute, Hyderabad.

4. While the 1st applicant was undergoing treatment, the 7<sup>th</sup> respondent issued a charge memo on 07.07.2009, alleging that he was unauthorisedly absent from 28.05.2008 to 30.06.2009 continuously for 399 days. Despite the 1st applicant informing the respondents vide his letter dated 04.09.2009 that he is undergoing treatment for his left eye, the respondents instituted an inquiry by appointing an Inquiry Officer under Rule 9 of Railways Servants (Discipline & Appeal) Rules, 1968. The Inquiry Officer held the charge of unauthorised absence proved.

5. The disciplinary authority after considering the reply of the 1st applicant and that of the inquiry report, imposed the penalty of compulsory retirement vide order dated 03.1.2011. Thereafter, the 1st applicant made an appeal to the 3<sup>rd</sup> respondent on 14.02.2011, which was rejected by the appellate authority vide Memorandum dated 28.09.2012. The 1st applicant followed it up by a revision petition to the 2<sup>nd</sup> respondent on 30.11.2012 and as it was not disposed even after an year, the present OA has been filed on 04.11.2013.

6. The 1st applicant's case is that the Railway doctors working for the respondents have been kind enough to direct him to LV Prasad Eye Institute for getting his eye treated. The respondents were aware of the fact that he was continuously taking treating at LV Prasad Eye Institute. Further, he was corresponding and meeting the respondents as directed during the said period of absence, confirming that his absence was not wilful, but was dictated by the circumstances in which he was placed. The 1st applicant further states that during the inquiry, he has informed the inquiry officer that he was sick and that he will be producing the relevant medical certificates to cover the period of absence after he is cured of the disease he was afflicted with. The emphasis has been that he has been on the sick list from the date he has approached the Medical Superintendent, Rajahmundry. The 1st applicant pleads that the compulsory retirement inflicted upon him will lead to twin disadvantages viz., i) the stigma of compulsory retirement; and ii) decimation of the scope to avail legitimate facility of seeking alternative employment for self or employment to his son, the 2<sup>nd</sup> applicant, on his being medically invalidated/ decategorised.

7. The respondents' case is that the charge memo and the inquiry report were attempted to be delivered at the office of the Chief Crew Controller where the 1st applicant was supposed to be working and since he was absent, the same had to be delivered at the last known address proving the fact that he was under unauthorised absence. The 1st applicant was issued DNA (Discharge for Non-attendance) from Rajahmundry w.e.f. 28.05.2008. The 1st applicant has not applied for leave and got it sanctioned by the competent authorities. The certificate issued by the LV Prasad Eye Institute covering the period of absence has not been covered by a certificate issued by the Railway Medical authorities. Therefore, the 1st applicant was proceeded against strictly as per the provisions of the Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968, on grounds of unauthorised absence and not following the Medical Attendance Rules.

8. Heard learned counsels on both sides and perused the records. They have confined their arguments to the contours of the written submissions made by them. Nothing additional was stated to enlighten the Tribunal on the issue.

9. The above facts stated and the submissions of the counsels were put to the sword of judicial scrutiny to arrive at the following:

i) The respondents have issued the charge memo dated 07.07.2009 as per rules.

The respondents' defence cannot be breached on this ground despite the incisive arguments of the 1st applicant.

ii) The respondents have also instituted full-fledged inquiry by appointing an inquiry officer and gave opportunity to the 1st applicant to be fully heard thereby

upholding the principles of natural justice to this extent. So far so good for the respondents.

iii) However, a close reading of the proceedings of the inquiry would reveal that the 1st applicant has stated that he was sick and he will produce the appropriate medical certificates after he gets cured from the disease he was suffering from. 1st applicant denied the unauthorised absence.

10. The question that has to be delved into depth as to how and why the 1st applicant was on unauthorised absence for 399 days. It has not been answered adequately in their reply as to why the respondents did not ascertain the whereabouts of the 1st applicant from the date of issue of DNA (Discharge for Non-attendance) by the Medical Superintendent, Rajahmundry Hospital. The reason as to why DNA was issued by the Medical Superintendent, Rajahmundry though he was referred to Sr. Medical Superintendent, Vijayawada was not brought out vividly anywhere. In other words, as he was sick, he was referred to Sr. Medical Superintendent, Vijayawada and then on to Sr. Medical Superintendent, Lalaguda, Secunderabad and finally to LV Prasad Eye Institute, Hyderabad. The continuance of sickness exists and carries forward. The Railway Hospital at Lalaguda, which referred the 1st applicant to LV Prasad Eye Institute has also not submitted any report about the progress in treatment of the 1st applicant to the respondents. No such record was placed for perusal.

