

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

OA/021/605/2016

Date of Order : 11.07.2018

Between:

P. Murali Krishna,
S/o. P. Venkata Ratnam,
Aged about 48 years,
Occ: Loco Pilot (Mail /Express),
South Central Railway,
Secunderabad Division,
Secunderabad.

..... Applicant

AND

1. Union of India rep. by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Operations Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Additional Railway Manager,
South Central Railway, Secunderbad Division,
Sanchalan Bhavan, Secunderabad.
4. Senior Divisional Electrical Engineer /TRSO,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

..... Respondents

Counsel for the Applicant : Mr. M.C. Jacob

Counsel for the Respondents : Mrs. A.P. Lakshmi, SC for Rlys.

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDL. MEMBER

ORAL ORDER

{ Per Hon'ble Mr.Justice R.Kantha Rao, Judl. Member }

Heard Mr. M.C. Jacob, learned counsel appearing for the Applicant and Mrs. A.P. Lakshmi, learned Standing Counsel appearing for the Respondents.

2. The O.A. is filed to set aside the penalty order of withholding one increment due on 01.07.2012 for a period of four months without cumulative effect issued by the 3rd Respondent who is the appellate authority in modification of the order passed by the disciplinary authority which was confirmed by the revising authority, by declaring the said order as illegal, unjust and contrary to the rules.

3. The Applicant, while working as Loco Pilot in Railways, submitted a leave application along with medical certificate and leave was granted to him from 3.11.2010 to 7.11.2010. He submitted that as he was advised to take bed rest by the doctor thereafter, he sought for further extension of leave by another 30 days up to 8.12.2010 by letter dated 7.11.2010 enclosing the medical certificates from the hospital where he was taking treatment. Subsequently, the applicant received a memo dated 20.12.2010 by registered post on 6.11.2011 from the 4th Respondent proposing to hold an inquiry under Rule 9 of Discipline & Appeal Rules, 1968 for the period of unauthorized

absence during the period from 21.11.2010 to 10.12.2010 (19 days) without prior sanction of leave or failure to observe Railway Medical Attendant Rules.

4. For the aforementioned charge of misconduct, a charge memo dated 20.12.2010 was issued to the Applicant and the Applicant submitted a statement of defence on 15.1.2011 stating therein that he had not fully recovered from the illness and, therefore, he was taking bed rest on the advice of the doctor and, therefore, he applied for extension of leave. He made a request therein to grant leave for the remaining period also. The version of the Applicant in the statement of defence however was not accepted by the disciplinary authority and an Inquiry Officer was appointed to conduct an inquiry. The inquiry was held and at the conclusion of the inquiry, the Inquiry Officer upon considering the material before him, arrived at the conclusion that the appellant is guilty of unauthorized absence from duties for a period of 19 days as mentioned in the charge memo and submitted his report to the disciplinary authority. The disciplinary authority, considering the report submitted by the Inquiry Officer, imposed a penalty of reduction of pay by three stages with cumulative effect for three years. Aggrieved thereby, the applicant submitted an appeal to the 3rd Respondent on 23.8.2011. The appellate authority while disposing of the appeal by order dated 24.11.2014 observed that the penalty inflicted by the disciplinary authority on the applicant is disproportionate and, therefore, reduced the penalty to withholding of one increment due on 1.7.2012 for a period of 40 months without cumulative effect. The said order was confirmed by the revising authority. It is against the said order, the applicant filed the present O.A.

5. The Respondents in their reply statement contended as follows:

The charged employee remained absent unauthorizedly after 22.11.2010 for which charge memo was issued. The Applicant has gone into extended leave without authorization which amounts to indiscipline. The charged employee was marked absent only after a futile attempt to call him on the Closed User Group mobile. Further, the Applicant has not approached the Railway hospital and is getting treated outside.

It is further contended that the Railway employee residing outside the jurisdiction of Railway doctor i.e. outside 2.5 kms from the Railway hospital obtained medical certificate from a private doctor. But it does not apply in the present case since the Applicant resides within the jurisdiction of the Railway doctor. Therefore, according to the Respondents, the medical certificate submitted by the Applicant which was obtained from a private doctor will not be taken into consideration. According to them if leave for absence is required on medical certificate, a request for such leave should be supported by a medical certificate from the Railway doctor. Therefore, the Respondents sought to justify the punishment imposed on the Applicant by the appellate authority by reducing the punishment imposed by the disciplinary authority.

Contending the above, the Respondents sought to dismiss the O.A.

6. In the course of inquiry held against the Applicant, no Presenting Officer was appointed and the Inquiry Officer himself examined the witnesses and also put some questions to the Applicant and thereafter recorded a finding. The discussion of evidence and reasons and also the finding recorded by the

Inquiry Officer is as follows:

“5. Discussion of Evidences and Reasons for Findings:

- (i) The muster record of CCS/ SC office had been verified and found that the dates of unauthorized absence mentioned in the listed document were correct.
- (ii) The CE had been on leave till 21.11.10 because of his illness and his further extension of leave had not been sanctioned.
- (iii) The office staff of CCC had tried to intimate him about not sanctioning of leave but his CUG mobile phone supplied by the Railways had been kept switched OFF.
- (iv) The CE cross-examined the Listed witnesses 1 & 2 but could not conclude that he had not remained on unauthorized absence on the dates mentioned in the Charged Memorandum.

