

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/173/2021

HYDERABAD, this the 2nd day of March 2022

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



P. Rakesh Kumar, (Group-C)
S/o. P. Srinivas, Aged about 35 years,
Occ: Substitute Bungalow Peon,
Sr. DOM/O/HYB, Hyderabad Bhavan,
Hyderabad Division, South Central Railway, Secunderabad.

...Applicant

(By Advocate :Sri K. Altaf Hussain)

Vs.

1. Union of India rep. by the General Manager,
South Central Railway, Rail Nilayam, 3rd floor,
Secunderabad – 500 025.
2. The Principal Chief Personnel Officer,
South Central Railway, Rail Nilayam, 4th floor,
Secunderabad – 500 025.
3. The Divisional Railway Manager,
South Central Railway, Hyderabad Bhavan,
Hyderabad Division, Secunderabad – 500 025.
4. The Senior Divisional Operations Manager,
South Central Railway, Hyderabad Bhavan,
Hyderabad Division, Secunderabad – 500 025.
5. The Senior Divisional Personnel Officer,
South Central Railway, Hyderabad Bhavan,
Hyderabad Division, Secunderabad – 500 025.
6. The Senior Divisional Financial Manager,
South Central Railway, Hyderabad Bhavan, Hyderabad Division,
Secunderabad – 500 025.
7. The Assistant Operations Manager,
South Central Railway, Hyderabad Bhavan,
Hyderabad Division, Secunderabad – 500 025.

....Respondents

(By Advocate : Smt Vijaya Sagi, SC for Rlys.)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

2. The OA is filed challenging the removal of the applicant from service.



3. Brief facts of the case are that the applicant, while working as Bungalow Peon was granted temporary status on 27.7.2018. On becoming sick, though he sought leave on 24.9.2018, it was not granted and hence applicant took treatment from Gandhi Hospital, Secunderabad from 24.9.2018 to 23.1.2019 (Annexure A-VI). However, after having been found to be fit, when the applicant reported to duty on 10.2.2019 he was not allowed to perform duty and instead, respondents terminated his services on 11.2.2019. Later, major disciplinary proceedings were initiated on 19.5.2020 and he was removed from service on 23.11.2020. Aggrieved, the OA is filed.

4. The contentions of the applicant are that the respondents ought to have directed him for medical treatment at the Railway Hospital when he was sick and unable to perform duty. The applicant attended to duty on being found fit, but the attendance of the applicant was not marked. Termination of services on 11.2.2019 is violative of Article 311 (2) of the Constitution. Applicant was not allowed to join duty even though the termination memo of 11.2.2019 was cancelled. Terminating the services of the applicant on two occasions is incorrect. Presenting Officer was not appointed and the I.O appointed was directly working under the disciplinary authority. Instead of listed witnesses, some others were examined in the regular inquiry. Rule 9 (21) of RS (D& A) Rules 1968 was

not followed, which is essential as per judgment of the Hon'ble Supreme Court in *Moni Shankar v. Union of India & Anr*, Civil Appeal No. 1729/2008. The order of removal dated 23.11.2020 is a non-speaking one. Further, for the period for which the applicant attended the inquiry attendance was not marked.



5. Respondents in the reply statement state that the applicant did not inform about his sickness nor sought leave and was on unauthorized leave from 21.9.2018 to 10.2.2019 for a period of 143 days. After taking treatment from other hospitals, Govt. Servants are required to approach the Railway Hospital and get the fitness certificate. Applicant never reported to duty as claimed by him. Earlier termination order, when withdrawn, would mean that the applicant has been taken on duty but the applicant did not report to duty. Applicant alleging that he was not allowed to perform duty is only an afterthought. Major penalty charge sheet was issued and after following the rules, the penalty of removal was imposed. Appointing a P.O in an unauthorized absence case is not required and appointing I.O is the prerogative of the disciplinary authority. Applicant had not raised any objection in regard to the I.O during the inquiry. The I.O asked the applicant as to whether he has anything to say about question No.16. Disciplinary authority issued a speaking order. No appeal was preferred by the applicant.

6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about the removal of the applicant from service. From the facts, it is seen that the applicant while working as Bungalow Peon was reported to be sick and when asked for leave or refer to the

Railway Hospital for treatment, the applicant claims that it was denied. Respondents assert that the applicant has neither sought leave nor did he make a request to be sent to the Railway Hospital. Respondents claim that for the unauthorized absence from 21.9.2018 to 10.2.2019, applicant's services were initially terminated on 11.2.2019 and thereafter, major disciplinary proceedings were initiated resulting in the removal of the applicant from service on 23.11.2020.