11. The 1st applicant was under continuous treatment as is evident from the medical records enclosed with the OA and the rejoinder of the 1st applicant. Medical records have been submitted from 14.05.2008 to 06.012.2012 indicating that the employee was not only getting treatment from LV Prasad Eye Institute but also from the Railway Hospitals, which, knives through the arguments of the respondents making a good kill.

12. Reverting to the contentious issue of the Medical Superintendent, Rajahmundry issuing DNA though he has referred him to Sr. Medical Superintendent, Vijayawada and then on to the Sr. Medical Superintendent, Lalaguda, it needs no elaboration but to state that the act was an error. The base for the charge memo has emerged from the irregular issue of DNA to the 1st applicant. One more thing which is pertinent to state at this juncture is that the Lalaguda Hospital has referred the 1st applicant to the LV Prasad Eye Institute and thereafter, it is not known as to whether the Lalaguda Hospital has ascertained the further progress of treatment of the patient.

13. Learned counsel for the respondents claims that it is the duty of the 1st applicant to report to the Doctor about the progress in respect of his health issue. To this extent, the respondents have a point to prove. If the same argument were to be flipped to the respondents as to why they waited for 399 days to recognize the absence of the 1st applicant then there was no answer coming forth, either in the reply statement or during oral submissions. In this regard it is also noticed that the 1st applicant has been frequently visiting Railway hospital, Vijayawada as outpatient and it was the Vijayawada Railway Hospital which referred the 1st applicant to the Lalaguda Railway Hospital and thereon to LV Prasad Eye Institute. In other words, the Respondents were aware that the 1st applicant was under treatment and have prescribed medicines to him as is evidenced from the outpatient tickets enclosed for the period from 2008 to 2012.

14. Therefore, it can be safely stated that the 1st applicant was not wilfully absent, but his absence was in the knowledge of the respondents. The 1st applicant lost his left eye which has become totally blind and his right eye has become unfit vide Certificate dated 28.07.2008 issued by LV Prasad Eye Institute. Hence, there was no scope for him to resume duty as Assistant Loco

Pilot which is considered as a safety cadre wherein stringent medical standards are to be fulfilled.

15. This apart, in the normal course, employees do apply for leave in advance and after the same is sanctioned, they proceed on leave. Sometimes, when there is an emergency, they avail the leave and later get it sanctioned after resuming duty. However, in certain compelling circumstances like when the employee is involved in an accident or severe illness, etc, he will not be in a position to apply for leave. Such absence where he could not apply for leave, definitely it has to be treated as unauthorised absence. Nevertheless, such absence cannot be put into the category of wilful absence. The reason being, the employee was in a helpless condition where he could not comply with the procedural requirement of making a leave application to the competent authority.

16. In the present case, the 1st applicant was suffering from a severe eye ailment. The ailment has been so severe that he lost his left eye. The treatment was continuous and the respondent themselves were prescribing medicines on occasions as evidenced from the records enclosed. In other words, it means that the respondents were fully cognizant of the fact that the 1st applicant was on continuous treatment. If this being so, then, it cannot be construed as wilful absence. When the absence is not wilful, then, it cannot be equated to misconduct or lack of devotion to duty or exhibiting behaviour unbecoming of a government servant.

17. The Article I of charge memo issued to the 1st applicant charges the 1st applicant on grounds of unauthorised absence and therefore, he has failed to maintain devotion to duty and thereby contravened Rule 3(1) (ii) of Railway Services (Conduct) Rules, 1966. Therefore, the very charge does not hold ground since it is not wilful absence.

