

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No.1377 of 1996.

Allahabad this the 23rd day of March 2004.

Hon'ble Mr. Justice S.R. Singh, V.C.

Hon'ble Mr. D.R. Tiwari A.M.

Gurdeep Prasad
S/o Ram Harak,
Rautania Sadar, Post Sardar Nagar
District Gorakhpur.

....Applicant.

(By Advocate : Sri Manish Mehrotra)

Versus.

1. Union of India
through General Manager,
North Eastern Railway,
Gorakhpur.
2. Chief Operations Manager,
North Eastern Railway,
Gorakhpur.
3. Deputy Chief Operations Manager (Goods)
North Eastern Railway,
Gorakhpur.

....Respondents.

(By Advocate : Sri V.K. Goel)

O_R_D_E_R

(Hon'ble Mr. Justice S.R. Singh, V.C.)

Heard Sri A.K. Dave holding brief of Sri Manish
Mehrotra learned counsel for the applicant and Sri V.K.
Goel learned counsel for the respondents.

2. Impugned herein is the order dated 27.06.1995 passed
by Disciplinary Authority thereby removing the applicant
from service and the appellate order dated 28.08.1995

Par

whereby the appeal preferred by the applicant against the order of Disciplinary Authority has been rejected.

3. The applicant was served with the charge memo containing therein the charge of unauthorised absence from duty from 29.04.1994 to 22.08.1994. Applicant submitted his reply to the charge memo and urged that he could not attend his duties because of his illness. The applicant, it appears has applied for half day leave on 29.04.1994 but he did not resume his duties the next and it is alleged by the applicant that he submitted medical certificate. Enquiry Officer, however, held the charge of unauthorised absence as proved. Copy of the enquiry report was furnished to the applicant with a view to enabling him to have his say in the matter. The applicant, it appears, filed his explanation on 04.08.1995. Disciplinary Authority on consideration of facts and circumstances of the case agreed with the report given by the Enquiry Officer and held the applicant guilty of unauthorised absence from duty and accordingly imposed upon him the punishment of removal from service w.e.f. 26.06.1995 (afternoon). Applicant preferred an appeal against said order which came to be rejected vide order dated 28.08.1995. Aggrieved by this, the applicant has approached the Tribunal.

4. Learned counsel for the applicant has urged that medical certificates filed by the applicant were not taken into consideration. Sri V.K. Goel learned counsel representing the respondents, in reply, has submitted that none of the medical certificates issued by Private Doctors was countersigned by the Railway Doctor and hence the certificates were of no avail to the applicant who was only a substitute Bungalow Peon.

120

5. It transpires from the record that in his application dated 29.04.1994, the applicant had prayed for half day leave due to pain in his legs. No application for medical leave subsequently was given by the applicant. Learned counsel for the applicant has not been able to show any procedural impropriety. He, however, submits that the punishment of removal from service was disproportionate to the charge of misconduct i.e. unauthorised absence from duty. We are not impressed by the submissions made by the learned counsel for the applicant. It is well settled that the Tribunal has no jurisdiction to interfere with the quantum of punishment except where it is found shockingly disproportionate to the alleged misconduct. In this case the applicant has been found unauthorisedly absent from duty for 160 days. This is a gross misconduct warranting imposition of major penalty. The case law of Union of India and Ors. Vs. Giriraj Sharma A.I.R 1994 S.C. 215 cited by the counsel, in our opinion, does not help the applicant. It was a case of overstaying leave for 12 days. In the fact situation of the present case the Apex Court held that the overstaying leave period of 12 days was not intentional and wilful and hence punishment of dismissal from service was not called for in the instant case, the applicant has been found to be unauthorisedly absent from duty for 160 days.

6. Vandana Saxena Vs. M.P. State and others, 1996 (2) E.S.C. 223 All, relied on by the learned counsel for the applicant too has no application to the facts of the present case. Petitioner therein remained absent on few days, unauthorisedly and in the fact situation of the case it was held that the imposition of major penalty was not warranted. In the instant case the applicant's unauthorised absence from duty was quite long. In the fact situation of the case, we are not persuaded to interfere on the quantum of punishment.

R.K.

7. Accordingly, the O.A. fails and is dismissed with no order as to costs.

Dhruv
Member-A.

Rehman
Vice-Chairman.

Manish/-