II. It is an admitted fact that the applicant was granted temporary status on 20.7.2018 and this being so, it is not understand as to how the respondents could terminate the services of the applicant on 11.2.2019 without conducting a regular inquiry. Such an action, violates Article 311(2) of the Constitution. It appears that the respondents were in great haste to terminate the applicant from service. We have perused the termination order dated 11.02.2019, which reads as under:

“Sub: Termination from Service of Sri P. Rakesh Kumar, B/Peon – Reg.

You have been engaged as Bungalow peon to Sr. DOM/HYB on 20.11.2017. You are absent from the duties of bungalow peon since 21.9.18 to till date.

Hence your service are terminated with immediate effect.

Sd/xx

Sr. DOM/HYB”

Under what rule, the services of the applicant have been terminated has not been indicated. It is unfortunate that the said memo was issued by a Senior Officer of the grade of Sr. DOM–Hyd. It speaks volumes about the callousness shown while dealing with the livelihood of a lower cadre employee. Rule of law has to be followed and the respondents cannot



indulge in arbitrary exercise of power. The mental pain that is caused to an employee by colourable exercise of power cannot be compensated. Without following the rules, respondents have highhandedly terminated the services of the applicant. Is it because the applicant belongs to the lowest rung of the bureaucracy and probably, he does not have the wherewithal to fight out his case in the upper realm of administration! This Tribunal is a witness to quite a few cases where the respondents have been extremely harsh in dealing with issues of Bungalow Peons exploiting the helpless situations, in which they are placed. The present case is one such one. We are disturbed to observe the highhanded manner in which the services were terminated by ignoring the rules and the Constitutional provisions.

III. Nevertheless, respondents realizing their mistake have withdrawn the termination notice on 14.5.2020 after a lapse of more than a year and thereafter, issued a major penalty proceedings. The withdrawal letter dated is extracted here under:

“Sub: Withdraw of orders of Termination from Service of Sri P. Rakesh Kumar, Bungalow Peon – Reg.

This office letter of even No. Y.T.166/Staff Matters/BP/18-19, dated 11.02.2019, wherein your services were terminated with immediate effect i.e. 11.02.2019 is hereby withdrawn without prejudice to further action contemplated against you under the Railway Servants (Discipline & Appeal) Rules, 1968 by the appropriate Disciplinary Authority.

Sd/xx xx

Sr. DOM/HYB”

A close reading of the letter would make it explicit that the respondents have not indicated that the applicant shall report to duty to a particular authority. In the absence of the said endorsement, respondents contending

that the applicant did not report to duty even after revocation of the termination is grossly irrational. It was the duty of the respondents to properly phrase the order and having failed to do so, blaming the applicant is appalling, to say the least.



IV. Coming to the charge sheet for unauthorized absence, the medical certificate issued by the State Govt. Hospital namely Gandhi Hospital, which has a good reputation does specify that the applicant's health was bad and recommended medical leave for the period from 24.9.2018 to 23.1.2019. The relevant portion of the medical certificate is extracted hereunder:

“History Low backache radiating to legs

*I, Dr. M. Narendra of Gandhi Hospital,
Office Professor of Medicine, Civil Surgeon, Gandhi Medical College
& Gandhi Hospital, Secunderabad or of Secunderabad, after careful
personal examination of the case hereby certificate that P. Rakesh
Kumar is in a bad state of health and solmonly and sincerely declare
that according to the best of my judgment in a period of absence from
duty is essentially necessary of the recovery of his/ her health and
recommend that his/her may be granted medical leave with effect from
24.09.18 to 23.01.2019.*

Sd/-xxxxx

*Dr. M. Narendra,
Professor of Medicin,
Civil Surgeon – 35829
Gandhi Medical College & Gandhi Hospital
Secunderabad – TS.”*

The medical certificate was given by a Civil Surgeon of the Govt. Hospital and therefore, it was necessary for the respondents to process his request for regularizing his absence on medical grounds. Instead, they contend that the applicant should have gone to the Railway Hospital and obtained the fitness certificate on the strength of the MC issued by the Govt. Hospital. As the applicant has not produced the same, the absence has to be treated as unauthorized. Presuming that the applicant has made a mistake in not

approaching the Railway Hospital for obtaining the fitness certificate, it is not understood as to what prevented the respondents to direct the applicant to obtain the fitness certificate from the Railway Hospital as per rules. There is no such letter filed by the respondents to this effect. Hence, the obvious conclusion would be that the respondents are equally responsible for not taking proper action in processing the request of the applicant for regularizing his absence on medical grounds. More than the applicant, it is the respondents who have to act responsibly as a model employer since they have the power to do or undo things. In the instant case, their reckless action of terminating the services of the applicant on 11.2.2019 without inquiry and the lack of any initiative to get the medical certificate issued by Gandhi Hospital duly examined by the Railway Hospital to issue the fitness certificate as well as for the purpose of sanction of medical leave would only indicate that their actions lacked any semblance of reasonableness. It is well settled in law that any administrative decision has to be fair, just and reasonable. None of the elements referred to are noticed in the approach of the respondents in regard to the issue on hand.



