

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
JABALPUR**Original Application No.200/937/2011**

Jabalpur, this Tuesday, the 29th day of January, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Indru Tulsiram, S/o Late Tulsiram, aged about 48 years years, Ex-Gangman Office of Pee-way Inspector Kalaghar, District – Betul (M.P.) 460001

-Applicant

(By Advocate – Shri M.N. Banerjee)

V e r s u s

1. Union of India through General Manager, Central Railway, Chhatrapati Shivaji Terminus Mumbai (Maharashtra) 400008.
2. Divisional Railway Manager, Nagpur Division Central Railway, Near Nagpur Railway Station, Nagpur (Maharashtra) 440001.
3. Additional Divisional Railway Manager, Nagpur Division, Central Railway, Near Nagpur Railway Station, Nagpur Maharashtra 440001.
4. Senior Divisional Engineer (North) Nagpur Division, Central Railway, Near Nagpur Railway Station, Nagpur 440001.
5. Assistant Divisional Engineer, Central Railway, Betul (M.P.) 460001

- Respondents

(By Advocate – Shri Praveen Namdeo)

(Date of reserving order : 22.01.2019)

OR D E R**By Navin Tandon, AM.**

The applicant has filed this Original Application as he is aggrieved by his removal from service.

2. The applicant has made the following submission in the O.A:

2.1 He joined Railways as Gangman in the year 1990.

2.2 He was served a Major Penalty chargesheet on 28.10.2006 (Annexure A-1) for absence from duty for 156 days in broken spells during the period 01.01.2006 to 17.10.2006.

2.3 He was suffering from constant fever, which was finally diagnosed as Jaundice. He was taking treatment from private Doctor. Being illiterate and from poor & backward background, he thought obtaining certificates from Doctor would be sufficient.

2.4 In the departmental enquiry, the applicant in his statement (Annexure A-3) has categorically stated that he could not attend office due to jaundice and that his children were too small to go to office and inform about the illness to the authorities.

2.5 When the enquiry report was served on the applicant, being illiterate, he did not know that any representation is to be submitted.

2.6 The Disciplinary Authority (DA) passed his orders on 13.06.2007 (Annexure A-4) in a stereo typed cyclostyle performa in such a casual fashion that at two places in the body of the order the period has been filled in as “from 01.01.2006 to 17.01.2006”. The DA imposed the severe most penalty of “Removal from Service” but did not pass any order about payment of compensatory allowance, which he ought to have been considered.

2.7 The Appellate Authority (AA) in his order dated 11.09.2007 (Annexure A-5), rejected the appeal with a two line order.

2.8 The Revisionary Authority (RA) rejected the submissions of applicant on the plea that “Ignorance of rule can not be an excuse” by his order dated 22.07.2008 (Annexure A-6).

3. The applicant has sought for the following reliefs:

“8. Relief sought:

Applicant therefore most respectfully prays as under:

- i. Respondents be kindly command to produce a complete departmental proceeding record for favor of kind perusal of Hon'ble Tribunal.
- ii. Quash and set-aside order dt. 13-06-2007 passed on Disciplinary authority order dt. 11-09-2007 passed by appellate authority and order dt. 22-07-2008 passed by revisionary authority.
- iii. Any other order which Hon'ble Tribunal may consider reasonable under facts and circumstances of the case.
- iv. Cost of the petition may kindly be allowed.”

4. The applicant has also filed application for condonation of delay vide MA 929/2011 wherein he has stated that he being an illiterate person did not know about provision of legal remedy and he became aware of the same only in a social function in July 2011.

5. The respondents in their reply to MA 929/2011 have submitted that order of RA were issued on 20.07.2008 but applicant has filed OA only in October 2011 after a lapse of more than three years and, therefore, the OA is hopelessly time barred. The application for condonatoion of delay does not give any specific and bonafide reasons for condonation of delay and that of ignorance of law is not a ground of condonation of delay.

6. The respondents in their para wise reply have submitted that the entire disciplinary proceedings have been carried out as per rules. The applicant admitted to his guilt regarding unauthorised absence for 156 days during the enquiry. The applicant was given full opportunity to represent against the enquiry report, which he did not avail. Therefore, on the basis of enquiry report, the DA rightly imposed the penalty. The AA has passed his orders after going through all the records of the case file, the representation of the applicant and by application of mind. The order of RA is

reasoned and speaking order and there is no illegality and infirmity in the same.

