
(2001) 09 DEL CK 0232
In the Delhi High Court
Case No : CW No. 5209/99

Union of India

APPELLANT

Vs

Mr. R.K. Rastogi and Another

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Citation : (2001) 09 DEL CK 0232

Hon'ble Judges : Sharda Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mr. H.K. Gangwani, for the Appellant; Mr. G.D. Bhandari, for the Respondent

Judgement

Sharda Aggarwal, J.—Petitioner has directed this petition against the judgment and order dated 28.6.1999 of Central Administrative Tribunal, Principle Bench (in short the Tribunal) allowing the OA No. 2450/95 quashing the orders of the Disciplinary and Appellate Authority and directing reinstatement of respondent in service with all consequential benefits with costs.

2. The respondent was appointed as Assistant Station Master (ASM) after being selected on Railways Service Commission on 25.2.1987. He was initially posted at Railway Station Chakrajamal and after a few years, he was transferred to Aghwanpur Railway Station (AWP) in the year 1990 at Moradabad Sharanpur Section. He met with a road accident on 29.5.1990 at AWP. He remained under medical treatment of railway doctor for one year and was discharged from hospital on 6.8.1991 after being declared medically fit. He was recommended light duty for three months. A medical certificate dated 6.8.1991 was also issued. He was, however, kept on light duty for about two years. The respondent was directed to join his parent post as ASM on 10.11.1993 but he did not report for duty and remained absent and later on submitted private doctor's certificate. He thus remained on unauthorised absence from 9.12.1993 to 15.2.1994 for which he was charge-sheeted on 4.4.1994. Enquiry was conducted and the Enquiry Officer found the respondent guilty of the charge vide his report dated

15.2.1995. The Disciplinary Authority confirmed the finding of the Enquiry Officer and dismissed the respondent from service on 15.5.1995. The appeal of the respondent against the said order was rejected by the Appellate Authority on 17.7.1995. The Reviewing Authority upheld the order of dismissal on 17.11.1995. Aggrieved by the same, respondent filed OA.No.2450/95 before the Tribunal which was allowed on 28.6.1999. Aggrieved by the orders of the Tribunal, Union of India has filed the present writ petition before this Court.

3. Perusal of the impugned order of the Tribunal and the material placed on record indicates that the main ground taken before the Tribunal by the respondent was that the delinquent was not afforded reasonable opportunity to defend himself in the enquiry proceedings as some of the documents, required by him, were not made available to him by the Enquiry Officer and also some relevant questions put to the witness of the department were dis-allowed. Respondents' plea before the Tribunal was also that the witness of the Department had admitted the case of the respondent and in fact it was a case of no evidence. The respondent's case is that after his discharge from the hospital on 6.8.1991, doctor had recommended him light duty for three months and it was also recommended that after utilising him on light duty he would have to be medically examined before he could be given the charge of his original post of ASM. According to respondent he also did not leave the station of AWP on 12th December, 1993. Though he requested the Senior DDM to send him for medical examination in terms of medical certificate/letter dated 6th August, 1991, he was pressurised to perform the duties of ASM even though he was not well to attend the said duty. It was only after his further medical examination when he was declared fit to join duties of ASM, he joined on 5th February, 1994 as ASM and continued to discharge his duties as such till he was dismissed by the Disciplinary Authority on 15th May, 1995.

4. The respondent during the pendency of the enquiry proceedings, desired to be supplied with the copies of documents like (1) CMS/MB Certificate No. 157/Med/P-VIII dated 6th August, 1991, (2) DPO/MB letter No.E/X/ASM/90/RKR dated 30th August, 1991 and 20th November, 1991, (3) letter dated 9th December, 1993 addressed to SM/AWP and DRM/MB, (4) SM/AWP letter No.5/SM/AWP/94 dated 4th August, 1994 with enclosures and medical certificate of Railway doctors and (5) attendance register/Muster Roll for the period 30th August, 1991 to 25th March, 1994. By the first document, respondent wanted to prove that he was not declared medically fit to perform the duties of ASM. By documents No.2 and 3 he wanted to prove that the (charged officer) was unfit to perform his duties. By document No.4 he desired to disprove his alleged unauthorised absence. By the attendance register/muster roll he wanted to show his attendance. The Enquiry Officer had declined to supply the said documents saying that the disciplinary Authority had regretted the request of the respondent for supply of additional documents. These documents, had they been supplied to respondent would have proved that he could not join the duties of ASM till he was medically examined and certified to resume such duties by the doctor, in

view of earlier medical certificate dated 6th August, 1991. By some of the other documents, copies of which were not supplied to him, he would have been able to establish that he was unfit to perform the duties as ASM. By not supplying these documents, as desired by the delinquent, he was seriously prejudiced to put forth his defense. It, in fact amounted to denial of reasonable opportunity to the delinquent to defend himself in the enquiry proceedings.

5. Learned counsel for the respondent contends that the medical certificate of private doctors and that of railway doctors of Railway Hospital, Moradabad were rejected by the Enquiry Officer on technical ground. Perusal of the enquiry report supports this contention. This has also seriously prejudiced the respondent.

6. In the circumstances and facts of the case, the findings of the Tribunal to the extent, it set aside the impugned orders of punishment of department finds favor with us. However, we do not find any justification in granting the delinquent full back wages for the period he was kept out of service. The delinquent was removed from service on 15th May, 1995. The enquiry proceedings are found vitiated basically on the ground that the delinquent was not supplied with relevant documents which prejudiced his defense. We have been informed that after the orders of the Tribunal, respondent was already been reinstated in service. The question, Therefore, arises as to whether he is entitled to be granted full back wages in the facts and circumstances of the case or whether this issue can be left to be decided by the Competent Authority. It is not a case where the respondent was completely exonerated in the disciplinary proceedings or that he was not blameworthy in the least. The enquiry proceedings in this case are held to be vitiated on a technical ground of non-supply of additional documents as desired by the delinquent. He did remain absent from 9th December, 1993 to 15th February, 1994. In view of the peculiar circumstances of this case, to our mind, the concerned authority should be vested with power to decide whether the employee at all deserves any back wages for the intervening period and if he does, to what extent. The respondent having already been reinstated in service, we find it expedient to leave it to the Competent Authority to decide as to whether the respondent be given back wages for the intervening period and if so, to what extent.

7. With the above observations, petition stands disposed with no order as to costs.