

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 6th day of April, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 1174 of 1996

Rajender Singh Yadav S/O Shri Babu Lal, Ex-Lower Division Clerk, Ministry of Railways (Rly. Board), Rail Bhavan, New Delhi.....
.....Applicant.

Counsel for applicant : Sri A.K. Dave.

Versus

1. The Secretary, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.....
.....Respondent.

Counsel for respondent : Sri P. Mathur.

ORDER (ORAL)BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri A.K. Dave, learned counsel for applicant, Sri P. Mathur, learned counsel for respondents and perused the pleadings.

2. The applicant was served with a charge memo containing the following charges :-

"Articles of charges framed against
Shri Rajendra Singh, LDC, Railway Board.

That Shri Rajendra Singh, LDC, E(Trg) Branch, Railway Board by his various acts of omission and commission viz. persistently attending office late despite being cautioned, arriving late after lunch break, unauthorisedly absenting from duty i.e. without prior intimation/sanction of leave, has misbehaved giving demonstration of insubordination/indiscipline, failed to maintain devotion to duty and committed gross misconduct, violating Rule 3(1)(ii) of the Railway Services (Conduct) Rules, 1966."

3. In response to the said charge, the applicant submitted his reply which reads as under :-

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"With reference to the above memorandum, I beg to state that there is no doubt that charges framed against me about my irregular attendance and coming late after lunch time, are true, but my circumstances were such that I was compelled to take frequent leaves due to serious illness of my mother at my native place Kanpur and heavy mental tension about the family circumstances. Further, as I am living alone in Delhi, I was also facing lot of problems about room accommodation in Delhi and no body wanted to give me even a single room accommodation being alone and new man.

In view of the above-mentioned facts, I would request your goodself kindly to give me a chance to improve my punctuality attendance to duties. I assure you, Sir, that now I will not give any chance of complain in future."

4. The Disciplinary Authority by its order dated 24.2.92 (Annexure A-1) imposed the penalty of removal from service after considering the charges as the reply submitted by the applicant. The order dated 24.2.92, passed by the Disciplinary Authority, reads as under :-

"Sri Rajendra Singh, LDC, Railway Board has submitted his statement of defence in response to the charge sheet issued to him vide Memorandum No. E91 DS2/10/RB(D) dated 10.10.91. As Sh. Rajendra Singh has accepted the charges, there is no need to hold an inquiry. Sh. Rajendra Singh has, however, given some extenuating grounds for the lapse/misconduct on his part.

2. The undersigned has carefully considered the case. While accepting the charges, the extenuating grounds given by Sh. Rajendra Singh are: i) serious illness of his mother at Kanpur, his native place, (ii) mental tension and (iii) not getting residential accommodation for his living alone in Delhi. His mother's illness has never been indicated as a ground in any of the applications referred to in the charge sheet. Even accepting it as a fact, his mother's illness at Kanpur, cannot even remotely justify the gross negligence of discipline/punctuality shown by him while attending office in New Delhi. Mental tension

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and difficulties faced by a new recruit in getting residential accommodation in Delhi are not uncommon. If these were to be accepted as sufficient reasons, the discipline/punctuality in the office can never be enforced at all. The memoranda issued to him by his immediate superior had no redeeming effect on him and he persisted with the irregular/late attendance totally ignoring the caution given about the disciplinary proceedings. The extenuating grounds given by him are not acceptable. He has demonstrated such gross misconduct/misbehaviour as brought out in the chargesheet, during the very first year of his service/probation. Such a person not at all responsive to the cautioning memoranda and persisting with the acts of insubordination/indiscipline involving total lack of devotion to duty is not fit to be retained in service. The undersigned has, therefore, decided that the penalty of removal from service should be imposed on Sh. Rajendra Singh, LDC, Railway Board. An order to this effect is enclosed.

3. Under the rules, appeal against the enclosed Order lies with the Secretary, Railway Board. Appeal, if any, against the enclosed Order is to be submitted within a period of 45 (forty five) days.

