CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 1012/96

New Delhi this the 14th day of February,2000.

HON'BLE MR.JUSTICE V.RAJAGOPALA REDDY,VICE CHAIRMAN(J)

HON'BLE MR. R.K. AHOOJA, MEMBER(A)

Sh. Anek Singh
R/o. B.A. 134/B Jail Road,
Janakpuri,
New Delhi-110058. ..... Applicant
(By Advocate Sh.B.S.Mainee)

Versus

Union of India : Through

1. The General Manager,
Northern Raiway
Baroda House
New Delhi

2. The Divisional Railway Manager,
Northern Railway
Allahabad.

3. The Sr.Divisional Operating Manager
Northern Railway
Allahabad. ....Respondents

(By Advocate Sh.O.P.Khastriya)

ORDER(Oral)

By Reddy J.-

1. The applicant while working as an Assistant Station Master at Railway Station in Hardwaganj was served with the charge memo containing the following two articles:

Article No.1

For misbehaving with Station Master/HGJ on 15.11.82 in presence of the TI/ALJN.

Article No.2

Shri Anek Singh while functioning as ASM failed to maintain absolute integrity and devotion to duty and remained on unauthorised absence from duty for the period from 2.11.82 to 15.11.82.

(6)

Article No.3

Shri Anek Singh while functioning as ASM/HGJ was responsible for malengering from duty on 2/11/82 as he was given MOD by Rly.Doctor/Tundla but absented from duty and submitted irregular PMC to cover his absence period from 2.11.82 to 15.11.82.

2. The applicant denied the charges. Thereupon an inquiry under the Railway Services (Conduct) Rules,1968 has been conducted by the Inquiry Officer. The Inquiry Officer, found that Article 1 was not established but Articles (2) & (3) of the charge were fully established. On the receipt of the Inquiry Officer's report the Disciplinary Authority passed an order dismissing the applicant from service. This order was challenged by the applicant before the Tribunal. The Tribunal, finding that the Inquiry Officer's report has not been furnished to the applicant before passing the order of the dismissal allowed the OA, giving liberty to the respondents to conduct inquiry afresh, from the stage of supplying the inquiry report. Accordingly, the respondents had supplied a copy of the inquiry officer's report to the applicant and after considering the representation made by the applicant, passed the order removing the applicant from service. The applicant's appeal was also rejected by the appellate authority. In this OA the order of removal as confirmed by the appellate authority, are under challenge.

3. The learned counsel Shri Mainee contends that disciplinary authority having disagreed with the findings of the inquiry officer on the charge No.1, has not recorded the reasons of disagreement, much less communicated the same to the applicant. Hence it is contended that the enquiry was vitiated. We do not agree. The Inquiry Officer found that

the Article 1 was also not established, although Article 2 & 3 were established. It is not correct to say that the reasons of agreement have not been given by the Inquiry Officer though it is true that the applicant was not communicated with, the reasons of disagreement. The Disciplinary Authority has given reasons as is evident from the impuugned order itself. He clearly stated that raising tone was an act of disobedience. He also relied upon the order of the disciplinary authority passed in 1983 to come to the conclusion that the charge was made out. The next question remaining to be seen is whether non communication of the reasons of disagreement is fatal to the enquiry and would violate the principles of natural justice. The learned counsel relies upon Punjab National Bank & Ors. Vs. Kunj Behari Mishra J.T.1998 Vol-5 S.C.548.

4. It is true that it has been held that once the disciplinary authority disagrees with the Inquiring Authority on any Article of charge, the reasons for such disagreement must be recorded and the officer must communicate the reasons of disagreement But the impugned order in this case was passed in 1994. The law as it stood on that day was different as is seen at para 12 of the above judgement. It was found that in State Bank of India, Bhopal Vs. S.S.Koshal 1994 Suppl. (2) SCC 468 and State of Rajasthan Vs.M.C.Saxena, 1998 SCC (L&S) 875 where the question that arose was whether the disciplinary authority was required to give a fresh opportunity of being heard if the disciplinary authority disagrees with the finding of the Enquiry Officer which was favourable to the delinquent, it was held that the only requirment was that the disciplinary authority should record reasons for disagreement and that it

(8)

was not necessary in such a case to afford further opportunity of hearing to the delinquent.

5. The law as stated in Kunj Behari Mishra's case (Supra) in the law as obtained prior to 1998. Earlier to 1998 the law was not definite as seen above. In these circumstances, it was not obligatory upon the disciplinary authority to have communicated the reasons for disagreement to the charged officer.

