

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 15th January, 2010
Decision on : 19th March 2010

W.P.(C) No. 1717 of 2004

SHRIKANT PRAJAPATI Petitioner
Through: Ms. Meenu Mainee, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr. V.S.R. Krishna, Advocate.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether Reporters of local papers may be
allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

J U D G M E N T

S. Muralidhar, J.

1. This petition initially sought to challenge a judgment dated 10th February 2003 passed by the Central Administrative Tribunal ('CAT') Principal Bench, New Delhi in OA No. 1738 of 2000. By a subsequent amendment, the writ Petitioner was permitted to challenge an order dated 7th July 2008 passed by the Appellate Authority, i.e. Secretary to the General Manager, Northern Railways upholding the decision of the Disciplinary Authority

removing the Petitioner from service.

2. The background to the present case is that the Petitioner was appointed as a Bungalow Khalasi in the pay scale of Rs.750-950 to work with Shri N.P. Srivastava, Adviser (Budget), Railway Board initially for a period of three months from 19th June 1996 to 18th September 1996. The working period of the Petitioner was extended first to 30th September 1996 and then till 31st December 1996. It is not in dispute that Petitioner's services were extended even thereafter.

3. In 1998 when Shri N.P. Srivastava was promoted and posted as General Manager, Railway Electrification at Allahabad, the Petitioner was, under his orders, deputed to work in Delhi. The order dated 28th January 1998 issued by the Head Quarters' Office, Central Organisation, Railway Electrification, Allahabad to the APO Railway Electrification, Allahabad reads as under:

“Letter No.G-6/23/Pt.8

Dated: 28.01.1998

APO
RAILWAY ELECTRIFICATION,
ALLAHBAD.

Sub: Regarding payment of Shri Shrikant Prajapati.

In accordance with the orders of the General Manager, Shri Shrikant Prajapati has been deputed to work in Delhi. Arrangements may be made to charge the pay on separate sheet till further orders.

Sd: N.P.Singh
For General Manager (G),
Railway Electrification,
Allahabad.”

4. According to the Petitioner although he was supposed to be working as a Bungalow Khalasi with Shri N.P.Srivastava, by virtue of the above order he was now required to work with his daughter Ms. Teesa Srivastava who was living in a private residence at Vasant Kunj in New Delhi. It is the Petitioner's case that Ms. Teesa Srivastava was living alone and he was required to work as her domestic servant cooking her meals, cleaning her house and utensils and so on. It is alleged that the Petitioner was tortured mentally and physically as he was made to work for 24 hours at the residence of Ms. Teesa Srivastava who on the slightest pretext used to reprimand, abuse and even assault the Petitioner. The Petitioner alleges that Ms. Teesa Srivastava made a false report against him that he was absenting from duty since 8th June 1998. As a result, a letter dated 13th October 1998 was issued by the General Manager Railway Electrification to the Petitioner at his address at District Azam Garh, UP asking him to report for duty failing which the disciplinary enquiry would be initiated against him.

5. The Petitioner states that he appeared on 10th November 1998 and submitted the following letter:

“Shri J.P.Singh
Asstt. Secy. To G.M.
Central Rail Elect. Org.
Allahabad.

Sir,

Sub: Unauthorised absence.

In accordance to your letter No.G6/23/D&R dt. 30.10.98 directing me to report for duty, I beg to report for duty on date.

Kindly allow me to resume duty as I was seriously ill and could not attend my duties early.

Thanking you,

Yours faithfully,

(Sri Kant Prajapaty)
Bungenlow Khalasi.
Under GM/RE.

Dated: 10.11.98”

6. It is stated that notwithstanding the above request, on 11th November 1998 a charge sheet was served upon the Petitioner for his unauthorised absence from 8th June 1998 onwards. The Petitioner in his reply dated 17th November 1998 denied the charges. By a separate letter dated 25th December 1998 the Petitioner requested the Public Relation Officer to allow him to join duty pending enquiry. However, he was not permitted to do so.