6. Findings:

From the above I hold the Article of Charge according to the Charged Memorandum issued by the Disciplinary Authority Sr. DEE/ TRSO/ SC vide SFV No.C/ E.150/TRS/227 /2/SFV/10/UA/ 34 dt.20.12.10 against Shri P. Muralikrishna LP M&E/ SC as PROVED.”

7. Thus, the Inquiry Officer, basing on the admitted facts, recorded the finding. The absence of the Applicant from duty is not in dispute. The crucial question required determination by the Inquiry Officer is as to whether the absence of the Applicant was unauthorized. The Applicant also admits that he was absent from duty but his contention was he applied for leave with medical certificate issued by a private doctor and thereafter as his illness was not completely cured, he sought extension of leave by producing a certificate issued by a private medical practitioner.

8. It is crucial to note in this context that for some period, the leave was granted and for the remaining period for which extension was sought, the leave was refused to the Applicant. The contention of the learned Standing

Counsel appearing for the Respondents is that since the Applicant was admittedly residing within the jurisdiction of Railway doctor i.e. within the radius of 2.5 kms. of a Railway hospital, he has to necessarily obtain a medical certificate from a Railway doctor or at least he could have got the medical certificate issued by the private medical practitioner attested by the Railway doctor but since he has not done so, the Respondents are right in rejecting the medical certificate produced by the Applicant.

9. Shri M.C. Jacob, learned counsel appearing for the Applicant relied on 2012 (3) SCC 178 in support of his contention that the absence to be unauthorized must be wilful. In the case relied by the counsel, the Supreme Court held as follows:

“16. In the case of the appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether “unauthorized absence from duty” amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

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 unauthorized 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, hospitalisation, 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 departmental proceeding, if allegation of authorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such find, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorizedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.”

10. Learned counsel further relied on 2015 (1) SCC (L&S) 251 wherein the Hon'ble Supreme Court held as follows:

“.....The appellant submitted the copies of medical certificates issued by doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. There was no allegation that the appellant's unauthorised absence from duty was wilful and deliberate. The inquiry officer has also not held that the appellant's absence from duty was wilful and deliberate. It is neither a case of the disciplinary authority nor the inquiry officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the inquiry officer or the disciplinary authority to disbelieve the medical certificate issued by the doctors without any valid reason and on the ground of 24 days' delay.”

11. Turning to the facts of the present case, Regulation No.538 lays down that where a Railway employee resides within the radius of 2.5. kms from the Railway Hospital, he has to obtain sick certificate from the Railway doctor and not from any private medical practitioner. From this it can be understood that the department thinks that the certificate issued by the Railway doctor will be more authentic. However, in the instant case, basing on the certificate issued by a private medical practitioner, the Respondents granted leave to the Applicant for certain period and rejected for the remaining period. If the private medical certificate is totally invalid, they ought not to have granted leave for certain period basing on the medical certificate issued by a private medical practitioner. Moreover, the crucial issue which requires determination is that the Inquiry Officer must record a finding that the absence of the Applicant is wilful and, therefore, it is unauthorised. In the present case by granting leave for certain period initially on the leave application sent by the Applicant, the Respondents did not dispute the genuineness of the version of the Applicant that he fell sick and, therefore, he was undergoing treatment.

The Inquiry Officer merely noted the period of absence which is admitted and basing on the said period of absence and considering the fact that the sick certificate was obtained by the Applicant from a private medical practitioner came to the conclusion that the absence is unauthorised and recorded a finding that the article of charge has been proved. His report also shows that an attempt was made to inform the Applicant over phone that the extension of leave has not been sanctioned to him but his phone was switched off. If that is so, the Respondents could have informed the Applicant about the refusal of extension of leave by other modes but they have not done so. In any event, when a finding of unauthorized absence is recorded mechanically without there being any evidence showing that the absence is wilful and intentional, an employee cannot be held guilty of unauthorized absence merely because admittedly he was absent for duty for a particular period.

12. In the instant case, the Applicant informed the authorities by applying for leave together with medical certificate and the same was initially granted. The rejection was only for the period regarding which the Applicant sought extension. No cogent reasons have been assigned for rejecting the leave for the latter period. The only reason seems to be the medical certificate submitted by the Applicant is not from a Railway doctor. The Respondents who granted leave on the very same certificate are not justified in rejecting the same in regard to the extension in latter period. In any event, in the instant case, there is no specific finding to the effect that the absence of the Applicant is wilful and deliberate and, therefore, the charge cannot be held to be proved. Therefore, the impugned order dated 16.07.2015 is set aside. Consequently, the O.A. is allowed. No order as to costs.

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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