

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No.040/00410/2015

Date of Order: This the Day of November, 2017

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.S.N.TERDAL, JUDICIAL MEMBER

1. Sri Pradip Kumar Nandy,
Ex-Technician Grade III,
T/1718 working under SSE/CRS/DBWS,
Presently residing at Sankar Dev Railway Colony,
Dibrugarh, Assam

Applicant

By Advocate Mr.S.N.Tamuli

-Versus-

1. The Union of India represented
by the General Manager,
N.F.Railway
Maligaon, Assam,
Pin-781011
2. The Chief Work-Shop Manager,
Dibrugarh Work Shop,
Dibrugarh, N.F.Railway,
Pin-783001
3. The Works Manager, Dibrugarh Work Shop,
Dibrugarh,N.F.Railway,
Assam,Pin-783001

Respondents

By Advocate Mr.H.K.Das, Railway Counsel

ORDER (ORAL)

Per Hon'ble S.N.Terdal, Member(J):

This O.A. has been filed by the Applicant seeking the following reliefs:-

“8.1 To set aside and quash penalty order issued vide NIP No.E/74/DAR/5/P dated 12.12.2008, Appellate Order communicated vide Letter No.CWM Memo No.E/74/DAR/5/P, dated 24.12.2009 and Revisional order dated 24.03.2010 communicated to the applicant vide letter dated 22.04.2010”.

2. Heard Mr.S.N.Tamuli, learned counsel for the applicant and Mr.H.K.Das, learned Railway counsel for the Respondents. Perused the pleadings and all documents produced by both sides.

3. The brief facts of the case are that a Memo was issued on 4.4.2008 proposing to hold enquiry under Rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968. Accordingly, a Memorandum of charge sheet, statements of imputation of Misconduct, List of documents and List of Witnesses were served on the Applicant, which are extracted below:-

“ ANNEXURE TO STANDATED FORM NO.5

Memorandum of Charge-sheet under
rule 9 of the RS (D&A) Rules, 1968

Annexure-1

Statement of Articles of charges framed
against Shri Pradip Kr. Nandy, Tech,GR-III,
T/1713

Article-1

As per attendance report submitted by
SSE/CRS/DBWS, vide L/No CRS/1-Leave
dt.21.03.03, Shri Pradip Kr.Nandy, Tech.
GR.III, T/No.1718 working under
SSE/CRS/DBWS is most irregular in his duty.
He is in the habit of remaining
unauthorized absent from duty very
frequently. This is serious misconduct in
violation of Rule 3.1 (ii & iii) of Rly services
(conduct) rules, 1966.

(Annexure II)

Statement of imputations of misconduct or
misbehaviour in support of the articles of
charge framed against Shri Pradip Kr.
Nandy, Tech.Gr.III, T/1713.

Article-11

Shri Pradip Kr.Nandy, T/No.1718 while
working as tech Gr.III under SSE/CRS/DBWS
is most irregular in his duty. He is in the
habit of remaining unauthorized absent
from duty very frequently and subsequently

reports for duty covering the period of unauthorized absence from duty under PMC. Previously, Shri Nandy was taken up under DAR for several times for his habit of remaining unauthorized absent from duty and lenient view was taken to offer him scope for improvement. But, it has been seen that he has not improved at all, rather he is repeating the same offence of remaining unauthorized absent from duty. This persistent habit of remaining unauthorized absence from duty indicates the gross lack of devotion and negligence to duty which is serious misconduct on the part of Shri Pradip Kr.Nandy, Tech,III T/1718 showing himself as unbecoming of a Rly servant.

(Annexure-III)

List of documents by which the articles of charge framed against Shri Pradip Kr.Nandy T/No.1713 are proposed to be sustained.

1) SSE/CRS/DBWS's
L/No.CRS/1-Leave Dt.21.03.03

(Annexure-IV)

List of witnesses by whom the articles of charge framed against Shri Pradip Kr.Nandy , T/No.1713 are proposed to be sustained.