7. The case of the Petitioner is that although he had been deputed to work at the residence of Ms. Teesa Srivastava at Vasant Kunj in Delhi, his attendance was being marked and payment was being made by the Chief Liaison Inspector, Railway Electrification, Tilak Bridge, New Delhi. It is stated that some time later it transpired during the inquiry that the muster sheet was forged showing the Petitioner's attendance in the office of the General Manager (Electrification), Railway Electrification at Allahabad.

8. One Shri Mohd. Masroof, working as Assistant Personnel Officer was appointed as an enquiry officer. The Petitioner has submitted a letter dated

24th January 1999 seeking permission to resume duties. He prayed that in the alternative he should at least be placed under suspension. Another letter dated 26th January 1999 was written by his Defence Helper stating that his family was going for a pilgrimage, and that the date of the preliminary enquiry should be adjourned to the first week of March 1999. However, by a letter dated 1st February 1999 the Inquiry Officer declined to do so. This led to another application dated 17th February 1999 by the Petitioner to the Inquiry Officer indicating that no journey pass was made available to the Petitioner for travelling to Allahabad to attend the DAR enquiry. However the facility was made available to his Defence Helper. The Petitioner also pointed out that he had also not been reinstated during the pendency of the enquiry. Consequently, the Inquiry Officer was requested to forward the case of the Petitioner to the competent authority for a decision on whether the Petitioner should be allowed to resume duties. It is stated that on 9th March 1999 the Inquiry Officer rejected the request of the Petitioner and fixed the next date in the inquiry as 22nd March 1999.

9. Aggrieved by the above decision of the Inquiry Officer, the Petitioner on 15th March 1999 wrote to the PRO, Railway Electrification requesting that he should either be allowed to resume duties or be placed under suspension. In reply thereto, on 30th March 1999 the General Manager informed the Petitioner that he should appear before the Secretary to the General Manager, Railway Electrification on 16th April 1999. For a second time on 6th April 1999, the Petitioner wrote to the General Manager, Railway Electrification seeking passes for himself as well as for his Defence Helper to appear before the Inquiry Officer as well as before the Secretary to the

General Manager.

10. By a letter dated 7th May 1999, the Inquiry Officer ('IO') informed the Petitioner that his complaint against the IO had been rejected by the competent authority. He was directed to appear on 20th May 1999 for the preliminary enquiry.

11. The Petitioner's Defence Helper expressed his unwillingness to continue on account of ill-health. Thereafter Shri Mohd. Ismail was nominated by the Petitioner as his Defence Helper. Shri Ismail made an application dated 8th June 1999 requesting for additional documents including copies of the letters dated 23rd June 1998 and 2nd July 1998 and also a copy of the report regarding unauthorized absence along with other documents. After the witnesses were examined by the Inquiry Officer, pursuant to an order, the Petitioner submitted his defence note on 20th December 1999.

12. However nothing was heard from the Respondents thereafter. The Petitioner points out that after he was turned out by Ms. Teesa Srivastava, another Khalasi Smt. Meera Devi working in the Railway Electrification was deputed the work in the residence of Ms. Teesa Srivastava. Smt. Meera Devi also was turned out by Ms. Teesa Srivastava, who reported the matter to her father. The General Manager thereafter passed an order on 4th August 1999 transferring Smt. Meera Devi from Delhi to Ambala. Smt. Meera Devi challenged the said orders by filing OA No. 1771 of 1999 in the CAT. An order was passed by the CAT on 19th August 1999 restraining the transfer of Smt. Meera Devi to Ambala. After notice was served upon Respondent

No.1, the CAT was informed that by an order dated 1st September 1999 the transfer order of Smt. Meera Devi had been cancelled.

13. With the Petitioner having filed his reply in December 1999 and not having been informed of the outcome of the enquiry, he filed OA No. 1738 of 2000 in the CAT on 29th August 2000. During the pendency of the OA, the Respondents passed an order dated 16th March 2001 removing the Petitioner from service. This led to the Petitioner amending the application before the CAT to challenge the said order.

