

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

+ **Date of Decision: 12th July, 2017**

% **W.P.(C.) No.6851/2015 & CM No.12544/2015**

GENERAL MANAGER, NORTHERN RAILWAY
& ORS. Petitioner

Through: Mr.Satpal Singh, Advocate

Versus

ASHOK KUMARRespondent

Through: Ms.Meenu Mainee, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The Union of India has preferred the present petition assailing the order dated 1st October, 2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2369/2013. The said original application preferred by the respondent, has been allowed by the Tribunal and the Tribunal had quashed and set aside the Enquiry Report dated 23rd March, 2000; the order of the Disciplinary Authority dated 6th August, 2010; the order of the Appellate Authority dated 21st May, 2011 and the order of the Revisional Authority dated 1st August,

2011. The Tribunal has directed reinstatement of the respondent in service with all consequential benefits.

2. The respondent while working as Safaiwala with the Northern Railways, remained on unauthorised absence between the period from 10th July, 2007 to 29th September, 2007. He was issued a memorandum dated 4th January, 2008 under Rule 9 of the Railway Servants/Discipline and Appeal) Rules, 1968. The petitioner proposed to hold major disciplinary inquiry against the respondent-applicant. The attendance register in relation to the respondent was sought to be relied upon in the inquiry proceedings. Apart from examining his leave account, the Respondent employee was examined by the inquiry officer on 3rd January, 2008. On the said date, the respondent appeared before the inquiry officer. The inquiry officer put several questions to the respondent and recorded his response thereto. The queries put to the respondent and the response given by him are reproduced as under:-

“Q.No.1. Have you received SF-V?

Ans.: Yes, I have received SF-V.

Q.No.2 Have you understood all the charges leveled against you carefully.

Ans: Yes, I have understood the charges levelled against me.

Q.No.3 Do you want to engage some defence helper?

Ans: No, I do not want any defence helper. I will defend myself.

Q.No.4 In your charge sheet SF-V it is mentioned that you were absent without any information from 10-7-2007 to 27-9-2007.

Ans: Yes, I had been absent during this period.

Q.No.5 Why were you absent from 10-7-2007 to 29-9-2007?

Ans: My wife was seriously ill and therefore, I could not attend to my duties being extremely busy in her treatment.

Q.No.6 What was wrong with your wife, can you produce relevant documents?

Ans: My wife was mentally disturbed for whose treatment I had to take her to OJHA for treatment.

Q.No.7 Did you inform your department by any means, post, telegram or any other manner?

Ans: I am illiterate and I had no knowledge about this.

Q.No.8. Do you agree that you were absent from 10-7-2007 to 27-9-2007 in an unauthorized manner?

Ans: Yes, I had been absent during this period.

Q.No.9 Do you need any further inquiry?

Ans: No, I do not want any further inquiry because I was absent from duty from 10-7-2007 to 17-9-2007.

This inquiry officer had asked all the questions in a simple language and has never misbehaved with me and I am fully satisfied with the inquiry and I do not want any further inquiry

Sd/-

Ashok
CO

Sd/-

EO”

3. From the above, it would be seen that the respondent acknowledged receipt of the memorandum and understood the charges levelled against him. He also declined to engage defence helper. In respect of the charge of unauthorised absence between 1-7-2007 to 29-9-2007, the respondent admitted to the same. His explanation to the said absence was that his wife was seriously ill and, therefore, he could not perform his duties as he was extremely busy in her treatment. He was also asked as to what was wrong with his wife and

whether he could produce the relevant documents to which he responded that she was mentally disturbed for which she was taking treatment at Ojha. In response to the query whether he had informed the department about his absence due to illness of his wife, his replies show he stated that he did not do so. He agreed to his unauthorised absence during the aforesaid period and also stated that he did not want any further inquiry since he was absent during the aforesaid period. The enquiry officer recorded that the questions had been put to the respondent in simple language. We may observe that in respect of the aforesaid proceedings, no dispute was raised by the respondent.

4. The inquiry officer, accordingly, submitted his report dated 23rd March, 2009. In his report, he recorded that the respondent had accepted the charges levelled against him in the charge-sheet. The statement of the respondent in writing also formed part of the inquiry proceedings. Consequently, the inquiry officer held that since the employee had admitted his fault in his defence, a detailed inquiry was not obligatory in the present case. The disciplinary authority, therefore, proceeded to impose the penalty of removal of the respondent from service vide order dated 6th August, 2010. As noticed above, the further endeavours of the respondent to challenge the penalty order also failed. Consequently, he preferred the aforesaid original application. The Tribunal found that the petitioner did not conduct the departmental enquiry by following the rules and instructions and consequently, quashed the proceedings.