1) SSE/CRS/DBWS

(P.Gupta)

WM/DBWS

Name and Designation of competent authority”

Thereafter, enquiry was held. The Enquiry Officer submitted Enquiry Report holding that the charge was established. The Disciplinary Authority, by the impugned order dated 12.12.2008 agreeing with the Enquiry Report imposed a penalty of removal from service. The Appellate Authority upheld the penalty imposed by the Disciplinary Authority. The Revision Petition filed by the Applicant was also dismissed. All the authorities including the Enquiry Officer, came to their respective conclusions, mainly, on the admission or acceptance of the charge framed against him by the Applicant. But however, as could be seen from the charge sheet and the supporting document namely, the attendance report it shows absence of the Applicant for few days, from 1.1.2008 to 21.3.2008. Though in the charge sheet it has been stated that the Applicant is in the habit remaining unauthorized absence from duty very frequently, but however, no supporting document was furnished to the Applicant alongwith the charge Memo. At the time of hearing, the learned counsel for the Respondents tried to impress upon the Tribunal that the Railway authority have gone through the earlier Attendance Register of the Applicant. But however,

the earlier Attendance Registers were not produced in the Departmental Enquiry. In the circumstances, the penalty of removal from service is shockingly disproportionate to the charge of being absent for few days in 3 months, particularly in view of the fact that the Applicant having been appointed in 1985 had put in about 23 years of service before the charge memo was issued. Also the Applicant has stated the compelling reasons for being irregular in attendance. The compelling reasons as stated by the Applicant in his appeal is extracted below:-

“That Sir, my emotion and respect towards my mentally ill mother compelled me to remain mum to submit any statement explaining the true fact in detail of my absence. I was all along a grief stricken sufferer with tension thinking about the abnormal behaviour of my mentally ill mother and devoted most of my time giving company to her including arrangement of medical treatment. The other members of my family and neighbours sometimes became irritated with her such psychic behaviour. I had to remain vigilant so that my mother may refrain ill behaviour from anybody. I know that in addition to medicine a kind approach may keep my mother mentally stable. Her violent condition at time warranted myself to stand by her side leading me to remain absent from duty, most of the occasions in the 1st half period of the day as may be seen from

my attendance sheet. In support of illness of my mother I enclose herewith a medical certificate for your kind information and perusal. She is still under the medical care of the professor of the Psychiatry who issued the certificate.”

4. The learned counsel for the Applicant has submitted that the absence of the Applicant was not wilful, but it was because of the compelling circumstances stated above. He further submitted that the penalty of removal from service ordered by the Respondents is highly disproportionate in the facts of the case. In support of his submission the counsel for the Applicant has drawn the attention of this Tribunal to the following decisions of the Hon’ble Supreme Court:-

- (1) Krushnakant B.Parmar –Vs- U.O.I & Another reported in 2012 (3) SCC 178.**
- (2) H.S.Arora –Vs- U.O.I reported in (1998) SCC (L&S) 172**
- (3) Elangbamnimai Singh –Vs- State of Manipur & Others reported in 1998 (2) GLT 315**
- (4) Achuyut Ch.Das –Vs- Union of India & Others reported in 1998 (4) GLT 472**
- (5) MD, Coal India Limited & Another –Vs- Mukul Kumar Choudhury & Another reported in 2009 (15) SCC 620**
- (6) 2015 (0) Supreme Court (pat) 231 reported in Umesh jha –Vs- Union of India.**

5. In the result, O.A. is allowed. The orders passed by the Disciplinary Authority bearing No.E/74/DAR/5/P dated 12.12.2008, Appellate Authority bearing CWM Memo No.E/74/DAR/5/P dated 24.12.2009 and Revision Authority bearing No.E/74/DAR/5/P dated 24.3.2010 are set aside. The Respondents are directed to reinstate the Applicant from the date of his removal that is 12.12.2008 with 50% back wages. The Respondents are at liberty to pass such penalty order as deem fit and proper and proportionate to the misconduct proved in the circumstances of the case.

(S.N.TERDAL)
JUDICIAL MEMBER

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

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