14. The CAT by the impugned order dated 10th February 2003 held that the Petitioner had been posted at the camp office of the General Manager at Delhi from where he had absented himself from 8th June 1998. He was not permitted to rejoin duty after he returned from his illness on the ground that no medical certificate was produced. The CAT noted that the Petitioner did seek permission of the Respondents to rejoin duties. He had submitted medical certificates for the period of October and November 1998. The CAT held that “there is nothing on record to show that the period of absence from June to October 1998 has been regularized in any manner.” Consequently, it was concluded that “the proceedings initiated against the applicant were, therefore, in order and cannot be assailed.” The punishment was also held to be not harsh or disproportionate. The CAT, nevertheless found that the Respondents did not place the Petitioner under suspension at any time between the period when he was found to be absent and 16th March 2001 when he was ultimately removed. Therefore the said period i.e. 8th June 1998 to 16th March 2001 was directed to be regularised in accordance

with law.

15. In conclusion, the CAT in its impugned order observed and directed as under:

“In the circumstances, we are convinced that the respondents’ action in initiating disciplinary proceedings against the applicant for his unauthorized absence from June, 1998 till October, 1998, which culminated in his removal on 16.3.2001. The same is good in law and is, therefore, upheld and OA is dismissed. Side by side, we direct the respondents to pass appropriate orders with regard to the period he was stated to be absent from duty, i.e., from June, 1998 to March, 2001 in accordance with law. This may be done within four months from the date of receipt of a copy of this order is entitled to draw his pay and allowances for the period after his return from duty in October, 1998 till the date of his removal, i.e., 16.3.2001. This amount may be sanctioned and disbursed to the applicant within a period of two months from the date of receipt of a copy of this order.”

16. Despite notice being issued in this petition on 6th February 2004, no counter affidavit was filed on behalf of the Respondents till October 2006. When the case was heard on 4th October 2006, this Court directed a responsible officer from the Respondents to be present on the next date i.e. 31st October 2006 to explain how the Petitioner who had been engaged as a Bungalow Khalasi to work with the General Manager, Railway Electrification at Allahabad was working at Delhi while the General Manager himself was posted at Allahabad. Thereafter, this Court passed the following order:

“An advance copy of the counter affidavit has been handed over to the counsel for the petitioner. Let the same be placed on record.

Let the respondents file an affidavit giving full details and particulars with regard to the camp office at Delhi of the General Manager, Railway Electrification, the location of the said office, whether it was a leased or licenced premises and the staff deployed therein, and the period thereof, whether any expense for utility such as water, electricity etc. were in fact incurred at the camp office. The affidavit be filed within a week. A responsible officer from the respondent side would also be present on the next date of hearing.

List on 31.10.2006.”

17. On 31st October 2006, one Shri Rakesh Chaturvedi, Liason Officer of the Respondents appeared. He informed the Court that the Respondents were reviewing the question of engagement of the Petitioner. Thereafter on 31st October 2006 the following order was passed by this Court:

“Mr. Rakesh Chaturvedi, Liason Officer is present. He seeks further time to file the affidavit in terms of order dated 4.10.2006. He says that the respondents are also reviewing the question of the engagement of the petitioner. Affidavit of the Deputy General Manager be also filed within 15 days from today, failing which the Deputy General Manager (Electrification) would personally be present in Court on the next date.

List on 27.11.2006.”

18. Pursuant to the above order an additional affidavit was filed by the Respondents on 24th November 2006 stating that the camp office of the General Manager, Northern Organisation for Railway Electrification was situated behind Hanuman Mandir, Tilak Bridge, Railway Colony near ITO, New Delhi and that it consisted of 7 rooms with 29 staff deployed therein.

19. On 27th November 2006, this Court was again informed that the Respondents were still examining the feasibility of engaging the Petitioner. The following order was passed by this Court:

“Let the original file relating to the termination of the petitioner be produced in court. In the meanwhile, learned counsel for respondent submits that they are also examining the feasibility of engagement of the petitioner and would be seeking necessary instructions in this regard from the competent authority.

