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

+ **W.P.(C) 9130/2017**

JAWAHAR LAL UPADHYAY

..... Petitioner

Through: Mr. H.K. Chakravorti, Advocate

versus

UNION OF INDIA & ANR

..... Respondent

Through: Mr. J.K. Singh, Standing Counsel
with Mrs. Madhulika Agarwal and
Mr. Harsh Pandit, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

19.11.2018

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1. The petitioner has preferred the present writ petition to assail the order dated 14.03.2016 passed by Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) in O.A. No.1417/2012, whereby his O.A. has been dismissed by the tribunal. The case of the petitioner is that the he joined the Delhi Division of Northern Railways as Junior Clerk on 04.10.1982 and he was posted in the workshop at Tuglakhabad, Delhi. He claims that in February 1984 he fell ill. He claims that information about his illness was conveyed to his office. However, the respondent treated his absence as unauthorised leave. He claims that on his way to office on 03.04.1984 he fell down from the train and became unconscious and went into coma. He has a long story to tell. He states that he was unconscious

and that he was carried by some people, who got him treated till such time he recovered and could identify himself. He claims that his wife was unaware about his whereabouts and she even lodged a missing report at police station Hariparwat on 05.04.1984 under intimation to the DRM, Northern Railways, New Delhi. She continued to write to the railways about his going missing.

2. The petitioner claims that the aforesaid circumstances were not taken into account while passing the order dated 16/19.08.1984 treating the period from 22.02.1984 to 06.07.1984 as unauthorised absence. Under Rule 723 of the Railways Establishment Manual, he was deemed to have resigned from service. The period of absence was treated as leave without pay.

3. The case of the petitioner is that he was traced in an unsound state of mind on 30.03.1987 from village Dehat, near Gwalior Lakshar town and his wife took him to his native place in Agra and got him treated by one Dr K.C. Dubey, Consulting Neuro Psychiatrist and at Human Behaviour Disorder Centre, Agra. She sent information about the petitioner being located on 05.03.1987. The petitioner claims that he remained under treatment from March 1987 to February 2009 – a period of twenty two years, during which period several communications were sent to the respondent about his condition. The petitioner claims that he was declared medically fit vide certificate dated 11.04.2009. When he reported for duty, he was not allowed to join his duties.

4. The respondent after gathering some information issued the second impugned communication dated 18.10.2010 informing that he was no more required by the respondents.

5. The submission of the petitioner was that he was not a temporary railway servant and consequently, Rule 723 of the Railways Establishment Manual was not attracted to him. The tribunal has, however, rejected the O.A. while observing as follows:

“5. Learned counsel for the applicant argued that in this case no notice was issued and no enquiry was held against the applicant. Thus, there was complete violation of principles of natural justice. Per contra, learned counsel for the respondents argued that the applicant had been deemed to have resigned under Para-732 quoted above and there was no requirement of issuing a notice or conducting an enquiry under this provision. We agree with the learned counsel for the respondents. The applicant has not been dismissed or removed under disciplinary proceedings. This para provides for deeming an employee to have resigned from service if he remains absent for a long period even exceeding the period for which he could have been granted EOL. This was not a punishment order. It was an order by which factum of applicant’s deemed resignation was taken note of and his links with employer were severed. We, therefore, agree with the respondents that there was no requirement of issue of notice or conducting an enquiry in accordance with principles of natural justice in this case. In fact, it is clear from the Railway Board Circular dated 23.03.1985 by which this provision was repealed from the Code that for this very reason the Railway themselves had found this provision to be draconian and had, therefore, removed it from the Code. Nevertheless, it cannot be denied that on 06.07.1984, this provision was in existence and, therefore, could have been used by the competent authority against the applicant. It is also noteworthy that applicant has not challenged the vires of this provision. He was only disputing its existence.

6. Learned counsel for the applicant further submitted that even if it is presumed that this Rule was in existence on 06.07.1984, it could not have been applied in this case as the leave of the applicant was not unauthorized. In this regard, we

have considered the facts of the case. As per applicant's own admission, he had fallen ill in February, 1984 and had sent an intimation to the department. Thereafter, on 03.04.1984, he fell down from a train and become unconscious and went into coma. His wife lodged a missing report at Police Station in Agra on 05.04.1984 with a copy to DRM. This report is available at page-14 of the paper-book. The report addressed to the Police Station says that the applicant was missing since 03.04.1984 and requests the police to trace his whereabouts. In this report, there is no mention of applicant meeting with an accident. Another report has been lodged by the applicant's wife on 03.11.1984 and a copy of the same is available on page-15 of the paper-book. There is no record of this communication being endorsed to the Railways. Thus, till 06.07.1984 as far as respondents were concerned, the only intimation available to them was that the applicant who had left his house for duty on 03.04.1984 has been missing since then and even his family was unaware of his whereabouts. By applicant's own admission, no leave application had been submitted. Thus, the respondents rightly treated this absence to be unauthorized and they cannot be faulted for coming to the conclusion that it was a fit case for use of Para-732 against the applicant. The past conduct of the applicant, which has been brought out in Para-3 under the caption preliminary objections in the counter of the respondents wherein it has been stated that even in the past the applicant had remained absent during several periods would have no doubt contributed to the decision of the respondents.

7. *Next, the learned counsel for the applicant argued that the applicant had placed on record that he had fallen ill after meeting with an accident and that several applications in this regard had been submitted by the applicant's wife but this was totally ignored by the respondents. We have considered the aforesaid submission. Even if the contentions of the applicant were to be accepted, it was only on 05.03.1987 that applicant's wife first wrote to the DRM, New Delhi (page-19 of the paper-book) wherein she mentioned that her husband had been found*

on 03.03.1987 but was not in a position to resume duties due to his illness. Subsequent communications were all sent after this date. As mentioned above, respondents had already passed an order on 06.07.1984 deeming the applicant to have resigned and thereby severing the employer employee relationship with the applicant. Since all these applications were made many years after the aforesaid order, the respondents cannot be faulted for not taking cognizance of the same. It is not disputed that the applicant reported for duty only in the year 2009 i.e. after remaining absent for more than 25 years.”

6. Learned counsel for the petitioner submits that neither the petitioner nor his wife were aware of the passing of the order terminating his services by placing reliance on Rule 723 on 16.08.1984. The wife of the petitioner as well as the petitioner, therefore, continued to correspond with the railways and wife of the petitioner kept the railway informed about his initial disappearance; the subsequent tracing, and; the treatment received by him from time to time.

7. Having heard learned counsel for the petitioner and perused the record, we are of the view that there is absolutely no merit in this petition. It is clear to us that the petitioner is trying to be too clever by half, and his entire story is completely unbelievable. It is claimed that the petitioner went missing since 03.04.1984. Intimation about his going missing was given to the police and the respondent. The wife of the petitioner claimed that he was traced only some time in 1987. Even according to the petitioner and his wife, they were not aware about his termination. We fail to understand as to why he was not got examined and got treated in a government/ railway hospital, and why the treatment over the years continued only in a private hospital by a private doctor. The story set up by the petitioner is, therefore,

not believable. There is absolutely no cogent material placed on record to substantiate the same. It is also not believable that the petitioner or his wife were not aware about the termination of the service of the petitioner in 1984 itself. Pertinently after his termination, the petitioner did not receive any salary – which could not have been the case had his services had not been terminated. No other notice or communication was sent to or received by the petitioner, by the railways. It is obvious that the petitioner went on a long furlough and came back to stake his claim for his job after a hiatus of 25 years.

8. In these circumstances, we find no merit in this petition. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

NOVEMBER 19, 2018

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