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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12033/2015 & CM.APPL 31917-31918/2015**

Date of Judgment: 21st December, 2015

UNION OF INDIA AND ORS.

.....Petitioners

Through: Mr. V.S.R. Krishna, Advocate

versus

SMT. REKHA AND ORS.

..... Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. The Present writ petition has been filed by the petitioners under Article 226 and 227 of the Constitution of India to set aside the order dated 14.07.2015 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal'), Principal Bench, New Delhi in O.A. No. 1005/2012, whereby the Tribunal allowed the aforesaid O.A. filed by the Respondents herein.
2. The brief facts of the case are that Shri Pramod Kumar who is the husband of respondent No. 1 Smt. Rekha, was working as Safaiwala in the Central Hospital, Northern Railway, New Delhi. According to the respondents, he was critically ill between 31.07.1996 to 21.06.1998 and was suffering from Hepatitis. Shri Pramod Kumar reported for duty on 22.06.1998 and submitted an application along with the copies of medical certificate issued by a private doctor. He was allowed to join his duty on 17.07.1998. Thereafter, vide memorandum dated 08.09.1998, Shri Pramod Kumar was proceeded under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, served for the

following statement of Article of charge against him:

“The said Sh. Parmod Kumar while working as Safaiwala N.Rly Central Hospital/NDLS has absented himself from duty w.e.f. 31.07.96 to 20.07.98 unauthorizedly.

By the above act of commission and omission Sh. Parmod Kumar, Safaiwala failed to maintain absolute devotion to duty and acted as in a manner unbecoming of a Railway Servant thereby contravened Rule 3 (ii) and (iii) of Railway Servant Conduct Rule, 1966.”

3. The Enquiry Officer proceeded ex-parte against Shri Pramod Kumar and found that he remained on an unauthorized absence from duty w.e.f. 31.07.1996 to 20.07.1998, without submitting any leave application. In this regard Shri Pramod Kumar made a representation dated 22.01.1999 to the disciplinary authority however; the petitioners imposed upon him punishment of dismissal from service.
4. Being aggrieved by the order dated 25.01.1999 passed by the disciplinary authority, Shri Pramod Kumar filed an appeal on 15.03.1999 wherein the Appellate Authority upheld the view taken by the disciplinary authority. However, due to the untimely death of Shri Pramod Kumar no revision petition could be filed. A representation by the respondent no. 1 was made to the Chief Medical Director on which no action was taken. Thereafter, O.A. No. 1413/2006 was filed by the respondents herein which was disposed of on 29.09.2006 with a direction to the Chief Medical Director to dispose of the revision petition dated 12.03.2004 within 3 months from the date, copy of this order along with the copy of the revision petition is received. On the aforesaid direction of the Tribunal the Chief Medical Director dismissed the revision petition vide order dated 13.12.2006 on the ground of non maintainability.

5. Aggrieved by the aforementioned order of the Chief Medical Director, respondent No. 1 filed an O.A. No. 2660/2006, in which the Tribunal vide order dated 11.10.2007 held that Shri Pramod Kumar had completed 10 years of service before his untimely death on 19.08.2001 and thus his legal heirs and more particularly the wife was legally entitled to the retrial benefits and further directed the petitioners to calculate all the benefits and to pay the legal heirs within a period of two months. The petitioners challenged the aforesaid order of the Tribunal before this court vide W.P. (C) No. 2551/2008, wherein this Court set aside order dated 13.12.2006 passed by the Chief Medical Director and modified the order of the Tribunal and directed the Revisional Authority to decide the revision petition filed by the respondents on merits.
6. Pursuant to the aforesaid direction of this court, the Revisional Authority vide its order dated 18.01.2011 upheld the findings of the Enquiry Officer in the light of the instructions contained in Para 537 of the Indian Railway Medical Manual (Second Edition), 1981. Thereafter respondents filed an O.A. No. 1005/2012, before the Tribunal which was allowed.
7. Mr. V.S.R. Krishna, learned counsel appearing on behalf of the petitioners submits that the order passed by the Tribunal is unjust, illegal, and arbitrary and is based upon the assumption and presumptions.
8. The counsel further submits that the Tribunal had quashed and set-aside the charge sheet dated 08.09.1999 in a mechanical way, when such relief was not even prayed for by the respondents. The counsel further argued that the Tribunal has reversed the order of Revisional Authorities dated 13.12.2006 without interfering with the order dated 18.11.2011.