V. Without going through the above process, respondents issued a major proceedings and finally, imposed the penalty of removal for unauthorized absence. It requires no elaboration that generally no one would like to risk losing a permanent job in a Govt. organization like the respondents. Same is the case with the applicant. For health reasons, he could not attend duty, which is evidenced by the Medical certificate issued by the Gandhi Hospital, which is Government Hospital. Rules provide for grant of Medical leave and it is claimed by the applicant that the



respondents refused to grant leave or refer him to Railway Hospital. The case history does give an impression that the respondents could have been indifferent to his request given their conduct in dealing with his career in a dehumanizing manner. Nevertheless, it is well settled in law that when an employee is not able to attend to duty due to reasons beyond his control, then it cannot be said that such absence is willful. Any absence, which is not willful due to compelling factors like ill-health cannot be considered as grave misconduct. Once it is not a misconduct, the penalty of removal for unauthorized absence would not stand legal scrutiny. We take support of the Hon'ble Apex Court judgment in ***Krushnakanth B Parmar and another Vs. Union of India*** reported in (2012) 3 SCC 178, as under to make the above observations.

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.”

The above verdict squarely covers the case of the applicant.

VI. In addition, we have also gone through the order of removal dated 23.11.2020 which reads as under:

“xxx The undersigned has gone through the case file and passed the following speaking orders:

“The undersigned has gone through the case file and IO’s Inquiry Report and accordingly, the following punishment is imposed.

The Employee Sri P. Rakesh Kumar, Substitute Bungalow Peon to Sr. DOM/HYB is “Removed from service” with immediate effect”.

“Accordingly Sri P. Rakesh Kumar, Substitute Bungalow Peon to Sr. DOM/HYB has been Removed from service with immediate effect from 23.11.2020”.



He is hereby informed that under Rule No.18(ii) of (D&A) Rules of 1968, an appeal against these orders lies to DOM/G/HYB provided that:

- i) The appeal is submitted through proper channel within 45 days from the date of receipt of this order, and*
- ii) The appeal does not contain improper or disrespectful language. “*

As seen from the above, the removal order is neither speaking nor reasoned one. We could not discover a single word giving the reason for the decision to impose a severe penalty of removal. Removal from service would mean extinguishing the livelihood of the applicant. When a decision entails serious repercussions for survival of an employee issue of a reasoned by proper application of mind is a must. Reasoning is the heart beat of any administrative decision. When the heart does not beat then life is lost, so too the order in the instant case. In **Ram Phal v. State of Haryana**, (2009) 3 SCC 258 :: (2009) 2 SCC (Cri) 72 : (2009) 1 SCC (L&S) 645 at page 259, the Hon’ble Supreme Court has observed as under:

6. The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man's sense of justice and also a healthy discipline for all those who exercise power over others. This Court in Raj Kishore Jha v. State of Bihar [(2003) 11 SCC 519 :: 2004 SCC (Cri) 212] has stated: (SCC p. 527, para 19)

“19. ... Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

There being no reasons given in the removal order, the said order is lifeless and anything lifeless is of no use. It is a dead and invalid order.



VI. Besides, the penalty of removal for unauthorized absence is disproportionate. The respondents have failed to follow the doctrine of proportionality in imposing the penalty in question. It has shocked the conscience of the Tribunal. More so, when the applicant could not attend duty due to factors beyond his control. The respondents did not make even the slightest of efforts to ascertain about the medical problem faced by the applicant. Instead, they wielded power in a brazen manner not once but on two occasions to get rid of the applicant in a manner not supported by rules or law. The reply statement is devoid of any reference about any adverse conduct of the applicant in the past. It is well settled in law that when the penalty imposed shocks the conscience of the Tribunal, either it can be set aside or the Tribunal can remit it back to the respondents for review. We prefer the former, since the applicant is without livelihood for many years not because of his fault but for the arbitrary and colorable exercise of power by the respondents. By remitting the case back to the respondents we would be contributors to the procrastination of the case and continue to make the applicant to suffer albeit law is in his favour. We take support of the judgment of the Hon'ble Apex Court in ***B.C. Chaturvedi vs Union Of India And Ors*** on 1 November, 1995, reported in ***1996 AIR 484, 1995 SCC (6) 749*** as under, to state the above.

