

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

Original Application No.21/733/2015

Order reserved on: 25.09.2018

Order pronounced on: 26.09.2018

Between:

K. Ramesh, S/o. K.D.V. Prasad,
Aged 39 years, Occ: Peon/PRs/SC,
Reservation Complex, South Central Railways,
Secunderabad, R/o. H. No. 6-161, Karepalli Village,
Singareni Mandal, Khammam District.

... Applicant

And

1. Union of India, represented by its
General Manager, South Central Railways,
IIIrd Floor, Rail Nilayam, Secunderabad.
2. The Chief Commercial Manager,
(Passenger Marketing), South Central Railways,
1st Floor, Reservation complex, Secunderabad.
3. The Deputy Commercial Manager (PRS),
South Central Railways, 1st Floor,
Reservation complex, Secunderabad.
4. Data Base Manager (PRS),
South Central Railways, 1st Floor,
Reservation complex, Secunderabad.
5. The Senior Divisional Personnel Officer,
South Central Railways, DRM Office, Secunderabad.
6. The Senior Divisional Commercial Manager,
South Central Railways, DRM Office, Secunderabad.

... Respondents

Counsel for the Applicant ... Mr. Ch. Satyanarayana

Counsel for the Respondents ... Mrs. A.P. Lakshmi, 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 is filed against the removal of the applicant from service vide Memo No.C/CR/DAR/V/01/12 dt.17.5.2013 issued by the 2nd respondent.

2. Brief facts of the case are that the applicant who is physically handicapped (70% handicap), has been appointed as Running Room Cook on compassionate grounds vide proceedings dt. 15.11.2003. Being physically handicapped he represented for change of post and since it was not considered, the applicant filed OA 653/2005 before this Tribunal. On the directions of this Tribunal he was offered the post of Peon vide respondents order dated 10.7.2006. While discharging his duties as Peon, he fell sick and could not attend duty on 7.9.2011 and the medical department of the respondent organization has declared him sick for two days vide Annexure A-17. Thereafter, for treatment he joined a private hospital for six months. As he could not attend duty for certain periods, he was marked absent and proceeded on disciplinary grounds ending with removal from service. Hence, the OA.

3. The applicant contends that the inquiry was conducted ex parte and the inquiry report dt. 18.2.13 concluded that the charges have been proved. Based on the inquiry report, the 2nd respondent removed him from service on 17.05.2013. This was confirmed on appeal by the appellate authority vide memo dated 6.11.2013 and also by the reviewing authority vide Memo dt. 20.1.1014. The applicants contention is that because of ill-health he could not move from the bed and therefore was not able to participate in the inquiry despite receiving notices. The fear of participating in the departmental proceedings also haunted him.

4. The respondents state that the applicant reported sick on 7.9.2011 at the Railway Health Unit for two days. Thereafter, when he reported to duty on

1.2.2011 he was directed to the Health Unit, Chilakalaguda for necessary medical check up and issue of fit certificate. The applicant did not report at Health Unit and remained unauthorised absence until 1.2.2012. The applicant thereafter returned to duty on 6.3.2012. But, since he was not maintaining devotion to duty, he was placed under suspension on 3.10.2012 and disciplinary proceedings for unauthorized absence were instituted. The inquiry officer was appointed and inquiry was fixed on 3.12.2012, 20.12.12 and 21.1.13. The applicant did not appear before the inquiry officer. The inquiry officer therefore concluded that the charges have been proved ex parte. Based on the same, the disciplinary authority has removed the applicant from service on 17.5.13 and confirmed by the appellate authority on 6.11.13 and the revising authority on 20.1.2014.

5. Heard the learned counsel and perused the documents.

6. Learned counsel for the applicant has argued that the inquiry officer has put leading question which he is prohibited to do so. Moreover, the applicant being physically handicapped and with fragile health, he could not attend the inquiry. The applicant is poor and is having two school going children. The punishment is too harsh and has put the applicant on the streets. Pleaded for a sympathetic consideration.

7. Counsel for the respondents contended that the applicant though given an opportunity by instituting an inquiry where he could have defended his case but he did not. Also appearance before the appellate and the reviewing authority to hear him before disposing his case was provided which he availed in regard to the later authority. There is no scope for mercy appeal. Hence, action was taken as per rules on the subject.