7. The applicant has filed his rejoinder in which he has submitted that the enquiry report does not mention about applicant admitting the guilt.

8. Heard the arguments of learned counsel of both the parties and the pleadings available on record.

9. There is no doubt that this O.A has been filed after more than three years of the order of the RA. We are inclined to agree with the argument of the respondents that no specific and bonafide reasons have been given by the applicant for the delay. Therefore, this O.A is barred by limitation.

10. Since the respondents have filed para wise reply, and arguments were heard, we are adjudicating this OA on merits also.

11. Learned counsel for the applicant argued that the DA has not passed a reasoned and speaking order.

12. Learned counsel for the applicant cited the orders passed by coordinate Bombay Bench of this Tribunal in OA 513/2011 in the case of **Bipinchandra N. Mistry vs. Union of India & ors. (2013)**

1 AISLJ (CAT) 95, wherein it has been held that Railway employees/pensioners can avail treatment in private hospitals in case of emergency.

13. Further, learned counsel for the applicant submitted that the punishment is too harsh for the alleged misconduct of the applicant.

14. Learned counsel for the respondents reiterated that the entire disciplinary proceedings have been carried out as per rules and the O.A has no merits. The order of the DA and AA merges with the same of the RA, who has given a detailed speaking order.

15. Perusal of the orders of the DA confirms the point of learned counsel for the applicant that the orders were issued in a stereotyped cyclostyle performa, and the date 07.10.2016 has been written as 17.1.2006 at two places. However, all the relevant points regarding the applicant have been stated in the order.

16. Further, we perused the order of the Revisional Authority (RA). He has spelt out entire background of the case, including the fact that the applicant did not submit his written submission before the DA, neither when chargesheet was issued nor when the inquiry report was served on him. He has conveyed his decision as under:

“In present Revision Appeal dt: 17/10/2007, you have contended that you fell sick on 1/1/2006 due to jaundice and availed

treatment of private doctor and that you joined duties as and when you felt better and remained under treatment of private doctor as and when become sick. You have further admitted that you have not submitted medical certificates to you office. You have further contended that you are illiterate and not aware of medical rules and therefore you could not follow rules. It is an admitted position that you remained absent as per charges leveled against you. It is also an admitted position that you did not submit medical certificates. Ignorance of Rule cannot be an excuse. Leave is regular only when sanctioned or when the absence is determined to be justified for some medical or other such reason, on proof of legitimizing circumstances for absence having been submitted by employee to establish that this absence without prior sanction of leave is justified. The present revision appeal is devoid of merit. Therefore there is no reason to interfere with the orders of Disciplinary Authority and Appellate Authority. The penalty of "Removal from Service" imposed by Disciplinary Authority vide order No STF/CS/KQE/IT/27 dt: 20/6/2007 and upheld by Appellate Authority vide order No.NGP/W.159/Appeal/IT dt: 11/09/2007 is just, proper and I maintain it."

17. From the above, it is clear that RA has given a clear speaking orders.

18. It has also been observed that the applicant was given a opportunity to submit his case before the DA twice – first when the chargesheet was issued and the second time when the enquiry report was served on him. However, the applicant did not avail any of these opportunities. The applicant has not been able to make out a case to indicate that natural justice has not been given to him.

19. The reliance placed by learned counsel for the applicant in **Bipinchandra N. Mistry** (supra), does not cut much ice. In the cited case, it was a case of emergency that the patient was admitted in a private hospital and subsequently shifted to Railway hospital. However, in the instant case, no emergency or life threatening circumstances have been demonstrated wherein the applicant approached a private doctor.

20. From the aforesaid, it is clear that the applicant was unauthorisedly absent for which a chargesheet was served to him. He was always provided with opportunities to defend his case.

21. In view of the aforesaid, we do not find any reason to interfere with the impugned orders issued by the competent authority of the respondent department. Accordingly, the O.A is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
am/-

(Navin Tandon)
Administrative Member