

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 762 of 2017

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Hon'ble Mr. Anand Mathur, Member (A)

1. Mr. Jitendra Samantray, aged about 29 years, Son of
Late Dibakar Samantray, resident of vill./P.O. –
Bajpur, P.S. – Khurda Sadar, Dist - Khurda
.....Applicant.

VERSUS

1. Union of India, represented through its General Manager, E. Co. Rly, E. Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda - 751017.
2. Deputy Chief Engineer (Bridge), East Coast Railway, E. Co.R Sadan, Chandrasekharpur, Bhubaneswar, Dist – Khurda – 751017.
3. Senior Engineer (Bridge), East Coast Railway, E. Co. R. Sadan, Chandrasekharpur, Bhubaneswar, Dist – Khurda – 751017.
4. Assistant Engineer (Bridge), Head Quarter, East Coast Railway, E.Co. R Sadan, Chandrasekharpur, Bhubaneswar, Dist – Khurda – 751017.

.....Respondents.

For the applicant : Mr. N. R. Routray, Advocate.

For the respondents: Ms. S. L. Patnaik, Advocate.

Heard & reserved on :08.01.2020

Order on :09.02.2021

O R D E R**Per Mr. Swarup Kumar Mishra, Member (J)**

The applicant by filing this OA under section 19 of the Administrative Tribunals Act, 1985, has prayed for the following reliefs:-

- (i) *To quash the memorandum dtd. 20.03.2017, order of punishment passed by the Disciplinary Authority dtd. 27.07.2017, by the appellate authority dtd. 22.09.2017 and by the Revisional Authority dtd. 21.11.2017;*
- (ii) *And to direct the Respondents to allow him to join in his post with full back wages;*
- (iii) *And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.*

1. The case of the applicants as averred in brief in the OA is that the applicant was initially engaged as Bungalow Peon vide order dated 19.07.2012 (Annexure A/1) issued by Chief Personnel Officer (CPO), East Coast Railway and attached to A. K. Sukla. Thereafter on completion of 120 days of continuous service was granted temporary status w.e.f. 16.11.2012 vide memorandum dated 07.12.2012 (Annexure A/2) issued by CPO. The applicant submitted that due to illness the authority had advised him not to come to his residence till full recovery and with an advise

that he will not take any cohesive action as such the absence of his was with due knowledge of his authority. After recovery the applicant joined in his post and after completion of further eight months the authority vide note dated 08.03.2017 recommended for disciplinary proceeding for his absence for the period 01.01.2013 to 13.07.2016. The applicant was served memorandum of article of charges dated 20.03.2017 (Annexure A/3) by Respondent No. 4. The applicant submitted his representation denying the allegation levelled against him and the disciplinary authority appointed inquiry officer to conduct inquiry. The inquiry officer submitted his report which was handed over to the applicant vide letter dated 26.03.2017 (Annexure A/4 series). The applicant submitted that after receiving the inquiry report he submitted his defence statement dated 28.03.2017 (Annexure A/5 series) categorically stating that his absence was due to illness and with oral permission of his authority namely Mr. A. K. Sukla and enclosed Xerox copy of medical certificates and copy of RMC fit certificate. Thereafter the Respondent No. 5 vide order dated 27.07.2017 (Annexure A/6) passed the order of punishment of "removal from service which shall not be a disqualification for further employment under the Govt. or Railway Administration". The applicant then submitted his appeal dated 16.08.2017 (Annexure A/7)

stating that since he was engaged and granted temporary status by the order of CPO, Respondent No. 4 is not competent authority to be the disciplinary authority and that his absence from duty was within the knowledge of his authority and prayed for setting aside the order of punishment. The appellate authority i.e. Respondent No. 3 vide order dated 16.08.2017 (Annexure A/8) disposed of the appeal. Thereafter the applicant submitted revision petition dated 25.10.2017 (Annexure A/9) to Revisionary Authority i.e. Respondent No. 2 who rejected his appeal vide order dated 21.11.2017 (Annexure A/10). Hence the OA.

