

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.110/98

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 22nd day of September, 2000

Shri Abdul Rehman
s/o Shri Imtiaj Ali
Ex. Gangman
under Permanent Way Inspector (PWI) (USFD)
Northern Railway
Tundla Jnc. (UP)
r/o 106/71, Mohalla-Punchkuigan
Mandavi Road
New Delhi - 92. Applicant

(By Ms. Meenu Mainee, proxy of Shri B.S. Mainee,
Advocate)

vs.

1. Union of India through
The General Manager
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Allahabad.
3. The Asstt. Engineer (Track)
Northern Railway
Tundla Jnc. .. Respondents

(By Shri B.S.Jain, Advocate)

O R D E R (Oral)

By Justice Rajagopala Reddy:

The order of removal of the applicant, who was working as Gangman under Permanent Way Inspector, at Tundla (UP) is under challenge, in this OA. The brief facts are as under:

2. A memorandum of charge sheet for major penalty was served on 1.12.1994 alleging unauthorised absence from 27.9.1994 till the charge sheet was issued, without any information and without any permission. The enquiry officer found these allegations as true. The disciplinary authority

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agreeing with the findings of the enquiry officer imposed the penalty of removal from service by the impugned order dated 5.10.1995 which has been upheld by the appellate as well as the revisional authorities.

3. The learned counsel for the applicant, Mrs. Meenu Maine submits that the enquiry officer has not applied his mind to the evidence on record PW1 clearly stated that the applicant had taken permission of the concerned officer to leave the office and that the applicant could not attend the office in view of the ill health of his wife who was suffering from T.B.. It is therefore argued that the applicant cannot be held guilty for unauthorised absence. It is also argued that the punishment of removal was excessive. The learned counsel for the respondents however contends that the findings of the enquiry officer having been arrived at on the basis of the evidence, they cannot be interfered with.

4. We have given careful consideration to the above contentions. There is no controversy as to the absence of the applicant from 27.9.1994 till the date of the issue of the charge sheet in December, 1994, i.e., a period of three months. The only question before the enquiry officer was whether it was unauthorised. The enquiry officer examined one witness for prosecution and two documents to support the charge whereas the applicant had examined himself. He had not filed any defence statement. Considering the oral and documentary evidence and the plea made by the applicant, the enquiry officer found that the

applicant failed to inform the office regarding his absence either personally or by post as treatment of his wife was going in Agra which was not far away from Tundla.

5. In view of the above consideration of the evidence the enquiry officer came to the conclusion that the charges of unauthorised absence has been proved.

6. The learned counsel for the applicant relies upon V.Gnanasadayan Vs. Union of India and Others, 1995(2) ATJ 499 (CAT, Madras Bench), where it was held that it was the duty of the enquiry officer to apply his mind to the evidence placed on record. It has been held as under:

"He did not assign at least a single reason why the evidence produced by the appellant did not appeal to him or was not considered credit worthy. He did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi judicial enquiry must show the reasons for the conclusions. It cannot be an ipse dixit of an Enquiry Officer. It has to be a speaking order in the sense that the conclusions is supported by reasons."

7. In view of the above state of affairs, the Court found that there was no application of mind on the part of the enquiry officer. But in the instant case, the enquiry officer has discussed the evidence on record and gave reasons for his conclusions. We cannot therefore hold that the enquiry officer has not applied his mind to the evidence on record. This decision therefore is wholly misplaced.

(contd - 4)

8. The next contention of the learned counsel for the applicant is that the penalty was excessive. We do not agree. The applicant was absent for a period of three months and it was also found that he had suffered punishments earlier during the service.

9. The OA, therefore, fails and is accordingly dismissed. No costs.

GOVINDAN S. TAMPI
MEMBER(A)

Ambygopal Reddy
(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/