5. We have heard learned counsel for the parties on the aforesaid aspect and also perused the record. We cannot agree with the conclusion drawn by the Tribunal that the inquiry conducted by the inquiry officer in the aforesaid circumstances, was unfair and illegal. Once the respondent had appeared himself in the inquiry proceedings and recorded his own statement admitting the charge that he was unauthorisedly absent during the period aforesaid; and further admitted that he had no evidence to lead to justify his absence and that he did not want any further inquiry. There was no purpose of holding any further inquiry just to create record by resorting to paper work. The purpose of holding a departmental enquiry is to conclude whether or not the guilt of the delinquent employee is established. In our view, the procedure prescribed for holding the departmental enquiry is structured to ensure compliance of the principles of natural justice and to ensure that adequate opportunity is available to the delinquent at every stage. In a case like the present, where the respondent delinquent had himself appeared from first date before the inquiry officer and admitted his guilt and also stated that he did not want any further enquiry to be held, no useful purpose could have been served by merely going through the process of calling for witnesses and recording evidence. Thus, the findings returned by the Tribunal with regard to the legality of the inquiry proceedings, cannot be sustained and impugned order to that extent deserves to be set aside.

6. However, another aspect that requires consideration is whether the misconduct alleged to have been was so serious as to warrant removal from service. The respondent was serving as a class IV employee i.e. safaiwala since 1988 and had rendered 22 years of service and in the enquiry itself, he had given a justification for his absence. In these circumstances, in our view, the punishment of removal from service inflicted upon the respondent was shockingly disproportionate to his misconduct. Learned counsel for the petitioners has submitted that this was not the first instance when the respondent had remained unauthorisedly absent and that there were several other instances of unauthorised absence of the respondent. However, the charge sheet did not invoke the misconduct of past unauthorised absence of the respondent. That not having been done, the past unauthorised absence of the respondent from service could not have been taken into consideration while subjecting him to penalty. Though the respondent could not substantiate his justification offered by him for his unauthorised absence, we cannot lose sight of the fact that the respondent is a class IV employee i.e. Safaiwala and as per his own statement, he was getting his wife treated by an Ojha i.e. a tantric. In these circumstances, there possibly could not have been any documentary evidence with relation to her treatment even if such treatment was actually being taken.

7. In view of the aforesaid, while setting aside the impugned order passed by the Tribunal in the facts of the present case, we

are inclined to modify the punishment imposed upon the respondent. This course appeals to us keeping in view that the respondent is a lowly paid class IV employee who has been out of service since 2010. We are conscious of the fact that the matter could be remanded to the disciplinary authority to impose a fresh penalty but if we remand the case back to the petitioners to reconsider the aspect of penalty at this stage, the same would further delay the matter and may lead to further litigation which would cause grave hardship to a class IV employee. In view of the facts and circumstances of the present case, we substitute the penalty of removal upon the respondent in the following manner:-

- (i) The respondent shall be forthwith reinstated in service.
- (ii) The period of unauthorised absence of the respondent from 10th July, 2007 to 29th September, 2007 shall be treated as dies non for all purposes i.e. he shall not be entitled to any salary or allowances for the said period and that the said period shall not be counted towards computation of length of service of the respondent.
- (iii) Since the respondent has not rendered any service from the date of his removal from service i.e. 6th August, 2010, he shall not be entitled to any pay and allowance from 6th August, 2010 till the date of his reinstatement. However, the said period shall count towards the length of his service and notional fixation of pay shall also be accordingly accorded to the respondent.

(iv) The penalty of removal of service is substituted with reduction to a lower stage in the time scale of pay for two years with further direction that he will not earn increment of pay during such reduction and on expiry of the said period, the reduction will have the effect of postponing the future aspect of his pay scale. In our view, the aforesaid would be adequate to meet the ends of justice.

8. The writ petition is disposed of in the above terms. In view of the writ petition having been disposed of, CM No.12544/2015 does not survive for adjudication and is dismissed as such.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

JULY 12, 2017/aa