

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No.680 of 2016

Mahru Oraon Petitioner

Versus

1. Union of India through, Manager, South Eastern Railway, Kolkata
2. Divisional Railway Manager, South Eastern Railway, Ranchi
3. Sr. Divisional Personnel Officer, South Eastern Railway, Ranchi
4. Sr. Divisional Engineer, South Eastern Railway, Ranchi
5. Additional Divisional Railway Manager, South Eastern Railway, Ranchi
6. Assistant Engineer, South Eastern Railway, Ranchi

.. Respondents

CORAM : HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE B.B.MANGALMURTI

For the Petitioner : Mr. Md. Ashrafuzzaman Khan, Advocate

For the Respondents : Mr. Mahesh Tewari, Advocate
 Mr. Abhishek Kr. Dubey, Advocate
 Mr. Subrat Kr. Singh, Advocate

07/26.07.2017 Heard counsel for the parties.

2. The writ petitioner was removed from service on the charges of unauthorized absence for nine years from 5th June, 1993 in a departmental proceeding initiated vide charge-sheet dated 21st June, 2002. He had joined the Railway service as a Trackman on 5th November, 1990 and started absents intermittently from 05th July, 1991. The employee/writ-petitioner attended the inquiry and also stated that his mental condition is not well. He was served with the inquiry-report and asked to submit his reply which he did on 11th July, 2003. On being dissatisfied with his reply and on the basis of the finding arrived at in the inquiry-report, the punishment of removal from service was imposed upon him by the respondent-Railways vide order dated 16th July, 2003 (Annexure-4). Petitioner preferred an appeal on 3rd March, 2013 after almost ten years before the Senior Divisional Engineer (Construction), South Eastern Railway, Ranchi and also sought condonation of delay in filing appeal vide Annexure-5 series respectively. The memo of his appeal shows admission of absence from 5th June, 1993 reportedly on the grounds of mental illness. He contended that this fact was intimated to the Controlling Authority by the members of his family that he underwent treatment under Neuro Surgeon, Dr. C.B. Sinha, treatment papers were also enclosed. Before he could regain coherent reasoning, he was charge-sheeted for unauthorized absence on 21st June, 2002. He pleaded that though he could not fully understand the implications, he filed a reply

drafted by the well wishers on 11th July, 2003. He accepts that he did not sufficiently answer the allegation and the charges. However, the order of punishment was imposed by the disciplinary authority, Assistant Engineer, South Eastern Railway, Ranchi on 16th July, 2003. According to him he was under prolonged medical treatment even thereafter and only after regaining health has preferred the appeal. He accordingly sought fair and proper inquiry in the charges.

3. The Appellate Authority did not find sufficient grounds in preferring the appeal after such a long period, though, the prescribed time limit is 45 days as per Rule 20 of the Railway Service (Discipline & Appeal) Rules. The Appellate Authority also took note of the fact that in cases of absence, information is to be given to the higher authority within 48 hours as per Railway Medical Manual. His contention that information was given by family members within stipulated time was also found to be absolutely incorrect. No such papers were available in the official records nor presented during inquiry proceedings. The Appellate Authority also recorded that sufficient opportunity was given to him in the inquiry and that he had expressed his unwillingness to continue in Railways service as per his statement recorded during inquiry proceeding on 22nd March, 2003. The appeal was accordingly dismissed by the Senior Divisional Engineer, South Eastern Railway, Ranchi vide order dated 1st July, 2014 (Annexure-6).

4. Petitioner also preferred a revision before the Revisional Authority-cum-Additional Divisional Railway Manager, South Eastern Railway, Ranchi vide Annexure-7 dated 19th August, 2014. By the order dated 25th November, 2014 (Annexure 7/A), the revision petition has also been rejected. The Revisional Authority has found the employee guilty of the charges and upheld the punishment. Unauthorized absentism of nine years have been found to be established.

5. These material facts were pleaded before the learned Central Administrative Tribunal, Circuit Bench, Ranchi in O.A. No.051/000264/14 preferred by the applicant/writ-petitioner impugning the orders of removal dated 16th July, 2003/the appellate order dated 1st July, 2014 and the revisional order dated 25th November, 2014. The learned Tribunal has upon consideration of the entire gamut of facts and the plea of the petitioner not found any infirmity in the departmental proceeding. It has also observed that the story of nine years absence due to mental illness is unbelievable on the basis of the applicant's own

case. In such circumstances, the punishment of removal from service was appropriate. The learned Tribunal has also taken note of the delay of ten years in preferring the appeal without any cogent explanation.

6. The writ-petitioner being aggrieved by the order passed by the learned CAT has in the instant writ petition again raised the same grounds. Learned counsel for the writ-petitioner has also harped upon the mental illness of the writ-petitioner for the periods in question which led to his unauthorized absence and delay in filing the appeal. Upon perusal of the records and the stand taken by the petitioner and the respondents as well, we do not find any error in the finding of the learned Tribunal on questions of fact or law where interference can be made.

7. Unauthorized absence for nine long years without any justifiable explanation and delay in moving the appellate forum after ten years, itself goes to show that the employee was not diligent in serving the respondent-employer. There are no documents on record either to show that he regained fitness after the treatment for his mental illness. In the totality of the facts and circumstances, therefore there are no grounds to interfere in the matter.

8. The writ petition is accordingly dismissed.

(Aparesh Kumar Singh, J.)

(B.B.Mangalmurti, J.)