18. Besides, it is up to the disciplinary authority to prove that the 1st applicant was wilfully absent. The respondents on the contrary, in particular, the disciplinary authority has admitted that the 1st applicant was undergoing treatment for an eye disease in his disciplinary proceedings. Therefore, the disciplinary authority himself was aware that the 1st applicant was absent for a genuine reason. Therefore, the reason for absence not being wilful, the very foundation of the charge memo is demolished and the natural corollary would be the punishment imposed based on an invalid charge has to go. This case is very well covered by a judgment of the Hon'ble supreme court in a contest between ***Krushnakanth B Parmar and another Vs. Union of India*** reported in **(2012) 3 SCC 178**. On a reading of the judgment of the Hon'ble Supreme Court, it would make it vivid and its relevance to the present case, as presented below:

*“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.*

*18. In a department proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.”*

19. One another relevant judgment of the Hon'ble Supreme Court, which has a direct bearing on the present case is one where the Hon'ble Supreme Court had to adjudicate between ***Jeewanlal (1929) Limited Vs. The Workmen & Another***, reported in **1962 (1) SCR 717**, wherein the Hon'ble Supreme court has observed as under:

*“Continued absence by itself cannot be termed as continuance of service has come to an end.”*

20. The implication is that the Rules of the game have to be followed in its letter and spirit, otherwise it is bad in law. In the present case, the respondents have adhered to the letter part of the observation, that is, strictly following the rules, but the spirit went missing in terms of not recognizing the fact that the respondents themselves have referred him for a medical treatment and that he was continuously in touch with the respondents for medical treatment. He was responding to the respondents as and when directed by them. It is also not out of place to cite the judgment of the Hon’ble Apex Court which is apropos to the present case is in regard to the contest between ***Lakshmi Ram Bhuyan vs Hari Prasad Bhuyan & Ors***, reported in ***2003 (1) SCC 197***. In this case, the Hon’ble Supreme Court has made the following observations:

*“An inadvertent error emanating from the non-adherence to rules of procedure prolongs the life of the litigation and gives rise to avoidable complexities. A stitch in time saves nine.”*

An inadvertent alleged error is committed by the 1st applicant in not applying for leave and getting it sanctioned. If the respondents had sewn a single stitch of calling the 1st applicant and getting him screened medically, it would have become obvious as to whether he was medically fit or unfit and if he was found unfit, the respondents could have medically invalidated him and thereupon, extended the benefits that are allied to medical invalidation. Unfortunately, such a measure appears to have not been taken at any time beginning from 2008 onwards till he was retired compulsorily.

21. The sensibilities of this case propels this Tribunal to quote one another judgment of the Hon’ble Supreme Court, which is pertinent to the present case.

The case was about a rigorous duel between ***Vice Chancellor, Banaras Hindu University Vs. Shrikant***, reported in **2006 (11) SCC 42**. In this case, the Hon'ble Apex court observed that “*An order issued by a statutory authority inviting civil or evil consequences on the citizen of India, must pass the test of reasonableness.*” The question that seeks an answer in the present case is whether the respondents were reasonable in charging the employee for the alleged unauthorized absence while they were fully aware that he was undergoing treatment as per their directions. The records on file prove the fact that the 1st applicant was in touch with the respondents as can be seen from the medical prescriptions issued by the Railway hospitals and therefore, it was not reasonable on the part of the respondents to proceed against the 1st applicant on the ground of unauthorized absence and for not following the Medical Attendance Rules. It is also seen that the 1<sup>st</sup> applicant has already attained the age of superannuation.

22. Thus, based on the facts stated above and the supreme judgments rendered by the Hon'ble Supreme Court quoted above, we in the Tribunal cannot conclude otherwise, than to accede to the prayer of the 1st applicant. Hence, the impugned order of the disciplinary authority dated 3.1.2011 and the order of the appellate authority dated 28.09.202 are set aside. Consequent to setting aside the impugned orders stated, the respondents are directed to consider as under:

- i) To consider treating the period of absence of the 1<sup>st</sup> applicant for 399 days as if he was on sick list and the financial benefits payable for the said period may be processed;
- ii) To consider and dispose the plea of the 1<sup>st</sup> applicant for compassionate appointment of his ward i.e. the 2<sup>nd</sup> applicant, if he is otherwise eligible in all respects as per Serial Circular No.92 of 2006, by subjecting the 1<sup>st</sup> applicant to medical examination as per rules and regulations on the subject;

iii) To consider the pension to be appropriately redrawn as if the 1<sup>st</sup> applicant were to be in service from the date of compulsory retirement till the date of superannuation. However, pay and allowances shall not be drawn for this period i.e. from the date of compulsory retirement till the date of superannuation.

23. OA is disposed of accordingly. No order as to costs.

**(SWARUP KUMAR MISHRA)**  
**MEMBER (JUDL.)**

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 24<sup>th</sup> day of August, 2018

*evr*