4. Sh. Rajendra Singh is required to acknowledge the receipt of this Memorandum and the enclosed order."

5. The order of punishment was made effect from the date of service of the order. The applicant preferred an appeal against the said order. The Appellate Authority held that the ~~fact~~ ^{fact} is that the acts of misconduct aforesated, committed by the applicant in ^{the} ~~the~~ very first year of his probationary service, as accepted by him, were grave enough to prove his lack of devotion to duty violating Rule 3(1)(ii) of Railway Services (Conduct) Rules, 1966 and accordingly dismissed the appeal vide order dated 18.6.92 while upholding the penalty of removal from service. Aggrieved the applicant has preferred the instant O.A.

6. Sri A.K. Dave, learned counsel appearing for the applicant has submitted that the impugned order of penalty was passed by the Disciplinary Authority without holding any enquiry and, therefore, it is not sustainable. Rule 9(9)(a) (i) of the Railway Servants (Discipline & Appeal) Rules, 1968 provides that on receipt of the written statement of defence, the disciplinary shall consider the same and decide whether the inquiry should be proceeded with under this rule, and clause (ii) of Sub Rule 9(a) provides that where the disciplinary authority decides to proceed with the inquiry it may itself inquire into 'such of the articles of charge as are not admitted' or appoint, under sub-rule (2), a Board of Inquiry or other authority for the purpose. A perusal of the written defence made by the applicant would show that the applicant had admitted the charges framed against him as being 'true'. He, however, tried to set forth in his defence, the circumstances under which he had to take frequent leaves. In view of the provisions contained in Sub Rule 9(9) aforesaid, it ~~was~~ not incumbent upon the Disciplinary Authority to hold an enquiry. The Disciplinary Authority has discarded the grounds given by the applicant in justification of his conduct which concededly amounts to gross negligence besides being subversive of discipline. The appellate authority in its order dated 15.6.92 has dealt with all the points raised by the applicant in his memo of appeal and has rightly maintained the punishment imposed by the Disciplinary Authority.

7. Sri A.K. Dave, counsel for the applicant then submits that the penalty of removal from service on the charge of unauthorised absence was not justified. In any case, ~~submit~~ the learned counsel, even if the employee had admitted the charge, it was incumbent to prove the charge on the basis of material before the Enquiry Officer and examine the witnesses on their part as held by the Madras Bench of C.A.T.

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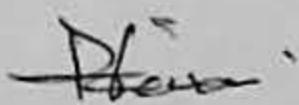
in T. Narayanan Vs. Dy. Chief Commercial Engineer, Carriage & Wagon 1999(1) ATJ 403. A perusal of ⁴⁵ ~~such~~ decision would indicate that it was rendered in a different situation and the provisions contained under Rule 9(9) of the Rules were not up for consideration in that case. The decision relied on by the counsel, therefore, has no relevance.

8. The next case relied ^{on} by the counsel is ~~2~~ (1996) 34 ATC 30 of CAT Jodhpur Bench (Poonam Chand Vs. Union of India & others) wherein ⁱⁿ facts of the case it was held that the statement made by the applicant therein did not amount to admission of charge framed against him. In his statement of defence, the applicant ^{had} ~~had~~ clearly stated that the charges framed against him about the irregular attendance and late coming are 'true'. In that view of the matter, the decision relied on by the applicant is of no use. Learned counsel has also relied the case of Manchand Bajoria Vs. Union of India 2001(3) ATJ 296. In that case also the Tribunal held in the facts of the case, that the purported admission of the ^{of guilt} applicant ^{committed} therein did not establish the fact that it was plain, unequivocal, precise and unambiguous. For the reasons aforesated, it is of no avail to the applicant. The punishment of removal from service, in our opinion, cannot be said to be disproportionate to the charge of misconduct ⁱⁿ the very first year of probationary period. The appointment of the applicant, as would be evident from the appointment letter dated 31.2.91 was purely temporary, liable to ~~be~~ termination ^{of service even} by either side. The applicant was no doubt placed on probation for a period of two years from the date of appointment but it was made clear that failure to complete the period of service to the satisfaction of the Government or to pass the pre-scribed test would render the applicant liable to discharge from service. However, in the instant case, the applicant has been removed from service as a measure of punishment during probationary period. We do not find

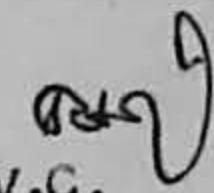
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9. In the facts and circumstances, stated above, we do not find any good ground for interference. The O.A. fails and dismissed with no order as to costs.



A.M.



V.C.

Asthana/