

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/941/2014

Hyderabad, this the 25th day of February, 2020



***Hon'ble Mr. Justice L Narasimha Reddy, Chairman
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

S. Ramesh Babu, S/o. S. Subba Rao,
Aged 42 years, Occ: Junior Engineer,
O/o. The Chief Workshop Manager,
South Central Railway,
Wagon Workshop, Guntupalli,
Rayanapadu, Krishna District.

... Applicant

(By Advocate: Mr. K.R.K.V. Prasad)

Vs.

1. Union of India, Rep. by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Chief Workshop Engineer,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Chief Workshop Manager,
South Central Railway,
Wagon Workshop, Guntupalli,
Rayanapadu, Krishna District.
4. The Deputy Chief Mechanical Engineer,
South Central Railway,
Wagon Workshop, Guntupalli,
Rayanapadu, Krishna District.
5. The Workshop Personnel Officer,
South Central Railway,
Carriage Repair Shop, Tirupati.

... Respondents

(By Advocate Dr. KMJD Syama Sundari, SC for Railway)

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



2. OA is filed challenging the penalty of reduction of pay from Rs.20,860 in the grade of Senior Section Engineer (in short “SSE”) to Rs.13,500 in the grade of Junior Engineer (in short “JE”), for unauthorised absence, vide disciplinary authority Memo dated 25.02.2013, which was upheld by the Appellate authority/ Revision Authority vide Memos dated 11.06.2013/ 12.12.2013 respectively.

3. Brief facts, which require mention are that the applicant while working as SSE in the respondents organisation was proceeded for unauthorised absence on disciplinary grounds vide Charge Memo dated 18.10.2011 and after due inquiry, based on the Inquiry Report submitted, Disciplinary Authority imposed the penalty of reduction in pay from Rs.20,680 in SSE grade to Rs.13,500 in JE grade vide Memo dated 25.2.2013. Appeal and Revision Petition filed thereupon were rejected. Aggrieved, OA has been filed.

4. The contentions of the applicant are that due to factors beyond his control, he had to be on unauthorized absence. One such key factor was the pressure applied by money lenders to repay the loans raised by his late father for construction of their own house. Without appreciating the reasons advanced as defence, respondents have heartlessly imposed a penalty which had a twin impact of reducing pay as well moving him down from SSE to JE grade, which is not only disproportionate but lack the backing of the applicable disciplinary rules.

5. Respondents assert in their reply statement that the applicant is habituated to unauthorised absence and that, in his 20 years of service, he was unauthorisedly absent for as many as 1149 days in different spells, which is too serious to be ignored. Hence, for one spell of such unauthorised absence of 238 days disciplinary action was initiated and penalty under contest was imposed. Respondents have cited decisions of the superior judicial forums to support their contentions of affirming that the penalty is not dualistic in nature and that the quantum of penalty imposed is justified. In fact, in the past, applicant was proceeded for unauthorised absence on 5 occasions and imposed different penalties, but the applicant did not mend his ways and instead is repeatedly coming up for adverse notice for the very same offence.

6. Heard Sri K.R.K.V.Prasad, learned counsel for the applicant.

7. I) The penalty imposed for unauthorised absence of the Applicant is as under:

“Reduction to a lower time scale of pay from SSE on payRs.20860/- (16260+4600 (GP) in scale Rs.9300-34800 + 4200 (GP) to the post of JE on minimum of the grade pay on Rs.13500 (9300+4200 (GP) in scale of Rs.9300-34800+4200 (GP) with immediate effect, without loss of seniority, without cumulative effect for a period of five years.”

Argument advanced by the applicant is that the penalty is twin pronged, in that it not only reduces pay but also pushes him down the ladder from SSE to JE grade. This is not true as the reduction to lower time scale of pay and grade is as per Railway Servants (Discipline and Appeal) Rules, 1968, which finds an echo in the Railway Board letter E(D&A) 89



RG 6-108 dated 12.12.1989, wherein the decision of the Hon'ble High Court of Rajasthan in *Shyam & Others v U.O.I* (1975 (1) SLR 511) confirming that the penalty of reduction to a lower time scale coupled with lowering of grade is not double jeopardy, has been elaborated upon. The relevant portion of the Hon'ble High Court order is extracted hereunder for a straightforward confirmation:



"The submission of Shrimali is that in the present case Shri Saini has not only been reduced to the lower grade but his salary was also reduced from Rs.212/- to Rs.175/- and in this manner, he has been doubly punished and it is not contemplated by Rule 1707. This argument was also made before the lower appellate court. But, it was over ruled on the basis of Rule 2024 of the Code, which runs to the following effect:

"2024 (FR.28) – Pay on reduction to lower post – The authority which orders the reduction of a railway servant as a penalty from a higher to a lower post or time – scale may allow him to draw any pay, not exceeding the maximum of the lower post, or time scale which it may thing proper."

