

(2019) 03 CAT CK 0115

In the Central Administrative Tribunal

Case No : Original Application No. 1898 Of 2013 With Miscellaneous Application
No. 1528, 1529, 1888 Of 2013

Bhagat Ram Meena

APPELLANT

Vs

Union Of India Through

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Railway Servant (Discipline And Appeal) Rules, 1968 — Rule 9(12), 9(21)

Citation : (2019) 03 CAT CK 0115

Hon'ble Judges : Nita Chowdhury, J;S.N. Terdal, J

Bench : Division Bench

Advocate : Meenu Mainee, VSR Krishna, A.K. Srivastava

Final Decision : Dismissed

Judgement

S.N.Terdal, Member, J

1. We have heard Mrs. Meenu Mainee, counsel for applicants and Mr. V.S.R.Krishna and Mr.A.K.Srivastava, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicants have prayed for the following reliefs:

"8.1 That this Hon'ble Tribunal may graciously be pleased to allow this application and quash the impugned orders.

8.2 That this Hon'ble Tribunal may be further pleased to direct the respondents to reinstate the applicant and give all consequential benefits like promotion, back wages etc.

8.3 That this Hon'ble Tribunal may be further pleased to pass any other or further order which this Hon'ble Tribunal may be deemed fit and proper under the circumstances of this case.

8.4 That the cost of this proceeding may be passed in favour of the applicant."

3. The relevant facts of the case are that for being unauthorizedly absent from 23.10.2005 to 23.02.2006 and also for being habitually unauthorizedly absent for 8 times in 2003, 6 times in 2004 and 6 times in 2005 and, therefore, not being interested in the Railway service a charge sheet was issued to the applicant. The applicant was at the relevant time working as Diesel Assistant. Alongwith the charge sheet, details of the indiscipline and misconduct, list of witnesses and list of documents were served on the applicant. As the applicant did not plead guilty, an inquiry officer was appointed. The Inquiry Officer conducted the departmental proceedings. The applicant did not appear in the departmental proceedings, despite the inquiry officer fixing the inquiry proceedings on 9.07.2006, 30.07.06 20.08.06, 13.09.06 and 20.10.06. Thereafter, on 31.10.2006 the inquiry officer proceeded with the departmental enquiry ex-parte and examined prosecution witnesses and submitted his inquiry report on 10.11.06 holding that charges leveled against the applicant were proved. On 11.12.2006 the inquiry report was sent to the applicant and on 08.01.07 he submitted representation against the inquiry report raising various grounds. The disciplinary authority considering the inquiry report and representation submitted by the applicant imposed a penalty of removal from service vide order dated 01.04.2009. Disciplinary authority before passing the order of removal called upon the applicant to appear before him for personal hearing but the applicant did not availed that opportunity and thereafter when the applicant appeared before the disciplinary authority, the disciplinary authority sent the applicant for medical examination to Railway hospital from where again the applicant disappeared unauthorizedly even thereafter the applicant was sent for medical examination 3 times. On 3rd occasions, the medical officer found that the applicant was colour blind and he was fit for Bee-one category and cannot be appointed in connection with running of trains as Diesel Assistant.

4. The applicant filed an appeal. The appellate authority also by recording every aspects by a detailed reasoned and speaking order enumerating many several instances of earlier charge sheets regarding unauthorized absence dismissed the appeal vide order dated 25.07.2011. The applicant filed Revision petition. The revision petition was also dismissed by the revisional authority after giving the applicant personal hearing also vide order dated 30.12.2011.

5. The counsel for the applicant vehemently and strenuously contended that there is violation of rule 9.12 and 9.21 of the Railway Discipline and Appeal Rules. The said rules are extracted below:

" Rule 9.12. The inquiring authority shall, if the railway servant fails to appear within the specified time or refuses or omits to appear, require 'Presenting Officer' if any, to produce the evidence by which he purposes to prove the articles of charge and shall adjourn the case to later date not exceeding thirty days, after recording an order that the railway servant may for the purpose of preparing his defence give a notice within ten days, of the order or within such further time not exceeding ten days as the inquiring authority may allow for the

discovery or production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in Sub-rule(6).

Rule 9.21. The inquiring authority may, after the railway servant closes his case, and shall, if the railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the circumstances appearing in the evidence against him."

6. The counsel for the applicant further submitted that it is a case of no evidence that the impugned orders of disciplinary authority, appellate authority and the revisional authority are not speaking orders and that the said authorities have taken into account extraneous consideration while passing the impugned orders. In support of her contention, she has also relied upon the judgments of Hon'ble Supreme court in the case of *Moni Shankar Vs. Union of India & Anr.* (2008 (3) 325), *Ministry of Finance and Another Vs. S.B.Ramesh* (1998)3 SCC 227) and *Narinder Mohan Arya Vs. United India Insurance Co Ltd. & Ors* (AISLJ 2006(3)211).

7. We have perused the entire material. We have also perused in detail the charge sheet, enquiry report and the impugned orders passed by the disciplinary authority, appellate authority and the revisional authority. In view of the facts and circumstances narrated above, particularly that the applicant did not participate in the enquiry proceedings and remained ex-parte and that he was habitually absentee and even when the disciplinary authority gave an opportunity to appear before him he did not appear, in the circumstances, we are of the view that the above stated Rule 9.12 and 9.21 have not been violated in this case and the law laid down in the above referred cases are not applicable in the present case and, therefore, the impugned orders do not require to be interfered with.

8. Accordingly, OA is dismissed. No order as to costs.