

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

(9)

O.A. No. 361/92

Dated: 7.10.1993

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Applicant

Vs.

Union of India & Ors.

Respondents.

Present: Shri V.P. Sharma counsel for the applicant  
None for the respondents.

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1. Hon'ble Mr. J.P. Sharma, Member (J)
2. Hon'ble Mr. B.K. Singh, Member (A)

JUDGEMENT (ORAL)

(Delivered by Hon'ble Mr. J.P. Sharma, Member (Jud.).

The applicant is an ex-Safaiwala in Central Railway, Mathola and has assailed the impugned order dated 7.12.90 (Annexure A-1) passed by Assistant Operating Superintendent, Bhopal. By the impugned order dated 7.12.90 a penalty was imposed upon the applicant under Rule 6 of the Discipline and Appeal Rules 1968 of removal from service w.e.f. 10.12.90 on the basis of departmental inquiry.

2. The applicant prayed for grant of relief that the impugned order dated 7.12.90 be quashed and the applicant be reinstated in service with back wages, seniority and promotion. A notice was issued to the respondents and they filed their reply and contested the application and the grant of relief prayed for. The facts of the case are that a Memo of charges

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dated 10.10.90 was served on the applicant with the article of charge that he remained unauthorisedly absent from duty from 12.8.90 to 10.10.90 and also did not send any information regarding his absence to the office or to any other authorities. In reply to this memo, the applicant has submitted his explanation which was received by the respondents on 26.10.90. In this reply the applicant has stated the reasons of his absence from duty mentioning that his wife has suffered abortion and he was running here and there for her treatment but <sup>she</sup> could not get recovered. He has therefore apologised though he was transferred from the present posting. In the inquiry proceedings the applicant has given his statement admitting his guilt of unauthorised absence on account of the serious illness of his wife (exhibit 11 of the counter). The inquiry officer on the basis of this statement gave his findings that "the delinquent Shri Vipiti, Safaiwala, Hoshangabad, who has been transferred to Mathola has admitted all the charges framed against him but simultaneously he has given certain pleas in defence. So in view of these defence pleas his case should be considered sympathetically and necessary orders be passed after giving him an opportunity." On the basis of the findings of the Inquiry Officer, the Disciplinary Authority (Assistant Operating Superintendent) has passed the order of removal from service for non-observance of rules and remaining absent from duty without any intimation to competent authority w.e.f. 10.12.90. This order was communicated by the office of the D.R.M. operating in Bhopal dated 7.12.90 (annexure A-1 & annexure XIV). The applicant has preferred an appeal against this order (annexure XIII). This appeal is dated 10.10.90 but <sup>date</sup> it appears to be wrongly written as it mentions about the order of

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removal from service w.e.f. 10.12.90. This appeal was preferred to D.R.M., Bhopal. This appeal was sent by registered post and the postal receipt has been filed as annexure A13. The said appeal was disposed of by D.R.M. by a one line order which is as follows: "The punishment given by the Assistant Operating Supdt., is confirmed".

3. We have heard the learned counsel for the applicant and perused the record. Firstly we find that in the reply filed by the respondents in para 7 of the preliminary objections it is stated that the respondents have not received any appeal/revision or representation from the applicant and so the application is barred by non-exhaustion of departmental remedies. This is incorrect statement of facts, because the the respondents have L themselves annexed copy of the order of the appellate authority (annexure XIX).

4. The disciplinary authority in fact has not applied his mind at all. Even in a case where the delinquent pleads guilty of charges framed against him on certain conditions that the misconduct alleged against him has been due to certain facts beyond his control, the disciplinary authority should have applied his mind to the pleas taken by the delinquent for acts and omissions which amounted to misconduct under the concerned service rules. The inquiry officer was satisfied, as is also evident from the findings given in his succinct report that the applicant was very much disabled because of the serious ailment of his wife and was running after her proper treatment. The disciplinary authority hasnot touched this aspect at all. A government servant in ordinary course is entitled to certain period

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of sanctioned leave and that is due to him either he has earned it or he wants to utilise the same without any remuneration in an exigency which makes him impossible to perform his duties. It is for the authorities to consider whether the case for sanction of leave is genuine or it is only a pretext for the employee to remain away from the duties. That aspect of the matter has not been dealt with by the inquiry officer and in fact he has left it for consideration of the disciplinary authority. Unauthorised absence can be turned to be one where the employee is out of duty without any sanctioned leave or permission of the concerned authority. But it has to be considered whether there was such circumstances beyond the control of the employee that he could not take time to intimate the authorities about his absence. In fact this was the issue which was to be considered by the inquiry officer in giving finding of guilt. The charge against the applicant was that he remained absent unauthorisedly from 12.8.90 to 10.10.90. This period cannot be said to be along absence from duty in case of a person who has to attend his ailing wife and in fact it is not rebutted that the wife did not suffer an abortion and was under treatment for the same. Even in the case of ladies the government has provided three months period of maternity leave. The applicant could have been considered whether his absence from duty is bona fide for the treatment of his wife or it was a lame excuse. As said above both the inquiry officer and disciplinary authority failed to consider this aspect.

5. Surprisingly and shockingly the appellate authority passed one line order confirming the punishment but without applying his mind to the pathetic circumstances detailed in the memo of appeal by the applicant. This order cannot be sustained.

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6. Since nobody is present on behalf of the respondents, we have considered the averments made in the counter and the annexures annexed to the same. So after a careful consideration of these facts we find that the order of punishment has been passed in a cryptic manner without application of mind by the disciplinary as well as appellate authorities. Accordingly, the order of the Assistant Operating Superintendent dated 7.12.90 is quashed and set aside. The applicant is reinstated in service with the liberty to the respondents to proceed, if so advised, with a proper inquiry under Rule 9, Discipline and Appeal Rules 1968 against the applicant after giving him fullest opportunity. The applicant shall be entitled to wages from the date he joins his service after reinstatement. The respondents shall reinstate the applicant in service within 2 months from the date of receipt of this judgement. The period intervening from the date of removal i.e. 10.12.90 till the date of his reinstatement by virtue of this order shall be decided by the respondents finally on the result of the aforesaid inquiry, if that is undertaken by the respondents. In case any inquiry is held the applicant shall be considered for payment of his wages provided he satisfies the respondents that he was not gainfully engaged elsewhere during this period. In these circumstances the parties are directed to bear their own costs.



( B.K. Singh )  
Member (A)



J.P. Sharma  
( J.P. Sharma )  
Member (J)