

Central Administrative Tribunal
Principal Bench

OA No.3077/2004
MA No.2586/2004

New Delhi this the 4th day of May 2007.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Neena Ranjan, Member (A)

K.K. Kulshrestha,
S/o Shri Nitya Nand Kulshrestha,
R/o 3, SIKIVALOO,
Sector 61, Noida (UP).

-Applicant

(By Advocate Shri B.S. Mainee)

-Versus-

Union of India through:

1. The General Manager,
West Central Railway,
Jabalpur.
2. The Divisional Railway Manager,
Western Railway,
Kota (Rajasthan).
3. The Senior Section Engineer,
TRD, Western Railway,
Bayana.

-Respondents

(By Advocate Shri Rajinder Khatter)

1. To be referred to the Reporters or not? *yes*

2. To be circulated to other Benches of the Tribunal or not? *yes*

S. Raju
(Shanker Raju)
Member (J)

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O R D E R (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

By virtue of this OA applicant has assailed respondents' order dated 5.7.2003, whereby consequent upon disciplinary proceedings penalty of removal has been inflicted upon him. Also assailed are appellate order dated 22.1.2003 and order passed in revision dated 7.3.2003, upholding the punishment.



2. While working as Technician Grade-I applicant was proceeded against for a major penalty for remaining absent from 15.5.1998 to 24.8.1998 and leaving the headquarters without permission. As number of communications had been sent to applicant, which when not responded to, the enquiry officer (EO) proceeded applicant ex parte and without holding him guilty of the charge referred the matter to the disciplinary authority (DA), who in turn, holding that guilt of applicant has been completely established in the enquiry, imposed the punishment. An appeal preferred by applicant was also turned down as well as a revision against the order of penalty by holding that applicant had remained absent for more than four years.

3. MA-2586/2004 has been filed, seeking condonation of delay, wherein it is stated that after the revision petition was rejected on 7.3.2003, applicant preferred a further representation to the General Manager on 20.4.2004, which when not disposed of, gives rise to the present OA.

4. As the case is good on merits and there is no iota of inordinate delay attributable to applicant or malafide established, in the light of the decision of the Apex Court in ***State of Bihar v. Kameshwar Prasad Singh***, 2001 (1) SLJ SC 76, delay is condoned.

5. Learned counsel of applicant states that the enquiry despite being proceeded ex parte, it is incumbent upon the EO



as per Rule 9 (25) of the Railway Servants (Discipline & Appeal) Rules, 1968 to record a finding of guilt by following the due procedure prescribed under the Rules. As the same has not been complied with, the same is in violation of decision of the Tribunal in ***Kiran Bala v. Union of India***, 1995 (1) ATJ 323.

6. Learned counsel would contend that the orders passed by the disciplinary, appellate and revisional authorities are non-speaking, which violate the mandate of Railway Board's instructions, supplementing the Rules, issued in 13.7.1981 and 5.12.1985.

7. On the other hand, learned counsel objected to the jurisdiction of the Tribunal by stating that all the communications were sent to applicant at his Bharat Pur address. Accordingly, the Principal Bench has no jurisdiction to deal with his case. The preliminary objection as to limitation was also raised, which we have already overruled.

8. On merits, learned counsel of respondents would contend that applicant has abruptly absented himself and as he was not receiving the communication during the course of enquiry, by pasting it on the work place it is deemed to have been served and ex parte enquiry has been held in accordance with Rules. It is stated that the authorities have passed speaking orders and there is no illegality of the procedure in the conduct of the enquiry.

9. We have carefully considered the rival contentions of the parties and perused the material on record.

10. In an *ex parte* enquiry assuming applicant has been validly served, yet it does not absolve the EO from holding the enquiry in the manner prescribed under Rule 9 of the Rules *ibid*, which, *inter alia*, includes taking the documents on record and examination of the witnesses. From the perusal of the memorandum issued to applicant under SF-5 we find list of witnesses and documents enclosed, yet on perusal of the enquiry report we find that after the EO deliberated upon how applicant was held *ex parte*, neither witnesses were examined nor documents were taken on record. We do not even find a finding of guilt with reasons recorded by the EO, which is violative of Rule 9 (25) of the Rules *ibid* as well as Board's instructions on *ex parte* enquiry issued vide Board's letter dated 18.6.1969. No procedure envisaged under Rule 9 of the Rules *ibid* has been followed and the EO has simply forwarded the enquiry report to the DA on the basis of *ex parte* enquiry. Such a procedure vitiates the enquiry and prejudices applicant.

11. The DA also wrongly concluded that the EO has established the charge fully against applicant and without recording reasons, as envisaged under the instructions, imposed the extreme punishment upon applicant.

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12. Rule 22 of the Rules *ibid* mandates the appellate authority, when an appeal is preferred, not only to comply with the procedure laid down in the Rules but also to record a specific finding on proportionality of punishment. The appellate memorandum of applicant shows the contentions regarding proportionality of punishment. From the perusal of the appellate order we do not find any consideration by the appellate authority as to the violation of the procedural rules and no finding with reasons as to proportionality of punishment. The appellate authority has not discharged its obligation by considering the quantum of punishment. The present case is a case where applicant from time to time, through postal communications, continued to inform the Department about his and his wife's illness, which has not been objected to by the respondents. As such, the absence, which is under mitigating circumstances, cannot be treated as willful and this element of willful absence takes a sting out of the severity of the misconduct. The Apex Court in ***Union of India v. Dwarka Prasad Tiwari***, 2007 (1) SCC 135, held as follows:

“15. The common threat running though in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the

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administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

13. Having regard to the above, finding illegality in the procedure and non-consideration of proportionality by the appellate authority and the fact that even the orders passed in revision and by the DA are non-speaking in violation of the guidelines issued by the Railway Board, this OA is partly allowed. The appellate order and the order passed in revision are set aside. Matter is remitted back to the appellate authority to reconsider the aspect of enquiry and the punishment imposed, keeping in light our observations made above. Such a consideration shall culminate into a reasoned order, which shall be passed within a period of two months from the date of receipt of a copy of this order. It, however, goes without saying that in the event of reinstatement of applicant consequences would follow as per the rules, instructions and law on the subject. No costs.

Neena Ranjan

(Neena Ranjan)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

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