
(2003) 09 AHC CK 0119
In the Allahabad High Court
Case No : C.M.W.P. No. 50111 of 2000

K.S. Kashyap

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-09-2003

Acts Referred:

Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 14

Citation : (2003) 4 AWC 3385 : (2004) 1 UPLBEC 55

Hon'ble Judges : Umeshwar Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : B.D. Maurya, for the Appellant; Lalji Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—Heard learned counsel for the parties.

2. The petitioner has challenged the impugned order of the Central Administrative Tribunal dated 15.9.2000 (Annexure-6 to the petition).

3. The petitioner was employed in the Railway and was posted at D.L.W., Varanasi. From 15.10.1987 he was absent without leave. The authorities repeatedly asked him to report for work but he did not come. It is stated in the letter dated 20.1.1989 that the petitioner also did not contact the department and did not send any information. Hence by the said order dated 20.1.1989, he was removed from service. He filed a mercy appeal which was decided by order dated 11.8.1995 (Annexure-2 to the petition). In that order it is stated that his removal on 20.1.1989 does not call for any change, but taking a compassionate view of the matter a compassionate allowance of Rs. 700 per month was sanctioned to him. The petitioner approached the Central Administrative Tribunal which has rejected his petition, hence this writ petition.

4. It has been stated in paragraph 3 of the counter-affidavit that the petitioner was absent from 15.10.1987, and office memorandum dated 31.8.1988 was sent to him vide Annexure-C.A. 1. It was stated therein that the petitioner was absent

without leave, and a memorandum was sent at his permanent address recorded in his service record at Lucknow through registered post twice, but the same were returned back by the postal authorities undelivered with the remark that the house of the applicant was not traceable. Thereafter the respondents then deputed one R. S. Sawhney, a staff member to trace out the applicant on 25.2.1988 and deliver him the aforesaid memorandum of the charges personally at his home address at Lucknow. However, Sri Sawhney reported that he could not locate the applicant or trace out about his whereabouts.

5. According to the respondents, the applicant suddenly appeared on 13.12.1994 and submitted an application dated 13.12.1994, that the reason for his absence from duty was that he was trying to locate his brother who was kidnapped. We are not prepared to accept this explanation. This petitioner was absent continuously from 15.10.1987 to 13.12.1994, i.e., more than five years.

6. Learned counsel for the respondents rightly pointed out that this is a case of abandonment of job and hence there was no question of holding an inquiry. We are fortified in this view by the Division Bench judgment of this Court in *Dr. Lakhte Mustaffa Kazmi v. State of U. P.* 2003 (2) UPLBEC 1351. In that decision the case law on the point has been discussed in great detail, and hence we are not repeating the same.

7. Learned counsel for the petitioner submitted that an inquiry should have been held against the petitioner; We do not agree. Rules of natural justice are not a straightjacket formula vide *Union of India v. Tulsiram Patel*, AIR 1985 SC 1416 and *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, Some times the rules of natural justice can be modified, and sometimes excluded altogether, depending on the facts. The petitioner himself disappeared and was not traceable for about 5 years. In our opinion, no useful purpose could be served by trying to hold an inquiry against him because he could not even be located nor did he inform the department where he had gone, and he was missing for 5 years. Hence obviously notice for the enquiry could not possibly be served on him as he was not even traceable. In our opinion, the petitioner's service was validly terminated under Rule 14 (ii) of the *Railway Servants (Discipline and Appeal) Rules, 1968*.

8. In our opinion a distinction has to be made between termination of service for the misconduct of absence without leave, and abandonment of service. In the former category opportunity of hearing has to be given vide *D.K. Yadav Vs. J.M.A. Industries Ltd.*, but not for the latter. Whether a particular case falls in the former category or the latter depends on the facts of the case, but as a general rule it can be said that absence without leave for long periods should ordinarily be treated as abandonment of job.

9. Moreover, writ jurisdiction is discretionary jurisdiction and we are not inclined to exercise our discretion in such a case where an employee disappeared for 5 years, and thereafter he claimed that he should be allowed to join. There is no

force in this petition and it is accordingly dismissed.