2. It is further submitted by the applicant that since he was initially appointed and granted temporary status by the order of Chief Personnel Officer, Respondent No. 4 is not competent to issue the memorandum of charge and that in the memorandum there is nothing regarding approval of the appropriate/competent authority for initiation of departmental proceeding and issuance of memorandum by Respondent No. 4. The applicant also submitted that he had taken leave on the advise of his authority which he submitted in his appeal both to the Appellate Authority as well as Revisionary Authority who did not give any adverse remarks on the medical certificates submitted by him but none of the authority took lenient view and imposed the punishment.

3. The respondents in their counter inter alia submitted that the applicant was initially posted with Sri A. K. Shukla, Dy. CE but upon his transfer the applicant was also transferred and attached to Dy. CE vide CPO order dated 24.03.2014 (Annexure R/1). The applicant had performed his duty till 31.12.2012 and then remained absent unauthorizedly w.e.f. 01.01.2013 and after a lapse of more than three years and six months vide application dated 05.07.2016 (Annexure R/2) the applicant submitted that he was sick from 01.12.2013 to 03.07.2016 as certified by private doctor vide certificate dated 03.07.2016 and requested Dy.CE/Plg to take him back on duty. Thereafter as per rule the applicant was referred to Railway doctor for medical fitness certificate and after giving fitness by railway doctor on 13.07.2016 (Annexure R/3) the applicant reported to duty vide his application dated 14.07.2016 (Annexure R/4). It is submitted by the respondents that the applicant vide his letter dated 05.08.2016 (Annexure R/5) requested for regularization of his absent period. But the competent authority vide letter dated 17.02.2017 (Annexure R/6) ordered to initiate D&A action against the applicant for unauthorized absence from 01.01.2013 to 13.07.2016 and accordingly the Dy. Chief Engineer ordered for initiation of disciplinary proceeding dated 27.02.2012 (Annexure R/6).

4. The respondents further submitted that IO was appointed by Competent Authority who submitted his report on 21.06.2017 sustaining the charges and a copy of report was served to the applicant vide letter dated 27.06.2017 enabling him to represent, if any, which fact is reflected on the letter dated 23.06.2017 (Annexure R/7) and the applicant submitted his representation on 04.07.2017 (Annexure R/8). Thereafter the Disciplinary Authority vide his reasoned speaking order dated 27.07.2017 imposed major penalty specified in clause (viii) upon the applicant under RS(DA&R) 1968 that "Removal from service which shall not be a disqualification for further employment under the Government of Railway Administration". The respondents submitted that both the Appellate Authority and Revisional Authority upheld the order of punishment of Disciplinary Authority. The respondents also submitted that no permission was given by the authority Shri A. K. Shukla to the applicant to remain absent and as per Chief Personnel Officer, Bhubaneswar's order dated 02.04.2007 (Annexure R/9), Respondent No. 4 is competent for imposition of penalties of removal from service of Group 'D' non-gazetted staff.

5. In the rejoinder the applicant submitted that departmental proceeding was not initiated by the competent authority and there is no finding/observation either by the IO or by the DA as well as in the counter

that the alleged unauthorized absent from duty is wilful and in absence of the finding either by the IO or the Disciplinary Authority the order of punishment of removal from service is disproportionate.

6. Learned counsel for the applicant relied on some citations including the following citations:

- a) Secretary, Ministry of Defense & Others vrs Pravash Chandra Mirdha (2013) I SCC (L&S) 121
- b) Union of India & Others vrs B. V. Gopinath (2014) I SCC (L&S) 161
- c) Premnath Bali vrs Registrar High Court of Delhi & another (2017) I SCC (L&S) 263
- d) Krushnakant B. Parmar vrs Union of India & Another in Civil Appeal No. 2106 of 2012.
- e) Union of India vrs Asit Kumar Nayak in WP (C) No. 17056 of 2016.

7. Learned counsel for the respondents relied on some citations including the following:

- a) Apparel Export Promotion Council vrs A. K. Chopra AIR 1999 Supreme Court 625.
- b) R. Mahalingam V. Chariman TNPSC AIR 2013 Supreme Court 2225

8. We have heard learned counsels for both the sides and carefully gone through their pleadings, written note of submission as well as citation relied by them. The citations relied by learned counsel for the applicant are

not applicable to the facts and circumstances of this case.

