

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**

Original Application No.407 of 1998

**CORAM**

**THIS THE 26th OCTOBER, 2004**

**HON.MR.JUSTICES.R.SINGH, V.C**

**HON.MRS.ROLI SRIVASTAVA, MEMBER (A)**

Amit Kumar, son of Shri Shyam Vir Sharma,  
 Village-Rajpur, post Hatharas Jn. District  
 Aligarh.

. Applicant

(By Adv: Shri S.S.Sharma)

Versus

1. Union of India owning and representing

'North Eastern Railway' Notice to be  
 served to the General Manager, North  
 Eastern Railway, Gorakhpur.

2. The Chief Personnel Officer, North

Eastern Railway, Gorakhpur.

3. Shri Kamlesh Chaudhary.

Assistant Controller of Stores/Depot  
 North Eastern Railway, Gorakhpur (The Alleged  
 Disciplinary Authority)

4. Shri Chunni Lal,

District Controller of Stores,  
 North Eastern Railway, Gorakhpur

5. Shri Rajendra Singh, Additional

Divisional Railway Manager,  
 North Eastern Railway, Lucknow

6. Shri Rajesh Lal,

Divisional Store Keeper/Depot,  
 North Eastern Railway,  
 Gorakhpur (The Inquiry Officer)

. Respondents

(By Adv: Shri Prashant Mathur)

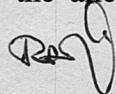
*Parj*

## ORDER

JUSTICE S.R.SINGH, V.C

By order dated 21.8.1997(Annexure A-1) the applicant has been removed from Railway Service in exercise of power under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant preferred an appeal which the Appellate Authority came to be rejected and accordingly the applicant instituted the instant original application <sup>for</sup> by setting aside the impugned penalty order dated 21.8.1997 and also the impugned charge memo dated 21.5.1997 and for issuance of a direction to the respondents to take the applicant back in service with all consequential benefits.

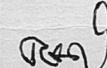
The charge against the applicant, who was a Bungalow Peon, was unauthorized absence from duty. The facts giving rise to the instant OA stated briefly, are that initially the applicant was appointed as a Substitute Bungalow Peon in the grade of Rs.750-940 by the General Manager, N.E. Railway, Gorakhpur vide his office order No.ka/227/14/classIV/BungalowPeon/pt. III/Eight dated 30.9.1994 and posted under Shri Mohan Chand Bhatt, the then Chief Material Manager, Controller of Stores, N.E. Railway, Gorakhpur vide his notice dated 25.1.1995 w.e.f. 27.1.1995. However, the applicant came to be reappointed as a Substitute Bungalow Khalasi in the grade of Rs 750-94940(RPS) by the Chief Personnel Officer, N.E. Railway, Gorakhpur's office order No.ka/227/14/classIV/Bunglow Peon/Stores/pt. II/I/III dated 06.11.1996 and in compliance of the said order the Deputy Controller of Stores/Depot, N.E. Railway Gorakhpur posted the applicant w.e.f 7.11.1996. The applicant, it appears, was put to work under Shri Vinay Ranjan Mishra, the then Dee. Controller of Stores/Depot, N.E.Railway, Gorakhpur who was subsequently transferred to Allahabad on 18.3.1997 where upon the applicant was directed to work under Shri Rajendra Singh, who took the charge of Shri Vinay Ranjan Mishra. It appears that the applicant absented from duty where upon the impugned charge memo was issued which ultimately culminated in an order of removal. The impugned order is sought to be quashed interalia, on the grounds; firstly, that the applicant was not afforded reasonable opportunity and inquiry was not conducted in tune with principle of natural justice in that the copy of the inquiry report was not furnished to the applicant and he was seriously prejudiced in the matter of his explanation before the Disciplinary Authority; secondly, the absence from duty was duly explained and in the fact situation of the case it was not a case of absence from duty but a case of the applicant being precluded from attending duties due to circumstances beyond his control; thirdly, that the applicant was appointed by Chief Personnel Officer, N.E. Railway Gorakhpur and whereas the penalty order was issued by the Assistant Controller of Stores/Depot, N.E. Railway, Gorakhpur who was subordinate to the appointing Authority by whom the applicant was appointed; and lastly, that the Disciplinary Authority failed to take notice of the mitigating circumstances and illegally imposed extreme penalty of removal from service which, in the fact situation of the case, was highly disproportionate to the alleged misconduct of unauthorized absence from



duty. The respondents have contested the original application. However, in paragraph 22 of the counter affidavit it is admitted that the appeal preferred by the applicant could not be decided and it is sought to be suggested that "in the interest of justice the matter may be remanded to the Appellate Authority for deciding the appeal afresh after reconstructing the file on the basis of documents furnished by the applicant".

It is no doubt true that absence from duty without proper intimation is a grave misconduct and may, in a given case, warrant removal/dismissal from service but in case the absence is satisfactorily explained on the ground of illness etc, the same may not warrant imposition of a major penalty of removal from service. The legality or otherwise of the order of removal has to be examined on the touch stone of compliance of the provisions of Railway Servants (Discipline & Appeal) rules, 1968 and principle of natural justice has embodied therein. The Appellate Authority under Rule 11 of the relevant Rules has very wide power of considering various aspects of the case and therefore, we are of the view that it would meet the ends of justice if the OA is disposed of with direction to the Appellate Authority to decide the appeal in accordance with law after proper self direction to the grounds taken by the applicant in his memo of appeal and such other grounds as he may like to supplement as also the factors contained in Rule 11 of the Railway Servants(Discipline & Appeal)Rules, 1968 by means of a reasoned and speaking order within a period of four months from the date of receipt of a copy of this order.

Accordingly, this original application is disposed of with no order as to costs.

   
MEMBER (A) VICE CHAIRMAN

Dated: 26-10-04

Uv/