9. The counsel for the petitioners further urged that the Tribunal has erred in pointing out loopholes drawn in the inquiry proceedings and has relied on the sole ground that the Enquiry Officer as well as the appellate authorities have faulted in following the proper procedure while framing the charges against Shri Pramod Kumar. The Counsel further submitted that the period of absence of Shri Pramod Kumar from service is a matter of record and the Tribunal has misdirected itself in quashing the charge memorandum.
10. We have heard the learned counsel for the petitioners and have also carefully perused the impugned order dated 14.07.2015 passed by the Tribunal.
11. Before examining the submissions made by the counsel for the petitioners it would be relevant to examine the Railway Board Circular No. E (D&A) 69 RG/6-20 dated 18.06.1989 passed by the petitioners in furtherance of Rule 9(23) of the Railway Servants (Discipline and Appeal) Rules, 1968 which prescribes the procedure to be followed in case of ex-parte enquiry. The relevant part of the instructions are as under:

“(a) The articles of charges must be delivered to the delinquent,

(b) He should either

(i) not submit his defence, or

(ii) otherwise fail or refuse to comply with the provision of Rule 9. Thus when a charge memorandum was sent per Registered Post but came back undelivered and was later not pasted at the working place, the memorandum was taken as not served, and ex-parte was not justified.

How to hold ex-parte inquiry-

For holding an ex-parte inquiry the Articles of charges must be properly served on the Railway employee either in person, or as per registered post, or by pasting at the working place, as the case may be. If the employee does not give the defence despite being served with the memorandum of

charges; or after having given the defence, does not turn up, or having turned up, does not sit in the inquiry then the ex-parte inquiry can be held. An ex-parte enquiry demands all the formalities of the normal enquiry e.g. (a) the inquiry officer must be appointed unless the disciplinary authority may decide to inquire himself; (b) he must fix the date and place of inquiry; (c) he must hold the inquiry and call all the witnesses and documents as cited in the memorandum of charges; (d) get the documents duly proved and record the evidence of witnesses so as to prove the charge; (e) where the delinquent had not turned up in the inquiry and adjournment has been given with a view to hold ex-parte inquiry, if he does not turn up on the next occasion, then notice of intention to hold ex-parte enquiry should be given; (f) findings of inquiry must be duly drawn.”

12. The Apex Court in its various decisions has taken the view that departmental enquiry cannot be conducted in a vague fashion and procedure laid down in the Service Rules need to be followed with utmost faith and care keeping the Principles of Natural Justice in mind. In ***State of U.P. Vs. Saroj Kumar Sinha 2010 (2) SCC 772*** wherein the Hon’ble Supreme Court explained the importance of Principles of Natural Justice in Departmental Enquiries. The relevant part of the judgment is as under:

“28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

13. It is settled Law that the Courts and the Tribunals can interfere with the decision of the disciplinary authority only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. Reference can be made to the decision of this Court in the case of **V. Ramana v. A.P.S.R.T.C. and Ors. (2005) III LJ 725 SC**, wherein it is stated:

“The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course, if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

14. Moreover, the counsel for the petitioners has relied on para 537 of the Indian Railway Medical Manual (Second Edition), 1981. The relevant part is as under:

“The competent authority may, at its discretion, accept the certificate or, in cases where it has reason to suspect the bonafides, refer the case to the Divl. Medical Officer for advice or investigation. The medical certificates from registered private

practitioners produced by Rly. Employees in support of their applications for leave may be rejected by the competent authority only after a Rly. Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications. However, where the Railway Medical officer could not be deputed for such verifications, the certificate from the registered medical practitioner may be accepted straightway.”

After perusing the above Manual, we find that the petitioners have failed to implement the aforementioned provisions in respect to sickness certificate. Hence, it amounts to admission on their part.

15. Having regard to the law laid down by Hon'ble Supreme Court of India and after considering the facts and circumstances of the present case and taking into account the contentions of the petitioners we are of the considered view that the main allegation against Shri Pramod Kumar is absence from duty from 31.07.1996 to 20.07.1998, for which no prior permission was obtained from the competent authority. In his reply, the respondent has taken the plea that he was seriously ill between 31.07.1996 to 21.06.1998, which was beyond his control; he never intended to contravene any of the provisions of the service Regulations. He submitted copies of medical certificates issued by Doctors in support of his claim after rejoining the post i.e. on 22.06.1998. The Inquiry Officer in his report did not mention that Shri Pramod Kumar's absence from duty was willful and deliberate. Every unauthorized absence from duty cannot be held to be misconduct. Therefore, while coming to a conclusion the disciplinary authorities should have considered whether the absence was willful or was due to circumstances beyond the control of the person. It is neither case of the Disciplinary Authority nor the Inquiry Officer that the medical reports submitted by Shri Pramod Kumar were forged or fabricated or obtained

for any consideration. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason. Moreover, the Appellate Authority while reviewing the matter has acted in an arbitrary manner as it never ensured whether the rules and procedure laid down in the Railway Board Circular No. E(D&A) 69 RG/6-20 dated 18.06.1989 were applied by the enquiry officer while passing ex-parte orders.

16. In view of the above, we find no grounds to interfere in the order impugned before us. There is no illegality or infirmity in the impugned order, Writ petition is accordingly dismissed. No order as to cost.

CM.APPL. Nos. 31917-31918/2015

17. Applications stand dismissed in view of the order passed in the writ petition.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 21, 2015

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