

Central Administrative Tribunal, Principal Bench

Original Application No.1837 of 1996

New Delhi, this the 7th day of March, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

(b)

Arun Kant Chaturvedi aged about 42 years, Son of Late Shri Rajesh Prasad Chaturvedi, Resident of Railway Quarter No.107/16, Thompson Road, Railway Colony, Near New Delhi Railway Station, New Delhi.

- Applicant

(Applicant in person)

Versus

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi.
2. President, Indian Railway Conference Association, General Manager, Northern Railway, Baroda House, New Delhi.
3. General Secretary, Indian Railway Conference Association, Divisional Railway Manager's Office, Accounts Building, Chemsford Road, New Delhi.

- Respondents

(By Advocate -None)

O R D E R (Oral)

By V.K. Majotra, Member (Admnv) -

The present application is made against the following orders - charge sheet dated 28.4.92 and its amendment dated 15.10.93 (Annexure-A-1), removal order dated 1.7.94 (Annexure-A-2), appellate order dated 30.11.95 (Annexure-A-3), and appellate order dated 9.8.96 (Annexure-A-4).

2. The applicant was initially appointed on compassionate ground as Junior Clerk on 17.8.1977. He was promoted as Head Clerk with effect from 1.1.1984. He was served with the charge sheet (Annexure-A-1) alleging that his attendance in office is very poor - from 1.1987 to 8.4.1992 he was on LAP for 114 days, on LHAP for 23 days, on commuted leave for 49/98 days, and LWP 604 days - total 839 days. It was also alleged that

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even when he attended office he turned up for duty late

many a times tantamounting to neglect of duty.

3. The applicant has averred that the General Secretary, Indian Railway Conference Association (IRCA) is not his disciplinary authority and thus was not competent to issue the charge sheet (Annexure-A-1). He has alleged that he was not supplied relevant documents. His appeal against the punishment order was not disposed of for a considerable time of 8 - 9 months. Whereupon he filed OA 897/95 in this Tribunal, which vide orders dated 19.9.1995 and 23.11.1995 (Annexure-A-9 Colly) directed the respondents to dispose of the appeal of the applicant in accordance with Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968 (in short RS(D&A) Rules) after affording him a personal hearing and by passing a speaking order. According to the applicant enhancement of penalty from reduction in rank to removal from service is illegal in view of proviso (V) of Rule 22(2) read with Rule 25(1) proviso (a) of the RS(D&A) Rules, as he was not given a reasonable opportunity of making a representation against such enhanced penalty. According to the applicant no prosecution witness was examined in the disciplinary proceedings. He has stated that whereas he had always been sanctioned leave by the competent authority, absence for the same period was made basis for proving the imputations. The applicant has sought quashing of orders Annexures-A-1, A-2, A-3 and A-4 and consequential benefits such as continued service with full back wages.

4. Vide an order passed on 12.9.1996 by this Tribunal the impugned order Annexure-A-4 passed by the

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Railway Board imposing the penalty of removal from service was ordered to be held in abeyance, whereupon the applicant was restored to his original post of Head Clerk by the respondents.

5. The respondents in their written statement have stated that the applicant was issued a charge sheet for imposition of major penalty vide Annexure-A-1 for irregular attendance during the period 1.1.1987 to 8.4.1992 and turning up late for duty many a times. After getting an enquiry completed under the RS(D&A) Rules, the disciplinary authority awarded the punishment of removal from service vide order dated 1.7.1994 (Annexure-A-2). The appellate authority vide order dated 30.11.1995 (Annexure-A-3) reduced the punishment from removal from service to that of reduction from grade Rs.1400-2300 to grade Rs.1200-2400 for two years with cumulative effect. In compliance with the orders of this Tribunal dated 26.4.1996 in MA 200/96 read with order dated 23.11.1995 in RA 311/95 and order dated 19.9.95 in OA 897/95 the Chairman Railway Board (in short 'CRB') considered the appeal dated 9.8.1994 and after considering in detail the enquiry report, the enquiry proceedings, orders of disciplinary authority and various points raised by the applicant in his appeal during the personal hearing, imposed the penalty of removal from service by a speaking order of 9.8.1996 (Annexure-A-4). According to the respondents General Secretary, IRCA is the disciplinary authority under IRCA Conference Rules Part-I (Annexure-R-I). The applicant had been afforded all reasonable opportunities to inspect all the relevant documents and submit his

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defence. The enquiry officer has stated in his report that the applicant remained absent on several occasions and whenever the date of enquiry was fixed he obstructed the progress of the enquiry report by raising one or the other point. He was informed vide letters dated 4.4.1994, 11.4.1994 and 19.4.1994 that since he had been given sufficient opportunities to inspect relevant records, his further request for supply of additional documents and information as asked for by him cannot be accepted. He was advised to submit his written defence but he showed reluctance to reply. On 25.4.1994 the enquiry officer ordered that if the applicant so desired he could cross-examine the prosecution witness who was present and also could produce defence witnesses if any but the applicant did not do so. The evidence of the prosecution witness was recorded in the presence of the applicant on 25.4.1994. The disciplinary authority had taken into consideration all the relevant factors such as enquiry officer's report, defence statement, statement of prosecution witness and all other relevant records and passed a speaking order, namely, Annexure-R-2. As in the absence of the regular incumbent the officer looking after the duties of the General Manager was not empowered in terms of Railway Board's letter of 4.8.1963 to dispose of the appeal in DAR cases, this Tribunal by the aforesaid orders had ultimately directed that the appeal be disposed of by respondent no.1 CRB. Thereafter, the CRB has passed the speaking order Annexure-A-4 after giving personal hearing to the applicant who was accompanied by his defence assistant on 26.7.1996.

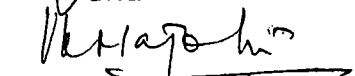
6. We have heard the applicant, who is present in

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person. The main issue in the present case is whether a penalty can be imposed on an official for a misconduct when his absence has already been treated as leave with or without pay. The applicant has referred to Hon'ble Supreme Court's decision in the case of State of Punjab and others Vs. Bakshish Singh, 1999(3) SLJ 1, to support his case. In that case the Trial Court had recorded a finding that unauthorised absence from duty having been regularised by treating the period of absence as leave without pay, the charge of misconduct did not survive. With this finding the suit was decreed. Ultimately, the Hon'ble Supreme Court upheld the judgment and decree passed by the Trial Court. The facts of the instant case are covered by the ratio of the aforesaid ruling. Various periods of absence mentioned in the charge-sheet had been regularised by sanctioning various kinds of leave, namely, LAP, LHAP, commuted leave and LWP. Since the charge does not survive, absence imputed having been regularised, out goes the penalty as well, as a natural consequence.

7. For the reasons given above, the OA succeeds and order dated 28.4.92 (Annexure-A-1), order dated 1.7.1994 (Annexure-A-2), order dated 30.11.1995 (Annexure-A-3) and order dated 9.8.1996 (Annexure-A-4) are quashed with consequential benefits. No order as to costs.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (Admnv)

7.3.2000