9. The extract of statement of articles of charges against the applicant is as follows:

Annexure – 1

“Sri Jitendra Samantaray, Sub. B. Peon attached to Sri A. K. Shukla, Dy. CE/Plg.HQ/BBS had remained unauthorized absence from duty w.e.f. 01.01.2013 to 13.07.2016 (i.e. more than three years and six months). This had resulted great inconvenience in the normal working of Sri A. K. Shukla, Dy.CE/Plg/HQ/BBS.

By the above act, Sri Jitendra Samantaray, Substitute Bungalow Peon has failed to maintain devotion to duty and committed serious grave misconduct and acted in a manner which is unbecoming of a Railway Servant in contravention of Rule – 3.1 (ii) & (iii) of Railway Services (Conduct) Rules, 1966 and thereby rendered himself liable for Disciplinary action being taken against him under Railway Servants (D&A) Rules, 1968 as amended from time to time”.

10. The extract of inquiry report is as below:

“a) Article of Charges:-

Sri Jitendra Samantaray, Sub. B. Peon attached to Sri A. K. Shukla, Dy. CE/Plg.HQ/BBS had remained unauthorized absence from duty w.e.f. 01.01.2013 to 13.07.2016 (i.e. more than three years and six months).

This had resulted great inconvenience in the normal working of Sri A. K. Shukla, Dy.CE/Plg/HQ/BBS.

By the above act, Sri Jitendra Samantaray, Substitute Bungalow Peon has failed to maintain devotion to duty and committed serious grave misconduct and acted in a manner which is unbecoming of a Railway Servant in contravention of Rule – 3.1 (ii) & (iii) of Railway Services (Conduct) Rules, 1966 and thereby rendered himself liable for Disciplinary action being taken against him under Railway Servants (D&A) Rules, 1968 as amended from time to time.

b) Defence of the Railway Servant in respect of each charges:

i) Sri Jitendra Samantray, Sub. B. Peon attached to Shri A. K. Shukla, Dy. CE/Plg./HQ was remained unauthorized from duty w.e.f. 01.01.2013 up to 13.07.2016. On his return to duty, Dy. CE/Plg./HQ realized the cause of his unauthorized absence and sent him to Sr. DMO/MCS for fit certificate. The positive action of Dy. CE/Plg./HQ amounts to condonation of his unauthorized absence.

ii) Shri Jitendra Samantray was absent from duty from 01.02.2013 due to illness. Had there any inconvenience he would have taken disciplinary action in February 2013 itself, because of the inconvenience felt by the absence of a bungalow peon is immediate, it is not felt after almost

four years. After working for more than 7 months, the charge sheet has been issued based on complaint made by Dy. CE/Plg./HQ on 27.02.2017 which contradict his own action he took seven months ago in forwarding him for RMC and taking back to duty means condoning his unauthorized absence.

c) An assessment of the evidence in respect of each article of charges:-

Shri Jitendra Samantray, Sub. B. Peon was remained unauthorized absence from duty w.e.f 01.01.2013 to 13.07.2016 (i.e. more than three years and six months).

He submitted his PMC fit and unfit certificate on 03.07.2016 for the period from 01.02.2013 to 03.07.2016. For the balance one month he did not submit any fit & unfit certificate. As per the extant rule within 48 hours of reported sick, the employee is required to submit the PMC/RMC. But he did not submit.

d) The findings on each article of charge and the reason therefore:

From the above inquiry, it is fact that Shri Jitendra Samantray, Sub. B. Peon was remained unauthorized absence from duty w.e.f. 01.01.2013 to 13.07.2016 (i.e. more than three years and six months). As per the extant, rule, he should have submitted his PMC/RMC within the 48 hours of reported sick, but Shri Samantaray has failed to submit the same. He submitted

his PMC fit and unfit certificate on 03.07.2016, for the period from 01.02.2013 to 03.07.2016. For the balance one month he did not submit any fit & unfit certificate. On the basis of oral and documents evidence, I cam to conclusion that Shri Jitendra Samantray was not since on this duty. Therefore, the chares framed against Shri Jitendra Samantray stands proof.