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be



based on some evidence. Neither the technical rules of [Evidence Act](#) nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

Xxxx

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

VII. To sum up, respondents have committed a galore of mistakes in dealing with the case of the applicant by

- i) Terminating the service of the applicant on 11.2.2019 violating Article 311 (2) of the Constitution;
- ii) Took more than a year to correct the mistake thereby taking away the livelihood of the applicant violating Article 21 of the Constitution,
- iii) Issued termination order without citing the rule under which it was issued and at the time of withdrawing the termination, not taking care to direct the applicant to report to a particular authority,

- iv) Not bothering to verify the genuineness of the medical issue faced by the applicant,
- v) Imposing disproportionate penalty for absence beyond the control of the applicant,
- vi) Absence of self-restraint in exercising power in dealing with the career of a lower rung official
- vii) Exhibiting the tendency to find fault with the applicant rather than looking within to verify as to whether they were on the right track in dealing with the case of the applicant as pointed out supra,
- viii) Arbitrariness was in full bloom in every step taken by the respondents to finish of the career of the applicant, who could not attend duty for health reasons and there being adequate provisions in the Rules to grant medical leave or any other eligible leave;
- ix) Total non-application of mind to the issue particularly in the context of application of rules and law to the dispute in question



With many an inadequacy noticed in the impugned decision of the respondents as at above, we hold that imposition of the penalty of removal as unfair, unjust, arbitrary, unreasonable and illegal. Hence, it cannot hold the ground under any context.

VIII. Consequently, we quash and set aside the Impugned order dated 23.11.2020. Applicant shall be reinstated and granted notional seniority from the date he was terminated from service on 11.2.2019. The period of absence from 24.9.2018 to 10.2.2019 shall be regulated by granting eligible leave to the applicant under the relevant Leave Rules. After granting the leave, the pay of applicant be accordingly revised and

fixed. Consequential benefits with respect to pay etc. thereof be paid to the applicant as per rules and law. We grant liberty to the respondents to proceed against the applicant if found justified and if they so desire as per rules and law. Time granted to implement the judgment is 3 months from the date of receipt of this order.



IX. Before, parting we would appreciate if the GM of the SCR issues specific instructions to the lower formations to abstain from a highhanded approach in dealing with the cases of the Bungalow Peons ignoring the rules and law and that responsibility would be fixed on the officers who are responsible for acting in contravention of rules and law. We are making this specific observation since we have come across a plethora of cases regarding Bungalow Peons from the respondents organization wherein, gross indifference to the facts of the case and colorable exercise of power in imposing the severe penalties of dismissal/removal were seen, although there are graded penalties available to be imposed. Law prescribes utilization of the graded penalties in consonance with the Principle of Proportionality. By going through the Bungalow peon cases we gain an impression that the cadre of the Bungalow peon has not been given a fair deal while dealing with their issues in the disciplinary domain. In fact, the cadre of the Bungalow Peon appears to be a punching bag to be punched by the respondents as and when they wish to display their mighty power. The Tribunal had to intervene to right the wrong on many an occasion. The emotional pain caused by the elimination of livelihood for the lower cadre employees is incalculable, albeit they had to be absent for genuine reasons of ill-health. Every paper in the



administrative file of the respondents has a bubbling life behind it, which has to be carefully nurtured in the interest of the Nation. The life cannot be snuffed by being arbitrary, indiscriminate and unfair. A distinction has to be made between willful and non-willful absence. Without making this distinction, sending Bungalow Peons home is too drastic and inhuman, which law does not support. In case if respondents continue to be irresponsible in dealing with the cases of similar nature without following the rules or law, then we would not hesitate to call the GM in person to assist the Tribunal in understanding as to why such irregular and arbitrary decisions with harmful intentions are taken repeatedly despite serious observations of the Tribunal and thereafter decide the further course of action. We do not intend to sermonize but given the angularities of the present case we are constrained to express the above views. Though appear to be harsh but to cure the disease repulsive medicine has to be used. Undoubtedly, views expressed are in public interest and in the overall interest of the respondents organization. We hope and trust that they will be taken in the right spirit and acted upon by the GM of SCR.

With the direction as at para VIII supra, the OA is allowed to the extent indicated with no order as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/