Renotify on 19th January, 2007.”

20. Again on 19th January 2007, learned counsel for the Respondents sought time to take instructions and the case was adjourned.

21. On 18th July 2008, the additional affidavit was filed by the Petitioner detailing all that had transpired till then. This Court was informed that the Petitioner had submitted an appeal to the Appellate Authority on 26th March 2007 against the order of removal from service. However that appeal had been rejected on 11th July 2007 by a non-speaking order. When the case came up for hearing on 7th December 2007 this Court passed the following order:

“Affidavit be filed and placed in the record.

While we are not entirely satisfied with the manner in which the appeal filed by the petitioner has been handled, nevertheless, we permit the petitioner to challenge the order dated 11th July 2007 dismissing the appeal filed by the petitioner before the Central Administrative Tribunal (CAT). If a challenge is made before the CAT against the said order within four weeks from today, the CAT is directed to dispose of the said application not later than three months from date of first hearing. Parties are directed to appear before CAT on 9th January 2008 when the OA challenging the order dated 11th October, 2007 shall be listed.

List on 20th April 2008 before this Court.”

22. Pursuant to the above order, the case was heard by the CAT. By an order dated 3rd March 2008, the CAT remanded the matter to the Appellate Authority to pass a fresh speaking order. Pursuant thereto on 7th July 2008, the Appellate Authority by another non-speaking order reiterated the dismissal of the appeal.

23. Instead of remanding the case to the CAT once again, this Court permitted the Petitioner to amend the writ petition to challenge the order dated 7th July 2008. The order passed by this Court on 29th August 2008 reads as follows:

“The learned counsel for the petitioner states that pursuant to the orders passed by this Court, the CAT by its order dated 14th March, 2008 had remanded the matter

to the Appellate Authority of the Railways to pass a speaking order. By order dated 7th July 2008, the Appellate Authority has dismissed the said matter reiterating the earlier order and according to the petitioner the said order has been passed again without any reasons. The learned counsel for the petitioner seeks leave to challenge the above order directly under Article 226 of the Constitution.

Considering the facts of the case and the tortuous nature of this litigation, we permit the petitioner to do so by amending this writ petition. The petitioner is directed to serve a copy of the amended writ petition on the respondents.

List on 3rd October, 2008.

Copy of the order be given dasti to the learned counsel for the petitioner.”

24. Several adjournments were granted to enable the Respondents to either file a reply or to take a decision. Ultimately, the Court heard the matter finally on 15th January 2010. No reply had been filed to the amended writ petition. Learned counsel for the Respondents stated that he would go ahead with the final arguments on the basis of the existing pleadings.

25. Learned counsel for the Petitioner submitted that the fundamental question was how the Petitioner, who was posted as a Bungalow Khalasi with the General Manager Railway Electrification at Allahabad, could be transferred to Delhi to work at the residence of his daughter while the

General Manager continued to be posted at Allahabad. This had not been answered by the Respondents. The so-called unauthorised absence of the Petitioner at Allahabad was, therefore, on the face of it untenable. It is submitted that the articles of charge make it abundantly clear that the allegation was that while working as Bungalow Khalasi at the General Manager's Bungalow, the Petitioner "has committed misconduct and he is absenting unauthorisedly with effect from 8th June 1998 without any leave or permission...". However the CAT had erroneously accepted the explanation offered by the Respondents that the Petitioner was in fact unauthorisedly absent from the camp office at Delhi. This was a complete change of stand of the Respondents which ought not to have been permitted by the CAT.

26. Secondly, it is submitted that the letters on record available with the Respondents clearly show that he had been requesting for issuance of a railway pass to undertake the journey from Delhi to Allahabad to attend the disciplinary enquiry. This had been wrongly refused, despite the fact that the Petitioner, a railway employee, had not even been placed under suspension during this period. It was not the case of the Respondents that the Petitioner was not in Delhi during this time. Consequently, the Petitioner was denied effective participation in the enquiry. It is submitted that the enquiry was totally unfair and biased and, therefore, the impugned order of removal of the Petitioner stood vitiated.