11. The relevant portion of speaking order of the Disciplinary Authority dated 27.07.2017 is extracted below:

“on going through the case, I as a DA has observed that:

- i) Shri Jitendra Samantray, Sub B Peon attached to Dy. CE/Plg./HQ/BBS remained unauthorized absence from duty from 01.01.2013 to 13.07.2016 (more than three years and six months). During this period he has not reported to the immediate supervisor or controlling officer. However, he submitted PMC from 01.02.2013 to 03.07.2016 on 03.07.2016 intentionally to cover up the absence period which is not accepted. As per Rule 538(1) of IRMM within 48 hrs of reported sick, the employee is required to submit the PMC/RMC when he ws residing in Rly. Doctor's jurisdiction, but he did nothing, which shows his carelessness in performing duty.

- ii) CO during inquiry confessed that he has committed that he has not reported during this period.
- iii) Keeping in view of CO's lapses reflected above, i the DA in exercise of power conferred in Rule-9 of DA&R rule 1968, impose upon the following major penalty specified in Rule-6 of RS (D&AR) 1968 to meet the ends of justice.
- iv) I am of opinion that it would be appropriate to impose major penalty specified in clause (viii) upon said Shri Samantray under RS (DA&R) 1968 which is felt sufficient to meet the ends of justice.

“Removal from service which shall not be disqualification for further employment under the Government or Railway Administration.” He does not deserve any compassionate allowance, since he had not rendered minimum 10 years of qualifying service.”

12. The relevant portion of speaking order dated 22.09.2017 of appellate authority is extracted below:

“3) Now, I the appellate authority have gone through the entire D&A case file, views of the disciplinary authority and mercy appeal of Shri Jitendra Samantaray, Sub. B. Peon (CO), I am of the opinion that:

As per Shri Jitendra Samantaray (CO)’s written statement dt. 09.06.2017 against IO’s questionnaire Sl. No. 2 that ‘during absent period (01.01.2013 to 13.07.2016) he has not informed to his controlling officer:.. For which he has committed a gross mistake and act as unbecoming a Railway servant.

Moreover unauthorized absence of Shri Jitendra Samantaray, Sub. B. Peon has been proved and the same has also been admitted in Para- 8 of the mercy appeal.

No evidence or fresh arguments have been brought forth by the co Shri Jitendra Samantaray for reconsideration.

In view of above, I opined that, the punishment imposed by the Disciplinary Authority (DA) through his speaking order stands good"

13. The relevant portion of speaking order of Revisionary Authority dated 21.11.2017 is extracted below:

"4) Being the Revisionary Authority, I had gone through the charges, inquiry proceedings, order passed by DA, orders passed by AA and revision petition dated 25.10.2017 submitted by you and all other records available in the case file and found that inquiry report made by Inquiry Officer is in accordance with Rule-9 (250 of RS(D&A) Rule 1968 and my views are as under

You were absent from duty from 01.01.2013 to 13.07.2016. There is no written evidence in the case file that you have informed to your controlling officer in time regarding your illness, neither you have submitted any sick certificate during this period. You have submitted your sick certificate(PMC) along with fit certificate on 04.07.2016 i.e. after three and half years. For which you have committed a gross negligence and act as unbecoming a Railway servant.

Though you are staying outside, you could have availed other alternatives to communicate your illness to office. As per the extant rule you have to produce sick certificate to office within 48 hours of reporting sick. You had not taken the job seriously.

Though you were absent from 01.01.2013, you have submitted PMC since 01.02.2013. no sick certificate submitted by you for the period from 01.01.2013 to 31.01.2013. This shows that you are not since in performing duty.

The charge of unauthorized absence has been proved by the IO and the same has also been admitted by you in para-8 of the mercy appeal.

No fresh arguments have been brought forth by you for reconsideration.

