

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) 4835/2015**

% **Date of Decision: 26th February, 2016**

RAM KUMAR **...Petitioner**
Through : Mr.Amit Kumar, Advocate

Versus

UNION OF INDIA & ORS **...Respondents**
Through :

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

1. Ram Kumar by this petition impugns order dated 30th July, 2014 passed by the Central Administrative Tribunal, Principal Bench, Delhi ['Tribunal', for short], whereby OA.No. 2810/2011 of the petitioner was dismissed on several grounds.
2. The petitioner was appointed as a gangman in the North Central Railway on 22nd October, 1980. On 3rd July, 2003, he went on leave for two days, but did not return to join duty thereafter.
3. The absenteeism came to the notice of the respondents on verification of Standard Form No. 5 dated 11th October, 2003.

4. On 16th September, 2004, the petitioner was served with the show cause notice and proceedings were initiated against him under the Railway Servants (Discipline and Appeal) Rules, 1968. The memo of charge dated 11th October, 2003 was served on the petitioner under acknowledgement. This fact is not disputed. As per the respondents, the petitioner did not appear and *ex parte* enquiry was held and report submitted. By letter dated 16th September, 2004, a copy of the enquiry report was sent to the petitioner affording him an opportunity and right to submit his representation. Receipt of the report and letter dated 16th September, 2004 is accepted. As per the respondents, no reply or representation was received for a period of nearly two months. The Assistant Divisional Engineer, Dholpur, as the disciplinary authority by order dated 9th December, 2004 imposed penalty of removal from service. This order was communicated to the petitioner on 20th December, 2004.
5. It is the case of the petitioner that he had responded and submitted a reply dated 14th October, 2004 to the enquiry report and along with the said reply had enclosed UPC receipts and communications, which he claimed were written by him seeking leave. As per the respondents,

neither letter dated 14th October, 2004 nor any application or letters seeking leave had been received by them. The UPC receipts, we observe and hold, are rather debatable. The medical certificates of the wife relied by the petitioner were issued by private doctors in Agra and Aligarh and are dated 30th September, 2004, 5th October, 2004 and relate to subsequent visits on 10th December, 2004 and 11th February, 2005. There is also a certificate of a doctor at Aligarh that the petitioner's wife was under her treatment for vertigo from 5th October, 2004 till the date of the said certificate, i.e., 2nd March, 2005. These certificates do not pertain to the period July, 2003 to August, 2004.

6. The petitioner claims that he had filed an appeal challenging the order of removal from service passed by the disciplinary authority dated 9th December, 2004. The purported appeal was filed after about four months and was addressed to the Senior Divisional Engineer in form of a letter of request dated 3rd March, 2005 seeking indulgence on humanitarian grounds and that he would be careful and would not indulge in any such practice in future. A reading of the aforesaid letter dated 3rd March, 2005 would reflect that it was in the nature of a mercy petition, rather than a statutory appeal on merits. This letter, as

per the petitioner, was followed by another letter dated 15th June, 2005.

7. The petitioner thereafter did not follow up and get in touch with the said officer or make enquiries about disposal of the said appeal. After awaiting for about four years, petitioner's wife filed an application under the Right to Information Act. This was followed by two more applications on 27th /28th July, 2009 and 5th April, 2010. We are rather surprised and find it strange that the appeal had remained pending for over four years. Disposal should not have taken so much time. At the same time, we would record our hesitation and it does appear that the petitioner himself had remained passive. He did not follow up. Indicative that he had lost interest. The appeal was dismissed and the order of penalty of removal from service was upheld by the appellate vide order dated 21st April, 2010. The petitioner claims that he was intimated and had received the papers on 13th July, 2010 only, though his wife had received the appellate order on 22nd April, 2010. After awaiting for more than a year, the petitioner filed the Original Application before the Tribunal on 29th July, 2011.

8. Impugned order of the Tribunal records that the petitioner's Original Application was dismissed in default on 2nd May, 2012. After nearly two years, an application of restoration was filed on 4th March, 2014 and the same was allowed, subject to payment of cost of Rs.1,000/-. It is pertinent to mention that the petitioner did not avail of his right to challenge the order of the appellate authority by way of revision as provided by the statute, i.e., Railway Servants (Discipline and Appeal) Rules, 1968. The petitioner had directly approached the Tribunal without availing the said remedy.
9. Looking from all angles, we find that the writ petition has no merit and there is no reason and ground to interfere with the impugned order dated 30th July, 2014 passed by the Tribunal dismissing OA No. 2810/2011. No order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

February 26, 2016
Ssn/VKR