27. Thirdly, it is submitted that the cross-examination of Shri R.S.Vishwakarma, the principal witness who appeared on behalf of the Railways, revealed that the Respondents were maintaining the Petitioner's

muster roll at Allahabad while he was supposed to be working at the camp office in Delhi. This completely contradicted the case of the Respondents. If indeed he was posted at the camp office in Delhi, he could not be expected to be present at Allahabad.

28. Fourthly, it is submitted that no records were being maintained to show that the Petitioner was posted at the camp office at Delhi. He could, therefore, not prove that he was working at Delhi. This unfair manner of dealing with the Petitioner had led to the passing of a wholly improper order of removal from service. The Appellate Authority had two opportunities to comply with the requirements of the law and pass a speaking order. Yet, it failed to do so. It is submitted that for the aforementioned reasons the impugned order ought to be set aside and the Petitioner shall be reinstated in service with all consequential benefits.

29. As already noticed, the Respondents time and again informed, this Court that they were considering the question of taking the Petitioner back in service. However, despite taking numerous adjournments for this purpose they ultimately decided not to take the Petitioner back in service. Learned counsel for the Respondents, therefore, tried to support the impugned order of removal of the Petitioner by stating that in terms of para 542 of the Railway Establishment Code, the Petitioner was not even entitled to get allowances during the period for which he was found absent from the duty i.e. 8th June 1998 to 16th March 2001. It was denied that the Petitioner had been treated unfairly. It was maintained that the Petitioner did not have the prior permission of the competent authority for his absence. It is submitted

that since the Petitioner was not suspended “the question of paying the subsistence allowance does not arise.” It is stated that the medical certificates produced by the Petitioner showed that he was not fit to resume his duties during October and November 1998. Therefore, he was rightly not permitted to join duty.

30. The Respondents have simply denied the specific averment in para 3(c) that the Petitioner was compelled to work in the residence of Ms. Teesa Srivastava. The case of the Respondents is that the Petitioner was directed to work at the General Manager’s camp office at Tilak Bridge, New Delhi. Again in reply to para 3(i) it is denied that the Petitioner was working at the residence of the daughter of Shri N.P. Srivastava. It is stated that “however the payment was being arranged at Delhi at the oral request of the Petitioner because the Petitioner was temporarily posted at the camp office of the General Manager, Tilak Bridge, New Delhi.”

31. This Court has perused the entire record of the case. It depicts an unhappy state of affairs. It raises serious questions about the manner in which the staff attached to the senior officers of the Railways are being shunted out from one place to the other for their private needs, contrary to the specific job description of such person. The fact that the Petitioner was appointed as a Bungalow Khalasi to work with Shri N.P.Srivastava, the General Manager, Railway Electrification is not denied. The fact that on the orders of the General Manager, a letter dated 28th January 1998 was issued posting the Petitioner to work in Delhi is also not denied. What is significant, however, is that the Respondents are unclear why the Petitioner

was posted at Delhi at the camp office even while the General Manager to whom he was attached was posted at Allahabad. The case of the Respondents that the Petitioner was assigned to the camp office at Delhi appears to have emerged only during the proceedings in the CAT and not earlier. The letter dated 28th January 1998 referred to hereinbefore only shows that the Petitioner “has been deputed to work in Delhi.” It does not talk of a camp office at all.

32. In the memorandum dated 11th November 1998, the specific charge for which an inquiry was conducted was of “unauthorised absence from duty and misconduct.” The allegation was:

“You are absenting un-authorisedly from your duty w.e.f. 8.6.98 without any leave or permission from the competent authority and thus there is a prima-facie evidence of misconduct and you have violated the rule 3 (ii) and (iii) of Railway service conduct Rule-1966.”

