

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

DA No.1769/2000

Date of decision: 19.9.2001

Nathi Ram

..

Applicant

(By Advocate: Shri U. Srivastava)

versus

Union of India & Ors.

..

Respondents


(By Advocate: Shri O.P.Kshatriya)

CORAM:

The Hon^{ble} Shri Kuldip Singh, Member (J)

The Hon^{ble} Shri M.P. Singh, Member (A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?


(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1769/2000

New Delhi, this 19th day of September, 2001

Hon'ble Shri Kuldeep Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

Nathi Ram
Kachchi Garhi, Kuan Mohalla
Balmiki Basti, Dt. Rohtak (Haryana) .. Applicant
(By Shri U.Srivastava, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway, Baroda House
New Delhi
 2. Divisional Railway Manager
Northern Railway, State Entry Road
New Delhi
 3. Divisional Mechanical Engineer
Northern Railway, New Delhi
 4. Coaching Depot Officer
Northern Railway, Nizamuddin
New Delhi .. Respondents
- (By Shri O.P.Kshatriya, Advocate)

ORDER

Shri M.P. Singh:

Applicant has impugned the order dated 25.10.99 by which he has been removed from service and the order dated 8.5.2000 by which his appeal against the removal order has been rejected.

2. Brief facts leading to the present OA are that the applicant, while working as Helper Khallasi under the respondent-Railway was issued charge-sheet dated 24.7.1997 for unauthorised absence from 29.5.96 to 26.7.1997. An enquiry was conducted and the enquiry officer vide his findings dated 19.11.98 concluded that the charge of unauthorised absence by the applicant



(12)

stood proved. He has also opined that 'after resumption of duty there was poor attendance of the employee'. A copy of the enquiry report was given to the applicant on 11.8.99 and he gave his representation on 24.8.99, inter alia, stating that "...I have no objection about the enquiry report but I may be pardoned keeping in view my family and personal problems/difficulties..". Agreeing with the findings of the EO, the disciplinary authority (DA, for short) imposed a penalty of removal from service on the applicant by order dated 25.10.99. Applicant made a representation on 16.11.99. When no decision was taken on his representation, he filed OA No.379/2000 which was disposed of by order dated 29.2.2000 with the direction to the concerned respondent to treat the representation as an appeal and dispose of the same within a period of three months. Thereafter his appeal was rejected by order dated 17.1.2000 conveyed to him through letter dated 8.5.2000. He is thus before us seeking direction to quash the impugned orders and also direction to the respondents to reinstate him in service with all consequential benefits.

3. Respondents in their reply have not disputed the above facts. They have averred that the applicant was afforded full opportunity during the enquiry to submit his defence and the charges were fully proved by the EO. The enquiry report has been accepted by the applicant which speaks for itself. His appeal was considered by the competent appellate authority and rejected as the applicant was a habitual absentee before and after this



case also. They also averred that the previous record of the applicant was not satisfactory, he being a habitual absentee without caring for his duties and the responsibilities of railway servant, which are essential in government service under the service rules. The competent authority considered all the facts of the case, including defence put in by the applicant and enquiry report and record of service of the applicant, before imposing the penalty. In view of this, the OA is devoid of merit and may be dismissed. (12)

4. We have heard the learned counsel for the parties and perused the records.

5. During the course of the arguments, the learned counsel for the applicant has taken the main ground that the DA should not have taken into account past adverse record of the applicant, which was not part of the charge-sheet, while imposing the extreme penalty of removal from service. He has placed reliance in this regard on the decision of the coordinate Bench of this Tribunal dated 25.10.2000 in OA No.2547/1997. The learned counsel also drew our attention to Rule 10 of Railway Servants (Discipline & Appeal) Rules, 1968 which deals with action to be taken on the enquiry report and primary factors to be considered before imposing penalties. It has been stipulated therein that extraneous matters or past conduct should in no case be taken into account against an employee unless a reasonable opportunity has been given to the delinquent to defend himself against any such allegations. He has also placed reliance on the decision of the coordinate

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Bench of this Tribunal dated 15.5.2001 in OA No.283/1999 (Kapoor Chand Verma Vs. GM(P), Northern Railway) reported in ATJ 2001(2) 592 and order of Madras Bench dated 17.7.91 in OA No.792/90 (N.Rajendran Vs. UOI) reported in ATJ 1992(2) 313 in respect of the main ground taken by him. In both these cases, the impugned penalty orders of removal from service imposed on the applicants were quashed and set aside by the Tribunal on the ground that previous misconduct of the applicants were taken into account which did not form part of the charge-sheet.


6. Having regard to the Rule position and also the judgements cited supra, we are of the considered view that the disciplinary authority should not have taken into consideration the past unauthorised absence of the applicant, which was not part of the charge-sheet, while passing the removal order.

7. In the circumstances, the aforesaid order of penalty and order of appellate authority deserve to be quashed and set aside. We do so accordingly. It is, however, clarified that it will be open to the DA to reconsider the quantum of punishment to be imposed upon the applicant after keeping out of consideration the earlier period of unauthorised absence and thereafter impose an appropriate order of penalty. It will also be open to the DA if so advised to show cause in respect of earlier period of unauthorised absence by submitting an additional summary of allegations and give an opportunity to the applicant to defend himself and, thereafter, again pass an order of penalty in accordance



with the rules. In case the applicant is aggrieved by the order to be passed by the DA, he will be at liberty to impugn the same in an appeal and thereafter, by way of filing a fresh OA in the Tribunal. Respondeents are directed to initiate action within a period of two months from the date of receipt of a copy of this order. The present OA is partly allowed in the above terms. There shall be no order as to costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

/gtv/