In view of above, it is construed as misconduct and the punishment imposed by the Disciplinary Authority (DA) and upheld by the AA is commensurate with the gravity of offence committed by you. Therefore, in exercise of powers conferred upon by me under Rule 25(1) (iii) of RS (D&A) Rules, 1968, I, as revising authority hereby order to uphold the punishment imposed by Disciplinary Authority and upheld by the Appellate Authority, to meet the ends of justice."

14. It is alleged that the applicant had remained absent for a period of about three and half years i.e. from

01.01.2013 to 13.07.2016. Therefore, one charge memo vide Annexure A/3 was issued against him by Respondent No. 4 i.e. Assistant Engineer. The submission of learned counsel for the applicant that the Respondent No. 4 was not competent to issue charge memo is not supported by any rules, circulars or citations. There is no material to show that, in fact by issue of charge memo vide Annexure A/3 any serious prejudice has been caused to the applicant, since the applicant has been given due opportunity in the departmental proceeding to defend himself. Just because the Chief Personnel Officer had issued the order of engagement vide Annexure A/1 and had also conferred temporary status on the applicant vide Annexure A/2 cannot lead this Tribunal to the conclusion that the issue of charge memo by Respondent No. 4 is neither permissible or accordance with law. On the other hand the Respondents have submitted that vide Railway Board circular dated 25.11.2002 "that the penalties of dismissal, removal or compulsory retirement should be imposed only by the highest of these authorities i.e. either by the authority which actually appointed the railway servant to the relevant grade or post or the authority which is empowered to make appointment to that grade or post at the time of imposition of penalty, whichever is the higher authority".

15. It was submitted by learned counsel for the applicant that there is no finding by the Inquiring Officer or by the Appellate or Revisionary Authority that the absence in question by the applicant was wilful absence and in this regard he has relied upon the decision passed by this Tribunal in OA No. 392/2014. But the facts and circumstances of the said case is not applicable to the facts and circumstances of the present case. In the said reported case the absence was for mere 103 days, but in the present case the absence of the applicant was for a period of more than three and half years from 01.01.2013 to 13.07.2016. Therefore it cannot be said that the said absence was not wilful, in the absence of any sufficient reason assigned by the applicant to the inquiring officer and the disciplinary authority. Some of the medical certificate said to have been issued in favour of the applicant by private doctors were not submitted before the inquiring officer and no satisfactory explanation has been furnished from the side of the applicant as to why those medical certificates were in possession of the applicant, could not be filed before the inquiring officer or during the departmental proceeding in question. The mere submission of fitness certificate does not by itself show that the applicant was suffering from any illness for the entire period in question and thereby he was performing his official duties during that period.

16. Further submission of learned counsel for the applicant that the bungalow peon being attached to the particular authority he had taken oral permission from him, the said authority, for the absence in question. The applicant has failed to show that there is any rules/circulars/instructions that any such oral permission of authority can be given for such a long period of absence by the applicant. Therefore such belated plea taken by the applicant without any supporting material to that effect is not accepted by this Tribunal.

17. Further submission of learned counsel for the applicant that the appellate authority as well as revisionary authority had not taken into consideration the grounds taken by the applicant regarding his justification for remaining absent for the period in question cannot be accepted in view of the detailed elaborate order passed by the disciplinary and so also by the appellate and revisionary authority as seen from Annexure A/8 and A/10. Just because some of the vague grounds taken by the applicant before them have not been dealt specifically does not mean that they have not applied their mind while passing the order in question. We have taken this view after going through orders passed by them in Annexure A/8 & A/10.

18. Hon'ble Supreme Court 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."

19. Remaining absent from duty for a long time, in our

opinion, cannot be said to be minor misconduct. In the instant case, the applicant remained on unauthorized absence for a period of three and half years without intimating his controlling officer or immediate superiors.

The applicant was given due opportunity to defend himself in the inquiry proceedings. Therefore the punishment imposed by the respondents is not illegal or arbitrary and is neither shocking to warrant interference by this Tribunal.

20. Accordingly, the OA being devoid of merit is dismissed

but in the circumstances without any order to cost.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(csk)