6. The next contention of the learned counsel for the applicant is that the findings of the disciplinary authority on the first charge, that is the disobedience of the applicant is not proved, as there is no evidence on record in support of this charge. There is force in the contention. In the Inquiry Officer's Report it is stated that there is no material evidence in support of the statement of the witnesses concerned to establish the charge of misbehaviour. It was also stated in the Inquiry Officer's Report that the SM could not be relied upon. According to the Inquiry Officer, he found that this charge has not been made out. However, relying upon the findings given by the diciplinary authority in its order 1993 the disciplinary authority found that the charge of misbehaviour was established. It must be recommended that the order of 1983 has been quashed by the Tribunal in the earlier OA. Hence it could not have been relied upon by the disciplinary authority. No other evidence has been recorded by the disciplinary authority in support of the charge. In the circumstances we are in agreement with the Learned counsel of the applicant that there is no evidence in

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support of the charge No.1. Hence it has to be held that it was not proved. The learned counsel for the applicant, therefore, complains that when the finding on the charge No.1 is set aside the entire order of the disciplinary authority goes as it can not be presumed that the disciplinary authority would pass the same order when the applicant is found not guilty on charge No.1. Learned counsel relies upon K.R.Bapure Vs. The Sate of Karnataka, 1992 Vol.II SLJ Page 189 (CAT, Bangalore Bench).

7. This was a case where the applicant therein was aggrieved by an order of compulsory retirement. In that case the Screening Committee had taken into consideration the adverse remarks of 1987-88, though they were not communicated by the time the Screening Committee met in April, 1989. On those facts the Tribunal held that it cannot be presumed that the Screening Committee would have come to the same conclusion even without the adverse remarks for the year 1987-88 and had recommended compulsory retirement. Hence, it was held that the impugned order suffers from an inaccurable defect, taking into consideration the adverse remarks which were under appeal and had not become final. Accordingly the order was set aside. In the instant case the same ratio cannot be applied to the proceedings before the disciplinary authority.

8. But in the present case the same ratio cannot be applied to the proceedings before the disciplinary authority. The charged officer was indicated with three independent Articles of charge. Even if one charge is found true, it would render the applicant to be unfit in police service as

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each charge constituted grave misconduct for which the major penalty of removal is the punishment. The disciplinary authority accepted the findings of the inquiry authority as to the charge of unauthorised absence. Even in the absence of the first charge being proved, the applicant was liable to be removed on the charge of unauthorised absence. No decision is brought to our notice taking contrary view in regard to the disciplinary proceedings. The above decision has no application to the facts of this case. In the circumstances, we do not find infirmity in the order of the disciplinary authority.

9. The Learned Counsel submits that as the applicant has resumed duty, subsequent to his unauthorised absence it is unjustified to remove him from service. Learned Counsel relies upon Smt. Mohani Nawani Vs. UOI 1996 Vol I ATSLJ page 523. It is true that the Bench of the Tribunal has taken the view that it was unjustified, in the circumstances of the case, to remove a charged officer after he resumed duty subsequent to his unauthorised absence. But that is the view expressed by the Bench on the facts of that case. No principle could be said to have been laid down by the Bench in the case. But in the present case the disciplinary authority considering the facts of the case has found that the applicant was not fit to be in service. Exercising the limited jurisdiction we have as to interference with the disciplinary proceedings we will not interfere with the order of the punishment awarded by the disciplinary authority. This is not one of the cases where the Court should interfere with the order punishment. We do not find it as highly unreasonable or

perverse or disproportionate to the misconduct proved. In the circumstances, the contention of the Applicant is rejected.

10. Counsel for the Applicant contends that even charges no.2 & 3 are not established as the Applicant was entitled to produce Private Medical Certificates under the relevant Rules. The Inquiry Officer has considered this aspect. The applicant was examined by the Railway Medical Doctor and according to the evidence he was found fit to perform the duty. Despite the same, the applicant absented from duty and produced the Private Medical Certificates, which were not accepted by the authority. In the circumstances, the Department was right to consider the same and not accepting the Private Medical Certificates. Accordingly the Applicant was found as absent from 2.11.82 to 15.11.82, unauthorisedly.

11. The Tribunal in its earlier order of 31st November, 1991 in OA 441 of 1996 allowed the OA and quashed the order of removal and that of the appellate authority.The Respondent was directed by the Tribunal to conduct the enquiry from the stage when the Inquiry Officer's Report was furnished. Subsequently inquiry was conducted, but he was not reinstated. He was also not placed under suspension. He was entitled to be paid the back wages. The applicant was entitled to be put back in service in the same position as he was working. It is not correct to contend that the Applicant was not in service. He was under suspension and that was revoked. In the reply it was stated that applicant was reinstated in service in November, 1992. He was suspended on 19.07.92 and suspension was later revoked. Therefore, we direct that the applicant be

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paid the back wages from the date suspension was revoked till the date of reinstatement. We, direct the respondent to pay the arrears within the period of three months from today.

12. There are no merits in the OA. The OA is accordingly dismissed subject to the observation in para 11. No costs.

(R.K.AHOOJA)
MEMBER (A)

(V.RAJAGOPALA REDDY)
VICE CHAIRMAN (J)

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