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Central Administrative Tribunal
Principal Bench: New Delhi

DA No.667/90

New Delhi this the 3rd Day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman (A)
Shri B.S. Hegde, Member (J)

Kashmiri Lal Kapoor,
S/o Sh. Ram Chand Kapoor,
Ex. Chief Controller,
Northern Railway,
H-33/4, Sector-III,
MIG Flars, Rohini,
Delhi.

...Applicant

(By Advocate Shri B.S. Mainee)

Versus

1. Union of India through
General Manager,
Northern Railway, Boarda
House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

...Respondents

(By Advocate Shri Shyam Moorjani)

ORDER (ORAL)

Mr. N.V. Krishnan:

The applicant was a Deputy Chief Controller, Northern Railway under the respondents. A disciplinary proceeding was initiated against him and by the order dated 30.8.88 (Annexure A-1) the applicant was removed from service by the disciplinary authority. The charges against him were as follows:-

"Charge No.1

It has been established that after discharge from sick list by DMO/DKZ on 15.5.87, Shri Kashmiri Lal Kapoor failed to inform the office. When asked by the administration to report to DMO/DKZ, he failed to do so. The fact that he lives in a railway quarter just 2.5 kms. from the dispensary, further establishes the guilt.

Charges No.2 and 3

Since he had been discharged by DMO/DKZ from the sick list w.e.f. 15.5.87 and he had failed to submit valid certificates despite being asked to report to DMO/DKZ, it goes to establish his unauthorised absence. Even the PMCs submitted by him do not cover the period beyond 1.9.87. The PMCs have been correctly rejected as he is staying in a railway quarter within a distance of 2.5 kms. of the railway dispensary, and the decision was duly communicated to him. The charge of unauthorised absence therefore stands proved."

2. An appeal was filed by him on 7.10.88 (Annexure A-2) to the General Manager, the appellate authority, respondent No.1. As the appeal was not disposed of in time the applicant filed this OA for a direction to quash the impugned order of imposing penalty of removal from service (Annexure A-1) and to give him consequential reliefs.
3. The respondents have filed a reply contesting the claims.
4. The matter came up for final hearing on an earlier occasion. A number of issues were raised, involving the question of facts and appreciation of evidence. The learned counsel for the applicant submitted that in any view of the matter the punishment of removal from service is totally out of proportion to the charges framed against the applicant, particularly, because of the meritorious record of the applicant to which a reference has been made in the appellate memorandum (Annexure A-2).
5. In this view of the matter we wanted to ascertain from the learned counsel for the applicant whether it would not be proper to remand this matter to the appellate

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authority to pass a speaking order after considering all facts so that he has an opportunity to look into all aspects of the order passed by the disciplinary authority which cannot be gone into by us.

6. The learned counsel for the applicant sought time to consult his client. He now submits that he has no objection if this O.A. is disposed of with such directions. He, however, pleaded that the appellate authority should be given a specific direction to consider, particularly, the quantum of penalty imposed, particularly, in the light of the good record of the applicant as mentioned in the appellate memorandum. ^{as also the judgement in 1992(1)SLJ 447-CAT.} The learned counsel for the respondents does not have any objection in this regard.

7. In this view of the matter we are satisfied that this OA can now be disposed of with directions to the appellate authority. In the circumstances, we dispose of this O.A. with the following directions:-

- i) The appellate authority, respondent No.1 is directed to dispose of the appeal filed by the applicant, i.e., Annexure A-2 memorandum within a period of three months from the date of receipt of this order, taking into account not only the said appellate memorandum but also the pleadings submitted by the applicant in the present OA. In particular, he is directed to consider the prayer of the applicant that even if the charges are proved, the penalty imposed upon him is out of proportion to the charges that may be proved and in any case, that penalty has to be toned down in the light of the good record of the applicant to which he has given a reference in the appellate memorandum.

ii) In addition the appellate authority shall also give a personal hearing to the applicant. For this purpose the applicant is directed to appear before the appellate authority with a copy of this order on 11.4.94.

iii) Needless to say that if the applicant is still aggrieved, it is open to him to seek such redress as advised.

The O.A. is disposed of with the above directions with no order as to costs.

B.S. Hegde
(B.S. HEGDE)
Member(J)

N.V. Krishnan
2.3.94
(N.V. KRISHNAN)
Vice-Chairman

Sanju.