33. The statement of article of charge in support of the above allegation reads as under:

“While working as Bungalow Khalasi to GM’s Bungalow he has committed misconduct and he is absenting unauthorisedly from his duty w.e.f.8.6.98 without any leave or permission from the competent authority and thus he has failed to maintain absolute integrity devotion to duty and acted in a manner unbecoming of Rly. servant and thereby contravened Rule 3.1 (ii) & (iii) of Rly. service conduct Rule 1966.”

(emphasis supplied)

34. The evidence led during the enquiry does not support the above case of

the Railways. The only witness cited by the Railways in support of the charges was Shri R.S.Vishwakarma, Superintendent. The replies given by him in his cross-examination completely belie the case of the Respondents.

The questions and answers read as under:

“Q-5. Regarding absence of Shri Prajapati from 8.6.98 who informed you and when?

Ans. The information was given by PRO, everyday i.e.8.6.98.

Q-6. (Showing the attested copy of the Muster sheet to Shri Vishwakarma as well as E.O. for the month of June/96. It is clearly seen that Shri Prajapati was marked ‘P’ on 8.6.98 & 9.6.98 by you but at later stage he was marked ‘A’ with overwriting without putting any initial. How did it happen?

Ans. He was marked ‘P’ in anticipating in the morning as usual but later on the same day it was informed that he was not present.

Q-7. It was your obligatory duty to get the counter signature of the informing authority for making correction in the attendance sheet. But it has not been done, why?

Ans. Normally attendance get countersigned by PRO but in this case it was left inadvertently.

Q-8. Why it could not be got rectified at the time of issuing as letter to Shri Prajapati regarding his absence. I hope the muster sheet must have been consulted/verified at the time of issue of the letter?

Ans. Since original Muster sheet is sent to personnel branch and photocopy of the same is kept for office records, any correction in photocopy was not felt proper at the time of issuing a Memorandum or the letters.

Q-9. When did Prajapati resume his duty at Allahabad on his transfer from NDLS?

Ans. On having been released from NR he resumed duty at CORE on 1.10.97 (F.N.).

Q-10. Would you say with affirmity that the dates on which he had been marked 'P' by you. Shri Prajapati remained at Allahabad?

Ans. Yes.

Q-11. Kindly confirm the availability of Shri Sri Kant at Allahabad on the under noted dated:- 26.11.97, 23.12.97, 23.1.98, 17.2.98, 18.3.98, 19.3.98, 8.4.98 & 27.5.98?

Ans. As per Muster sheet he was available at Allahabad on 26.11.97, 23.12.97 & 23.1.98 thereafter he was deputed to TKJ as intimated to P branch for drawing his pay for payment at TKJ vide letter G-6/23/Pt. VIII dated 28.1.98. So he was at TKJ on the remaining dates."

"Q.19. From the perusal of GM/G's letter No.G-6/23/DAR dated 23.6.98 and 2.7.98 it is seen that Shri Srikant Prajapati was informed about his absence from duty but the address was mentioned as a/Khalasi/GM/CORE/ALD-Can you say to whom the said letters were delivered and at which place.

Ans. I have nothing to say as these letters were not gone through me.

Q.20. Kindly mention the name of the official who has issue these letters?

Ans. The letters were issued by Establishment Clerk Shri I.N.Singh, Hd. Clerk.

Q.21 Shri Srikant Prajapati has been working as B/Khalasi in Bungalow of GM/CORE and he is alleged to have been absenting from duty w.e.f. 8.6.98. From perusal of the pp-1 it appears that the noting for the sake has come on 23.10.98 and put up to the controlling officer since incumbent is attached with the highest authority of the RE Organisation. Why so delay in taking suitable action against the incumbent was made i.e. after more than 4 months?

Ans. Action to be taken was not much delayed as he was already being informed through letters dated 23.6.98 & 2.7.98.

Q.22. In reply to Q.No. 11 you have stated that Shri Srikant was deputed to TKJ vide letter No. G-6/23/Pt. VIII dated 28.1.98. Can you say in what capacity and under whom he was working at TKJ?

Ans. He was working as B/Khalasi at GM's Bungalow where GM's family were residing at Delhi.