10. According to this rule when a Railway servant is reduced to a lower time scale the authority which orders the reduction can allow him to draw any pay which it may thing proper. This rule, further contains a prohibition that the authority cannot allow the railway servant to draw pay exceeding the maximum of the lower post or time scale. In the present case the plaintiff was drawing Rs.212/- per month. The authority could not have allowed him to draw any pay beyond the maximum. The situation does not arise in this case. But, it was open to the authority to allow him to draw any pay within that grade which he thought proper. It is true, that the authority could have fixed him up at Rs.212/- without contravening any rule. But, in the discretion of the punishing authority, the plaintiff was fixed at Rs.175/- per month it had not contravened any rule of the Railway Establishment Code. It may, as well, be observed here that when the Railway servant is reduced to a lower grade or to a lower time scale of the post it envisages not only reduction in rank but it also entails his pay is reduced in view of the rule 2024 extracted above that the railway servant has been awarded more than the penalty prescribed under rule 1707(iv). This can be well illustrated. In case the plaintiff had been drawing more than Rs.212/- that is more than the maximum of the lower grade, his salary was bound to be reduced in terms of rule 2024. Therefore, the combined effect of the rules is obviously against the construction sought to be put by Mr. Shrimali of Rule 1707 (iv). In my opinion the case in hand is not a case of double punishment and the impugned order clearly falls within the ambit of the Rules. The contention has no substance and it must be rejected."

A similar view was also expressed by the Hon'ble Apex Court in U.O.I. v G. Veeraswamy (2003 (10) SCC 251) as presented below:



“5. Learned counsel for the appellant Union of India has submitted that reading Clause 6 of Sub-rule 1 of Rule 6 with Rule 1322 of the Indian Railway Establishment Code together, the disciplinary authority has power after imposing a punishment of reduction to lower time-scale to fix the pay. Learned counsel for the respondent in reply has submitted that the tribunal has rightly held that so doing amounts to double punishment.

6. The language of Clause 6 of Sub-rule 1 of Rule 6 of the rules, in our opinion, is clear. After reduction to the lower time scale the disciplinary authority has to fix the pay in terms of Rule 1322 of the Establishment Code. The establishment code clearly empowers the disciplinary authority to allow to draw any pay not exceeding the maximum of the lower post or time scale. We are unable to accept the reasoning of the tribunal which amounts to double punishment inasmuch as unless pay is fixed after reduction he may be entitled only to draw pay on the lowest of the time scale.

7. We are not able to accept the reasoning given by the tribunal and accordingly the order is set aside."

II) Another averment made by the applicant was that the penalty was disproportionate and in this regard to rebut the said contention, we draw support from the observation made by their Lordships in *State Bank of India v. Samarendra Kishore Endow (1994 (1) SLR 516)*, wherein it was held that it is the discretion of the disciplinary authority to impose the appropriate penalty after following the prescribed disciplinary procedure.

“..that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority. It may be open to the appellate authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226...”

Supplementing the above view, Hon'ble Supreme Court in *North Eastern Karnataka Road Transport Corporation v. Ashappa*, on 12.05.2006 in Appeal (Civil) No. 2637 of 2006, has observed as below:

“Yet, recently, in State of U.P. v. Sheo Shanker Lal Srivastava and Others [(2006) 3 SCC 276], it was opined that the Industrial Courts or the High Courts would not normally interfere with the quantum of punishment imposed upon by the Respondent stating:



“It is now well-settled that principles of law that the High Court or the Tribunal in exercise of its power of judicial review would not normally interfere with the quantum of punishment. Doctrine of proportionality can be invoked only under certain situations. It is now well-settled that the High Court shall be very slow in interfering with the quantum of punishment, unless it is found to be shocking to one's conscience.”

In the instant case penalty imposed is not shocking and on the contrary, as stated by the respondents, it leans towards leniency.

