

IN THE HIGH COURT OF JHARKHAND, RANCHI
[Civil Writ Jurisdiction]

.....
W. P. (S) No. 6174 of 2017
.....

Arbind Linda

..... Appellant(s)

Versus

1. Union of India through, General Manager, South Eastern Railway Kolkata
2. Chief Electrical Engineer, South Eastern Railway, Kolkata
3. Additional Divisional, Railway Manager, South Eastern Railway, Ranchi Division, Ranchi.
4. Divisional Electrical Engineer (OD), Ranchi Division, Ranchi.

.... Respondent(s)

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE KAILASH PRASAD DEO

For the Appellant(s)	:	Md. Ashrafuzzaman Khan, Advocate.
For the Respondent	:	Mr. Vijoy Kumar Sinha, ASC (Rly).

06/10.12.2019. Heard learned counsel for the parties.

2. Applicant- Assistant Loco Pilot working at Muri was proceeded against under memorandum of charges dated 16.12.2010 for unauthorized absence under Railway Service Discipline and Appeal Rules, 1966. The proceeding was conducted ex-parte, as the delinquent did not appear to participate in the proceeding despite valid service of notice, as per the enquiry officer. Charges were found to be established against him vide report dated 31.01.2012. Applicant in the meantime had joined duty on 09.07.2011 and was sent for training, but he again absented from 19.07.2011 and did not turn up till the passing of the penalty order on 30.04.2012. Therefore, an order of compulsory retirement from Railway service was imposed upon him by the respondent No.4-Divisional Electrical Engineer (OD), South Eastern Railway, Ranchi Division. The appellate authority did not grant him any relief and rejected the appeal on 17.10.2013 holding that applicant had not sent any intimation regarding his sickness during this period and not even attended the enquiry proceeding which showed his casual approach. Applicant preferred revision before the respondent No.2 (Chief Electrical Engineer, South Eastern Railway, Kolkata). The same was also rejected vide order dated 27.08.2014 holding that no ground has been made out to interfere in the order of punishment. He also observed that since the applicant was involved in train operation, his unauthorized absence was not proper. Before the Central Administrative Tribunal, the applicant sought quashing of the orders of punishment upheld in appeal and revision and consequent reinstatement in service.

3. It was urged on behalf of the applicant that there was no valid service of notice upon the employee in the disciplinary enquiry. The charge memo did not contain list of documents or witnesses. The appellate and revisional authority did not deal with the grounds urged though medical certificates showing illness were enclosed to the memo of appeal. The appeal was rejected practically on the grounds of delay without properly dealing with the contentions on merits. It is not disputed by the parties that the appeal was preferred after 13 months of the order of punishment, whereas time limit prescribed is 45 days as was also indicated in the disciplinary order dated 30.04.2012. It was further urged that the revisional authority did not deal with the grounds made out by the applicant on the basis of his medical condition. The revisional order was cryptic and showed no application of mind.

4. Learned Tribunal did not find substance in any of the grounds urged. It was held that the plea of non-providing list of documents and witnesses could not be entertained on behalf of the applicant as he never chose to attend the departmental proceeding. He did not produce any documentary evidence about illness or treatment during the period of his unauthorized absence. Even if the applicant was mentally unsound, his family members also did not inform the employer about his mental condition. Be noted here that the applicant had not taken the ground of mental unsoundness, but some heart ailment. Learned Tribunal also found that despite reporting for duty during the departmental proceeding on 09.07.2011 and even after being sent for training, he again absented from 19.07.2011 and never turned up till passing of the disciplinary order on 30.04.2012. Applicant, a public servant thereby remained in unauthorized absence without any permission from his controlling authority nor provided any reasons for his absence during the entire period. The enquiry proceeded ex-parte because of his non-participation and even though the report was submitted on 30.01.2012 after the applicant had turned up for duty on 09.07.2011 though he absented from 19.07.2011 again, but he did not choose to participate in the disciplinary proceeding. The appellate authority had also taken note that the applicant reported for duty after being declared medically fit on 21.05.2013. This again showed that the applicant never tried to care about the status of his service between 19.07.2011 till 20.05.2013. Apart from that the learned Tribunal found that the original application was time barred since it has been filed on 18.04.2016 after more than two years of the revisional order dated 20.01.2014, whereas the time period for raising a cause

of action under Section 21 of the Administrative Tribunals Act, 1985 is one year. The applicant had on his part chosen to take a plea that he had filed an application for condonation of delay along with the original application which was not considered by the learned Tribunal. Learned Tribunal, after dealing with the contention of the applicant, did not find any merit or substance in the original application since the scope of judicial review in such matters is very limited. The original application was dismissed, as being devoid of merit.

5. In this Writ Petition, apart from the grounds urged before the learned Tribunal, the petitioner has sought to rely upon the medical certificates enclosed at Annexure-A Series to the rejoinder application. Each of the certificates deals with the different period of his absence, such as, from 18.07.2011 to 04.03.2012; 18.07.2011 to 13.05.2012 and thereafter with effect from 18.07.2012 and the last one declaring him fit from 21.05.2013 disclose complaints of *Angina*. These certificates do not relate back to the period of his unauthorized absence from 15.11.2010 till he reported for joining on 09.07.2011 which was the imputation of misconduct, as per the charge memo. The Writ petitioner has not enclosed any other evidence of Indoor treatment, surgical intervention, diagnostic investigation reports for the entire period to show that he was in such a state of illness due to *Angina* problem that he had to remain absent for a period starting from 15.11.2010 with intermittent joining for ten days between 09.07.2011 to 19.07.2011 till he finally reported for duty on 20.05.2013. This in itself is indicative of casualness of the approach of the applicant in discharge of duties as a public servant, moreso when he was having an onerous responsibility, as an Assistant Loco Pilot. At each stage during enquiry proceeding and while preferring the appeal and even while approaching learned Tribunal, there has been apparent lack of diligence on the part of the applicant. The appeal was preferred after 13 months while the Original application was preferred after more than two years since passing of the revisional order. The learned Tribunal considered each of the grounds, urged by the applicant, but did not find any merit for the reasons recorded therein, taken note of here-in-above, as well. The applicant/petitioner has been imposed with a punishment of compulsory retirement which does not deny him pensionary benefits.

6. Taking an overall view of the matter, we do not find any grounds made out to interfere in the impugned order in exercise of the powers of judicial

review under Article 226 of the Constitution of India. The instant Writ Petition is accordingly dismissed.

(Aparesh Kumar Singh, J.)

(Kailash Prasad Deo, J.)

Sandeep/