Q.23. Whether GM/RE occupied Rly. Bungalow at TKJ after his coming at Allahabad or beyond 28.1.98?

Ans. No.

Q.24. It means Shri Srikant was employed at TKJ in the Private accommodation of GM/RE to reside with his family staying there?

Ans. Yes.

Q. 25 Has Srikant been paid any TA for the period he worked at TKJ?

Ans. No.

Q.26 Can you ascertain whether Srikant was aware of his deputation at TKJ?

Ans. He was deputed to work at TKJ as per PRO's L.No. G-6/23 Pt. VIII dt. 28.1.98 addressed to Dy. CPO/RE. No other records are available whether he was aware of his deputation.

Q.27. Kindly elaborate the duties of B/Peon. As an office Supdt. you are supposed to know the same?

Ans. No duty list has been issued in CORE for B/Peon.

Q.28. When Shri Srikant Prajapati was taken back from TKJ to ALD from his deputation? In support of which the office order may kindly be quoted.

Ans. He was absconding from TKJ Delhi and no order for his coming back to Allahabad was issued till 9.6.98.” (emphasis supplied)

35. It is abundantly clear from the above answers of Shri R.S.Vishwakarma that the Petitioner had been deputed to work at Delhi. The witness refers to the letter dated 28th January 1998 which states that the Petitioner was deputed to work at the Tilak Bridge Junction ('TKJ') Office although that letter itself does not say so. It is plain that while at Delhi, he was supposed to be working at the camp office and not at the General Manager's Bungalow since the General Manager was not occupying any bungalow at TKJ, Delhi after 28th January 1998. The GM was posted to Allahabad after that date. This is evident from the answers to questions 22 and 23. The answer to question 24 is very categorical. He answered in the affirmative that the Petitioner was employed "at TKJ" in the "private accommodation" of the General Manager "to reside with his family staying there."

36. In the reply filed to the present petition, these answers are sought to be explained away in the following manner:

"it is submitted that deposition of Shri Vishwakarma is a part of the enquiry and only in answers to question No. 24 of defence counsel he has replied with the word 'yes' but in this connections the question of the defence counsel may also be looked into which clearly mentions that the residence of General Manager as Tilak Bridge and not at Vasant Kunj for which in the previous several paragraphs the petitioner has leveled charges against the daughter of respondent No.1 so the answer of the witness should be read in context with the question only and should not be employed for a different matter by the petitioner. It is a fact that there is a camp office of General Manager, Railway Electrification at Tilak Bridge. Therefore, the question No.21 of the enquiry

officer is redundant.”

37. The above explanation is a desperate attempt to try and cover up what has emerged during the enquiry. The Respondents in their reply filed in this Court on 31st October 2006 contended that the Petitioner was working at the camp office in Delhi from where he absented himself. That is not the case set up in the disciplinary enquiry. The case set up by the Respondents was that the Petitioner was unauthorisedly absent from his duty “while working as Bungalow Khalasi at General Manager’s Bungalow.” The charge is vague as to the location of the General Manager’s Bungalow referred to above. Significantly, at that point in time the General Manager to whom he was attached was back at Allahabad. Therefore, there was no question of the Petitioner working at the General Manager’s Bungalow in Tilak Bridge on 8th June 1998. The stand of the Respondent before the CAT and in the reply filed in this Court is that the Petitioner was working during the relevant period at the camp office at Tilak Bridge, New Delhi. This is contrary to the case of absenting from the General Manager’s Bungalow, as set up in the disciplinary enquiry. This is a fundamental flaw in the entire case which remains unexplained by the Respondents. In other words, they have simply failed to prove what they have charged the Petitioner with.

38. This Court finds that the CAT is completely misled into accepting the case of the Respondents that the charge was about the Petitioner’s absence from 8th June 1998 from the camp office at Delhi. That was not the charge at all. Once this basic fact was missed by the Tribunal, it fell into further errors in holding that the order of removal was justified.

