

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.86 OF 1996  
ALLAHABAD THIS THE 3RD DAY OF JANUARY, 2003

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, V.C.  
HON'BLE MAJ GEN. K.K. SRIVASTAVA, A.M.

Dilip Kumar Manik,  
Son of Shri Badri Prasad Manik,  
aged about 35 years,  
r/o D 38/9 Hauj Katra,  
Varanasi posted as Fireman  
Grade C Divisional Officer,  
Northern Railway,  
Loco, Varanasi.

..... Applicant

(By Advocate Shri V.K. Srivastava)

Versus

1. Union of India,  
through its General Manager,  
Baroda House,  
New Delhi.
2. Divisional Rail Manager,  
Hazratganj,  
Lucknow.
3. Senior Divisional Mechanical Engineer (P)  
Northern Railway,  
Hazratganj,  
Lucknow.

..... Respondents


(By Advocate Shri A.V. Srivastava)

O R D E R

HON'BLE MR. JUSTICE R.R.K. TRIVEDI, VICE-CHAIRMAN

By this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has challenged the order of punishment dated 13.01.1994, by which the applicant <sup>has been</sup> ~~was punished~~ ~~by order of~~ removed from service on conclusion of the disciplinary proceedings. The order was challenged in appeal which was dismissed on 23.12.1994, aggrieved by which the applicant has approached this Tribunal.

2. The facts of the case are that the applicant was appointed as Khalashi with effect from 21.02.1978. While the applicant was serving as Fireman Grade 'C', he was served



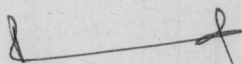
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with a memo of charge for major penalty for unauthorised absence from duty from 19.07.1991 to 15.01.1992. The applicant submitted his reply, However, he was failed to explain the absence from 19.07.1991 to 15.01.1992. He only stated that on account of his extreme weakness, he was usually lying ill. He further stated that on 18.01.1992, he suffered fracture in his leg and was admitted in Railway Hospital from where he was discharged on 01.05.1992, but even after discharge he was unable to work as there was severe pain in the leg and he was continuously under treatment. The inquiry officer submitted report on 06.09.1993 as the applicant did not put any contest to the charge and only made an application admitting the absence. The inquiry officer though gave opinion that the charges are proved but also made observation to the following effect.

"The version of delinquent appears to be correct as his body constitution was going clear indication of his general health."

3. The Disciplinary authority, however, accepted the report of the inquiry officer and passed the order of punishment as stated above which has been confirmed in appeal.

4. The learned counsel for the applicant has submitted that the applicant was serving Railway's since Feb, 1978. He had already served Railway's for more than 15 years when the order of punishment was passed. The fact that the applicant was maintaining the weak health, <sup>and suffering from</sup> ~~the delinquent~~ illness, was accepted by the inquiry officer but this aspect of the case has not been taken into consideration by the disciplinary authority and the appellate authority while considering the <sup>quantum</sup> ~~award~~ of punishment to the applicant. It is submitted that the punishment awarded has not commensurate to the charge. The absence of the applicant was no delivered <sup>by</sup> but was in compelling circumstances.





5. Shri A. V. Srivastava, learned counsel for the respondents on the other hand submitted that the applicant did not put any defence to the charge levelled against him, though he was given enough opportunity. In these circumstances no interference is called <sup>for</sup> by this Tribunal.

6. We have carefully considered the submissions made by the parties.


7. However, from perusal of the order of the appellate authority, we do not find that he ~~was~~ considered the punishment awarded in the light of the facts stated by the inquiry officer. The respondents have, alongwith counter affidavit, filed a chart as Annexure CA-8. This chart shows that the decline in quality of <sup>rendered by applicant</sup> ~~discharge of~~ services started from 1990 prior to that applicant had already rendered his services for over 12 years but there was no complaint against him. It appears that after 1990 he could not maintained good health and could not discharged <sup>he</sup> his duties satisfactorily. The disciplinary authority as well as the appellate authority were required to consider this aspect of the matter and if he was <sup>unable to perform</sup> ~~retained~~ in service, he could had been awarded alternative punishment of compulsory retirement. In our opinion, the ends of justice required <sup>that</sup> that matter may be remitted to appellate authority for re-consideration on quantum of punishment.

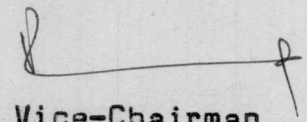
8. For the reasons stated above this O.A. is partly allowed though the order <sup>dated</sup> 13.01.1994 and 23.12.1994 are maintained, <sup>So</sup> far as the applicant has been found guilty of the charge, however, the order of the appellate authority dated 23.12.1994 is set aside, <sup>So</sup> far as he confirms the punishment awarded, the appeal shall be re-considered by the appellate



authority on quantum of punishment in the light of the observation stated above. As the matter is very old the appellate authority may decide the matter within three months from the date of receipt of a copy of this order.

9. There will be no order as to costs.

  
Member-A

  
Vice-Chairman

/Neelam/