8. The applicant is a physically handicapped employee. In view of his poor health, he was not able to attend office and therefore disciplinary proceedings were initiated on grounds of unauthorized absence. The disciplinary authority appointed an Inquiry Officer without appointment of a Presenting Officer, thereby the Inquiry Officer has enacted the role of both a judge and prosecutor. This is evident from the fact that the Inquiry Officer has put leading question No 5 to the prosecution witnesses N. Jayaraj, Chief Office Superintendent to strengthen the case of the disciplinary authority. Inquiry Officer should be unbiased and he should not work to further the interest of the disciplinary authority. Therefore the inquiry proceedings are vitiated. Further, continued absence by itself cannot be termed as 'continuance of service has come to an end'. In this regard, support could be had from *Jeewanlal (1929) Ltd. v. Workmen, (1962) 1 SCR 717* wherein the Apex Court has held as under:-

If the service of an employee is brought to an end by the operation of any law that again is another instance where the continuance is disrupted; but it is difficult to hold that merely because an employee is absent without obtaining leave that itself would bring to an end the continuity of his service.

9. When the regulations provide for certain drill to be performed before terminating the services of an individual, failure to follow the said drill is bad in law. Here, we see the inquiry officer violating the approved drill by asking leading question which tantamounts to bias. Further, Hon'ble Apex Court in Union of India Vs. Ram Lakhan Sarma, in Civil Appeals No. 2608/2012 has held that the inquiry officer in the absence of the presenting officer should conduct himself in an unbiased manner and observed as under:

The High Court having come to the conclusion that Inquiry Officer has acted as prosecutor also, the capacity of independent adjudicator was lost which adversely affecting his independent role of adjudicator. In the circumstances, the principle of bias shall come into play and the High Court was right in setting aside the dismissal orders by giving liberty to

the appellants to proceed with inquiry afresh. We make it clear that our observations as made above are in the facts of the present cases”

Further, the Railway Board circular No.E(D&A)705RG-6-41 dt. October 1971 states that, “*The disciplinary authority **may**, by an order in writing on standard form No.8 nominate a Railway servant or any other Government servant to be known as Presenting Officer to present the case in support of the charges, before the inquiry report. The nomination of a presenting officer by disciplinary authority is not obligatory but discretionary*”.

The word “**may**” has a mandatory connotation as per Honorable Supreme Court Judgement in Union of India Vs. A.K. Pandey, reported in 2009 (10) SCC 552, wherein the Hon’ble Apex Court in para 10(d) of its judgment held as under:

“In other words, if the language of the statute, considered as a whole and with due regard to its nature and object, reveals that the legislature intended the words “shall” and ‘must’ to be directory, they should be given that meaning. Similarly, under the same circumstances the word ‘may’ should be given a mandatory meaning and especially where the statute concerns the rights and interests of the public, or where third persons have a claim de jure that a power shall be exercised, or whenever something is directed to be done for the sake of justice or the public good, or is necessary to sustain the statute’s constitutionality.”

For the sake of justice, appointing a Presenting Officer was essential which the respondents failed to do. Therefore, to sum up, the word ‘may’ used in the Railway Board Circular cited above makes it mandatory to nominate a Presenting Officer.

In view of the above observations of the Hon’ble Supreme Court, the respondents have to appoint the Presenting Officer and having not done so, the inquiry is vitiated.

10. On grounds explained above where the inquiry officer has donned the role of prosecutor, in the absence of a presenting officer, which is mandatory, this Tribunal has no other alternative but to set aside the punishment of removal from service imposed by the disciplinary authority based on a vitiated inquiry proceedings. Accordingly, the penalty order of the 2nd respondent vide Memo No.C/CR/DAR/V/01/12 dt.17.05.2013, as confirmed by the appellate and reviewing authorities, is set aside. Consequently, the respondents are directed to reinstate the applicant into service within a period of 15 from the date of receipt of this order and institute denovo inquiry from a stage of appointing a Presenting Officer. Depending on the outcome of the denovo inquiry proceedings, the respondents are at liberty to proceed against the applicant as per law. On reinstatement, the applicant is not eligible for any backwages or seniority on this count or any other benefits.

11. In the result, the OA is allowed as above. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, the 26th day of September, 2018

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