

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1078/2002

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New Delhi this the 27th day of June, 2003.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Mani Ram,
S/o Shri Singa Ram,
T.No.81, Northern Railway,
Signal Workshop,
Ghaziabad,
R/o Vill. Nandi,
P.O. Shakhpura Karim,
Distt. Saharanpur.

-Applicant

(By Advocate Shri M.L. Sharma)

-Versus-

Union of India through

1. General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.
2. Chief Workshop Manager,
Northern Railway Signal Workshop,
Ghaziabad.

-Respondents

(By Advocate Shri B.S. Jain)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Impugned in this OA are respondents' order dated 9.3.99, removing applicant from service, appellate order dated 18.11.99, rejecting the appeal and order dated 20.9.2001, rejecting the revision petition. Quashment of the aforesaid orders has been sought with direction of re-instatement with all consequential benefits.

2. Applicant was appointed as a Khalasi and was lastly working as skilled grade-I. On account of serious illness of his wife applicant remained absent from duty from 9.8.95 to 2.7.96. On reporting he had filed an application. He tendered an application with medical

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record of his wife. Subsequently on duty applicant was hurt and had undergone treatment.

3. Applicant was served with a major penalty under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 for the allegation of remaining unauthorizedly absent from 9.8.95 to 2.7.96. Applicant was sent a communication during the course of enquiry and as applicant was not found assuming service ex-parte proceedings were held. Enquiry Officer (EO) held applicant guilty of remaining absent from duty. Though the enquiry report was sent on two occasions but remained unserved as applicant was not found, third communication was sent but not returned, service was presumed.

4. Disciplinary authority (DA) by an order dated 9.3.99 imposed upon applicant a punishment of removal. On appeal same was dismissed by an order dated 18.11.99. Applicant further preferred a revision petition which was dismissed on 20.9.2001, giving rise to the present OA.

5. Earlier the OA was heard and by an order dated 8.11.2002 finding no infirmity in the enquiry and relying upon a letter of applicant dated 10.10.96 as admission of his unauthorized absence OA was dismissed.

6. Review Application No.30/2003 filed by applicant was allowed on 21.5.2002 by holding that the statement of applicant was ambiguous with an explanation, as such RA was allowed.

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7. Learned counsel for applicant Sh. M.L. Sharma assails the impugned order on the ground that his explanation and genuine ground of absence, i.e., serious illness of his wife has never been questioned by respondents but the same has not been taken into consideration. By referring to the orders passed in appeal as well as in revision it is contended that it is incumbent upon respondents under the rules 9bid to apply their mind to the proportionality of punishment keeping in view the mitigating circumstances. As the orders passed are non-speaking applicant has been deprived of a reasonable opportunity. He refers to Rule 22 to substantiate his plea.

8. On the other hand, respondents' counsel Sh. B.S. Jain vehemently opposed the contentions and stated that in appeal applicant has admitted his fault of remaining absent for 11 days the authorities having considered the contentions raised by applicant as well as his explanation and there is no infirmity in the orders passed by the respondents.

9. It is further stated that despite several opportunities applicant had neither participated in the enquiry nor filed any representation to the enquiry report.

10. We have carefully considered the rival contentions of the parties and perused the material on record. After the review of the aforesaid OA the explanation tendered by applicant through his letter dated 10.10.96 where he has adduced the grounds of serious illness of his wife and death of his father for remaining

absent during the period alleged as unauthorized absence. Applicant has taken a specific plea in his OA as to submission of the medical record in para 4.3 of the OA which has not been denied by respondents and is deemed to be accepted. Moreover, nothing on record has been brought to indicate that the genuineness of these medical record of wife of applicant has ever been issued regarding its genuineness. Accordingly, a legal presumption arises as to the authenticity of the ground taken by applicant for remaining absent for such a period. The contention put-forth by Sh. B.S. Jain as to absence of applicant of subsequent period being not a subject matter of the charge and punishment imposed as an extraneous factor cannot be taken into consideration.

11. The order of the disciplinary authority has referred to the representation dated 10.10.96 of applicant but no reasons have been assigned as to rejection of medical record of wife on account of whose illness applicant has remained absent.

12. Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 prescribing consideration of appeal under clause 2 mandates the appellate authority to consider whether the penalty imposed is adequate, inadequate or severe and then to pass an order. As per Railway Board's letter No.RBE 5/86 issued on 20.1.1986 being a quasi-judicial authority it is incumbent upon appellate authority to record reasons in support of the order. We have perused the orders passed and communicated to applicant. The same is bald and non-speaking order without

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conforming to the provisions and mandate of Rule 27 (2) of the Rules ibid. Neither any reasons have been recorded nor the proportionality of punishment has been gone into.

13. Revisional Authority has also followed the foot steps of appellate authority and despite existence of explanation of applicant and the medical record of his wife had not recorded any finding on the proportionality of punishment. The Apex Court in Director General, RPF and Others v. Ch. Sai Babu, (2003) 4 SCC 331 has held as follows:

"6 As is evident from the order of the learned Single Judge, there has been no consideration of the facts and circumstances of the case including as to the nature of charges held proved against the respondent to say that penalty of removal from service imposed on the respondent was extreme. Merely because it was felt that the punishment imposed was extreme was not enough to disturb or modify the punishment imposed on a delinquent officer. The learned Single Judge has not recorded reasons to say as to how the punishment imposed on the respondent was shockingly or grossly disproportionate to the gravity of charges held proved against the respondent. it is not that in every case of imposing a punishment of removal or dismissal from service a High Court can modify such punishment merely by saying that it is shockingly disproportionate. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of and discipline required to be maintained, and the department/establishment in which the delinquent person concerned works."

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14. If one has regard to the aforesaid after examining all the relevant factors as the charge is of unauthorized absence the past conduct of applicant as well as nature of duties we find from the official record produced by respondents that the appellate authority has not at all gone into the proportionality of punishment. Absence of applicant was on account of severe illness of his wife for which when the certificates have been produced by applicant the same have not been disputed or rebutted. Despite this and having tendered an explanation the disciplinary authority as well as the appellate authority have not at considered and taken into account the mitigating circumstances. The revisional authority also on this absence without perusing the medical record merely because applicant has not applied leave maintained the punishment.

15. We also find that applicant had completed a qualifying service of about more than 17 years at the time of removal from service and only on the communications sent which are not validly served proceeded ex parte and held applicant guilty of the charge. Despite the fact that applicant has taken a specific plea of proportionality of punishment in his appeal same has not been dealt with.

16. Any unauthorized absence which is not wilful, as in the present case, covered by the genuine ground of illness of wife of applicant, cannot, per se, constitute such a grave misconduct to warrant an extreme punishment.

17. In the light of the above we find that the punishment imposed is shockingly disproportionate to the charge alleged against applicant. Mere absence from duty would not itself be sufficient to impose extreme punishment unless it is wilful. As applicant has tendered an explanation and medical record pertaining to his wife's illness has not been questioned, the punishment imposed is certainly shockingly disproportionate.

18. As the appellate as well as revisional authorities have not complied with the mandatory provisions and have not taken into consideration the proportionality of punishment, OA is partly allowed. Appellate, as well as revisional orders are quashed and set aside. However, the matter is remanded back to the appellate authority to consider proportionality of punishment in the light of our observations and be carried out through a detailed and speaking order to be passed within two months from the date of receipt of a copy of this order. In the event the punishment is set aside the intervening period shall be decided in accordance with rules and instructions on the subject. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Member (A)

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