

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

Original Application No.21/2013

Date of C.A.V. : 18.09.2017

Date of Order :20.11.2017

Between :

K.Jaya Krishna, S/o K.V.Ramana,
aged about 31 years, Technician Grade-III,
Electric Loco Shed, Visakhapatnam,
R/o H.No.6-12, Seshadrinagar,
Opp : Military Engineering System,
Vepagunta, Visakhapatnam.

... Applicant

And

1. The Divisional Electrical Engineer,
Electric Loco (TRS), Marripalem,
Visakhapatnam.
2. The Union of India, Rep. by
The Senior Divisional Electrical Engineer,
(TRS), Electric Loco Shed, Marripalem,
Visakhapatnam.
3. The Additional Divisional Railway Manager,
Visakhapatnam.
4. The Divisional Railway Manager,
Visakhapatnam. ... Respondents

Counsel for the Applicant ... Mr. D.Balakishan Rao, Advocate
Counsel for the Respondents ... Mr. S.M.Patnaik, S.C.for Rlys.

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... ***Member (Judl.)***
Hon'ble Mrs.Minnie Mathew ... ***Member (Admn.)***

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

A departmental inquiry was held against the applicant on the charge relating to misconduct viz., unauthorized absence from 15.04.2010 to 24.12.2010. The inquiry officer found the applicant guilty of charge of unauthorized absence and submitted his report. The Disciplinary Authority accepted the findings of the inquiry officer and imposed punishment of removal from service by order dated 20.05.2011. The said order was confirmed by the Appellate Authority and Revisionary Authority by their respective orders dated 21.07.2011 and 21.04.2012. The applicant challenged the said orders in the present OA. He sought to set aside the orders and to reinstate him into service with all consequential benefits.

2. Briefly stated the facts set forth in the OA by the applicant may be stated as follows :

The applicant who was working as Technician Grade-III in the Railways applied for medical leave from 29.03.2010 to 14.04.2010 on health grounds. He extended leave from 15.04.2010 to 24.12.2010. After the expiry of leave he reported to duty by producing a medical certificate and he was permitted to join duty on 24.12.2010.

3. Later the 1st respondent issued a charge memo dated 30.08.2010 indicting him of serious misconduct namely that he failed to maintain devotion to

duty by absenting for duties from 29.03.2010 to 14.04.2010 and did not submit any medical certificate in continuation thereof and thus unauthorisedly remained absence from 15.04.2010 to 24.12.2010. In response thereto the applicant submitted a detailed explanation denying the charges and stating that he produced medical certificate from the department of Railways. His explanation was not accepted by the respondents and a departmental inquiry was initiated. The inquiry officer found him guilty of the charge and submitted his report to the Disciplinary Authority - 1st respondent herein. The 1st respondent issued him a show cause notice dated 03.03.2011 directing to submit his explanation to the inquiry report. The applicant submitted his explanation and requested the 1st respondent to drop further action stating that he was suffering from Osteo Arthritis, due to which he was unable to attend the duties and his absence was not willful and he was absent from duties under the circumstances which were beyond his control as he was suffering from chronic medical problem. The 1st respondent did not accept the explanation and passed an order dated 20.05.2011 removing him from service. As already said the Appellate and Revisionary authorities also confirmed the order passed by the Disciplinary Authority.

4. In their reply statement, the respondents contended inter alia as follows :

The applicant admitted that he absented from duties from 15.04.2010 to 24.12.2010. He also admitted that he did not submit any leave application and sick certificate which facts would clearly indicate that he was unauthorisedly absent from duties for the period from 15.04.2010 to 24.12.2010. The respondents

admit that he produced medical certificate, but their version is that a Railway employee who is residing outside jurisdiction of a Railway Doctor if requires leave on medical grounds, he shall submit sick certificate within 48 hours from a registered medical practitioner. Thus the respondents did not consider the medical certificate produced by the applicant as he produced the same after 48 hours. They also contended that the applicant did not submit the continuation sick certificate soon after expiry of the medical leave which was originally applied for. Nextly it is contended that the applicant did not submit his explanation to the charges levelled against him and did not attend two sittings of inquiry initially and only attended the third sitting of the inquiry. They further contended that the applicant was in the habit of absenting from duties on some other occasions. Their version is that he was not showing any interest in attending the duties and his disinterestedness warranted imposing of severe punishment. On the aforementioned grounds the respondents sought to dismiss the OA filed by the applicant.

5. We have heard Mr.D.Balakrishna Rao, learned counsel for the applicant and Mr.S.M.Patnaik, learned standing counsel for the respondents.