III) Unauthorised absence is not a minor misconduct. It speaks about the negligence and lack of interest in the job. Frequently going on unauthorised absence derails the smooth working of a public sector organisation like the Railways. Therefore the burden to prove that such absence was for valid reasons shifts on to the employee. In the instant case we do not find any valid reason furthered by the applicant, except personal reasons which are not acceptable grounds to be away from work in an unauthorised manner. We bank on the observation made by the Hon'ble Apex Court in *North Eastern Karnataka Road Transport Corporation v. Ashappa* cited supra, for making the above assertion, as under:

“Remaining absent for a long time, in our opinion, cannot be said to be a minor misconduct. The Appellant runs a fleet of buses. It is a statutory organization. It has to provide public utility services. For running the buses, the service of the conductor is imperative. No employer running a fleet of buses can allow an employee to remain absent for a long time. The Respondent had been given opportunities to resume his duties. Despite such notices, he remained absent. He was found not only to have remained absent for a period of more than three years, his leave records were seen and it was found that he remained unauthorisedly absent on several occasions. In this

view of the matter, it cannot be said that the misconduct committed by the Respondent herein has to be treated lightly.

In Delhi Transport Corporation v. Sardar Singh [(2004) 7 SCC 574] this Court opined:

"11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials."



Respondent organisation is in the business of transport of running trains. The applicant as SSE/JE has an important role to play in the movement of trains. Such being the nature of the work assigned, applicant's frequent bouts of unauthorised absence do demonstrate lack of interest and *de facto* negligence in attending to the call of duty. It is a conduct which can be construed as abandonment of service and therefore invites serious repercussions. Respondents took a liberal view and allowed the applicant to be on the rolls by imposing penalties which are humane rather than being organisation oriented. Nevertheless, it is the discretion of the respondents in deciding the nature and quantum of penalties and therefore we say no more.

IV) Further, the career record of the applicant is depressingly discouraging tainted with the habit of unauthorised absence which was not allowed to go scot free but duly proceeded against resulting in a wide range of penalties from removal to withholding passes in a service span of nearly 20 years. Confirmatory details of such unauthorised absence over the years and the penalties imposed in consequence thereof are tabulated hereunder to drive home the point that the applicant has been recalcitrant in regard to his habit of unauthorised absence. Nevertheless, such penal action

has not deterred the applicant in continuing to do what he was not supposed to do, resulting in the penalty under contest.



Sl. No.	Year	No. of days absenteeism
1	2000	145
2	2001	109
3	2002	68
4	2003	105
5	2004	58
6	2005	127
7	2006	63
8	2007	74
9	2008	34
10	2009	190
11	2010	31
12	2011	145
	Total	1149 days

The penalties imposed on applicant for his unauthorised absence are as under:

Sl. No.	Charge	Penalty imposed
1.	Unauthorised absence of 211 days during the period from 1.1.2000 to 11.5.2001	Removal from service
2.	Unauthorised absence of 110 days during the period from January 2006 to September 2007 (cum.)	Withholding of annual increment
3.	Unauthorised absence of 71 days during the period from 1.1.08 to 30.04.09	Withholding of 2 sets of Passes for the years 2011 & 3 sets of passes for the year 2012, 2013, 2014 & 2015 and 1 set of pass for the year 2016
4.	Unauthorised absence of 238 days during the period from 06.05.09 to 07.10.11	Reduction to lower time scale of pay from SSE to JE
5.	Unauthorised absence of 11 days during the period from 01.05.13 to 30.06.13	One more set of privilege pass for the year 2016 was withheld

As can be seen from the above, even after imposition of the penalty which is a subject matter of the OA, applicant without remorse was on unauthorised absence in 2013 which led to the penalty of withholding privilege passes for the year 2016. This is enough to establish that the

applicant has developed a tendency of incorrigibility as far as the habit of habitual unauthorised absence is concerned. True to speak such an errant behaviour while the OA is on does positively refrains us to interfere on behalf of the applicant for granting the relief sought. Several penalties inflicted from 2000 onwards for the very same infringement discussed, undoubtedly strengthens our aforesaid view.



IV) Applicant's banal defence is that personal issues were compelling him to be on unauthorised absence. Such a line of defence does not curry favour with us since personal issues which are extenuating, can be no grounds whatsoever to infringe rules. Before parting, it must be said that the conduct of the applicant is the aggravating factor inviting penalty after penalty over the years and for the same finding fault with the respondents by interpretive logic without the intrinsic base of rules/law, as expounded in the OA, would not further the career growth of the applicant. Instead a reformative inward looking approach would be beneficial to the applicant in the long run. We have no more to say.

V) To conclude, in view of the aforesaid circumstances, we find no error in the decision of the respondents in imposing the penalty under reference either under rules or law. OA is, thus, devoid of merit deserving dismissal and hence, dismissed, with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE L. NARASIMHA REDDY)
CHAIRMAN