39. There is further evidence of the unfortunate manner of dealing with the Petitioner. Since Shri Vishwakarma in response to Question No.2 has stated that the letters dated 23rd June 1998 and 2nd July 1998 regarding the Petitioner's absence from duty had been sent to him by Mr. I.N.Singh, Head Clerk (Establishment), the latter was produced in the enquiry proceedings on 19th August 1999. Mr. I.N.Singh was asked to clarify. His reply is quite revealing:

“Ans. These two letters were not prepared by me but the then Secy. Shri B.K.Sharma called me in Chamber and gave the copies thereof to place on file. On being asked by me whether outgoing copy of the letter had gone, he stated that it will go. Thereafter on 30.10.98 I prepared a letter and sent the same to the Home address of Shri Prajapati in reference to which he reported in this office for duty on 10.11.98. Copies of the letter dated 30.10.98 and application of Shri Prajapati dated 10.11.98 are presented herewith. (Marked Annexure I & II).” (emphasis supplied)

40. It is plain to this Court that the above action of inserting two letters into the record was a crude attempt at fabricating the record. These notices were in fact not sent to the Petitioner. It is surprising to this Court that the Respondents should go to such lengths to try and defend a wholly illegal order of removal of the Petitioner.

41. It is surprising further that despite several adjournments taken for the purpose informing this Court that they would reconsider the entire issue, the Respondents have not taken any corrective action. If any senior officer of the Railways, particularly the Appellate Authority, had perused the record in the

manner as this Court has, it would have become immediately clear that the Petitioner has been subject to gross injustice. Yet, despite the case being remanded to the Appellate Authority for reconsideration and for passing a reasoned order, the Appellate Authority did not do so. On 7th July 2008 the following non-speaking order was passed dismissing the Petitioner's appeal:

“Considering the enquiry report, and other documents available on the record, I observe that there is no merit in your case. I uphold the decision taken by Disciplinary Authority. Thus your appeal for setting aside decision of removal from service and re-instating you in service is hereby dismissed and rejected.”

42. There are other factors that bring out the high handedness of the Respondents in the manner in which they have dealt with the Petitioner. The Petitioner kept writing to them time and again protesting the charges and asking them for permission to report for duty. He wrote a letter on 10th November 1998 producing medical certificates. Interestingly, this fact is not denied by the Respondents. What is stated however is that the medical certificates show that the Petitioner was seriously ill during the months of October and November 1998 which position is apparently accepted by the Respondents. This then offers some credible reason for his absence. Nevertheless instead of permitting him to join duty thereafter, they served him with a charge sheet. There is absolutely no explanation offered for this unfair manner of treating the Petitioner. Interestingly, simultaneous with the initiation of the disciplinary enquiry, the Petitioner was not placed under suspension. Consequently, he was not paid any subsistence allowance. Why this course, which was obviously unfair to the Petitioner, was adopted

is also not explained by the Respondents. The repeated requests of the Petitioner that he should be issued railway passes to attend enquiry at Allahabad was declined. The explanation given by the Respondents for not complying even with the order of the CAT to pay the Petitioner the salary and allowances till the date of his removal by referring to Rule 542 of the Railway Establishment Code is also untenable.

43. Viewed from any angle, therefore, the impugned order dated 16th March 2001 removing the Petitioner from service is unsustainable in law and is hereby set aside. The order dated 10th February 2003 passed by the CAT affirming the said order of removal and the subsequent order dated 7th July 2008 passed by the Appellate Authority are also hereby set aside. The Petitioner will be reinstated in service with all consequential benefits as if there was no break in service from the date of his removal. Further, the Petitioner will be entitled to all pay and allowances and all consequential benefits from 8th June 1998 onwards. The arrears of salary should be paid to the Petitioner within a period of 8 weeks from today. All consequential orders should also be passed within the same period.

44. The petition is accordingly allowed with costs of Rs.30,000/- which will be paid to the Petitioner by the Respondents within a period of four weeks.

S. MURALIDHAR, J

RAJIV SAHAI ENDLAW, J

**MARCH 19, 2010
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