6. It is contended by the learned counsel appearing for the applicant that the applicant was suffering from chronic Osterio Arthritis for which he was undergoing treatment. Initially he applied for medical leave and he could not submit the medical certificate for the extension period as he was unable to move.

He further contended that though the applicant was absent, his absence was not willful, but under the circumstances which were beyond his control and therefore he shall not be held guilty for the charge of unauthorized absence. The learned counsel seeks to set aside the punishment order and the consequential orders in appeal as well as in the revision and to reinstate him with all consequential benefits.

7. On the other hand it is contended by the learned standing counsel for Railways that the applicant in the course of inquiry admitted that he was absent from duties during the period of charge, he was also absent on some other occasions and therefore the punishment imposed against the applicant needs no interference in the OA.

8. Perusal of the inquiry report clearly indicates that in response to the questions put to the applicant in the course of the inquiry he stated that he suffered from Osterio Arthritis of knee joints, was bedridden and as such he was unable to give intimation to the office and he accepted the charge of absence of duty from 15.04.2010 to 24.12.2010. A witness by name Sri Ramesh on behalf of the department stated in inquiry that the applicant did not submit any leave application or sick intimation for the period from 15.04.2010 to 24.12.2010. It is basing on the above said material the inquiry officer arrived at the finding that the applicant was guilty of the charge of unauthorized absence levelled against him. Thus the main contention of the respondents seems to be that since the applicant admitted that he was absent from duties from 15.04.2010 to 24.12.2010 without submitting a

medical certificate in continuation of the leave, the charge was held to be proved.

9. To appreciate the rival contentions it would be necessary to look into the judgement of the ***Hon'ble Supreme Court in (2012) 3 SCC 178 {Krushnakant B. Parmar Vs. Union of India and another}*** relied on by the learned counsel for the applicant. On identical facts the Hon'ble Supreme Court held that the absence due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful and employee guilty of misconduct. Holding as such the Hon'ble Supreme Court set aside the impugned order of dismissal, declined to remit the matter to the Disciplinary Authority and directed the department to reinstate the dismissed employee with 50% back wages.

10. In the instant case also either the inquiry officer or the Disciplinary Authority did not take into consideration the crucial fact that the applicant was prevented from attending the duty on account of his medical condition. The fact that the applicant was suffering from Chronic Oster Orthritis has not been denied by the respondents. They also did not consider the medical certificate produced by him subsequently which indicated his medical condition. The Appellate and Revisionary authorities also mechanically confirmed the penalty order passed by the Disciplinary Authority. The applicant specifically contended in his OA that the respondents have adopted different yardstick in the matter of imposing punishment in respect of similarly situated persons by imposing lesser punishment of stoppage of increments. He mentioned in the OA specifically that in case of Sri

J.S.Maheshwara Rao, Technician Grade-I who was working in the same wing under the same authority when the charge of absence from duty for six months was proved, he was imposed punishment of stoppage of increments with cumulative effect. In the reply statement there is no denial to the said fact from the respondents. In ***Civil Appeal No.4335/2007*** the Hon'ble Supreme Court and the ***Division Bench of A.P.High Court in 2013 (4) ALT*** took the view that there shall not be any discrimination while imposing punishment to the employees against whom the disciplinary proceedings were held on identical charges and in similar set of facts.

11. Turning to the facts of the instant case none of the authorities indicated in their respective orders the reasons as to how the charge of unauthorized absence was held to be proved. The explanation offered by the applicant in the course of inquiry was not considered by the authorities in toto. In his explanation the applicant clearly stated the real cause for his absence and also submitted medical certificate in support there of. As regards the alleged unauthorized absence on other occasions there is no charge and thus it remained as allegation without proof. All the authorities overlooked the said fact while dealing with the punishment of removal from service. From the facts and circumstances which have been discussed herein above, the absence of the applicant from duty is not wilful. He offered acceptable explanation for his absence, which in fact has not been specifically denied by the respondents. Therefore, the finding recorded by the inquiry officer which has been confirmed by the Appellate and Revisionary authorities does not stand to legal scrutiny and is unsustainable.

12. Consequently the penalty order passed by the 1st respondent – Disciplinary Authority dated 20.05 .2011 which is confirmed by the Appellate and Revisionary Authorities is set aside. The respondents are directed to reinstate the applicant into service forthwith. They are directed to consider the issue of back wages and pass appropriate orders following the judgement of the Hon'ble Supreme Court in the case of ***Krushnakant B.Parmar Vs. Union of India*** and according to the rules.

13. Consequently the OA is partly allowed. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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