

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 29th day of August, 2003.

original Application No. 794 of 1998.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.

Hon'ble Mr. D.R. Tiwari, Member-A.

Trilokinath Mishra S/o Sri Munni Lal, Ex. Gangman,  
R/o Village- Bhawanipur, P.O. Hadia Manpur,  
Distt. Allahabad.

.....Applicant

Counsel for the applicant :- Sri Satish Dwivedi

V E R S U S

1. Union of India through the General Manager,  
Northern Railways, Baroda House, New Delhi.

2. The Divisional Superintending Engineer- I,  
Northern Railway, Allahabad. Office of D.R.M,  
Northern Railway, Nwab Yusuf Road, Allahabad.

3. Assistant Engineer, Northern Railway,  
Mirzapur.

.....Respondents

Counsel for the respondents :- Sri G.P. Agarwal

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A filed under section 19 of Administrative Tribunals Act, 1985, the applicant has challenged the order dated 15.01.1997 (Annexure- 1) by which disciplinary authority awarded penalty of removal from service to the applicant on account of his remaining absent from duty. The order was challenged in appeal. The appeal was dismissed by order dated 05.05.1998 (Annexure- 2) which has also been challenged.



2. The facts of the case are that the applicant was serving as Gangman under the Divisional Engineer, Northern Railway, Chunar. The applicant absented from duty for the period 04.06.1994 to 04.01.1997 for which he was served the memo of charge dated 04.01.1997. Applicant received the memo of charge on 03.02.1997 and he submitted his reply on 04.04.1997, a copy of which has been filed as annexure-4. In his reply the applicant stated that his father was a patient of Cancer and applicant was the only person to look-after him. His father died on 19.04.1994. Due to his family circumstances, applicant could not join the post but he informed the authorities by letter dated 25.08.1994. A copy of said letter was annexed alongwith explanation. He further submitted that wife of the applicant was also seriously ill. She was suffering from Blood Suger, and Uterus Cancer and applicant was required to look- after her during the period of absence. Applicant also stated in his explanation that he had communicated his circumstances which did not permit him to join the duty, by letter dated 05.06.1994, 05.07.1994, 28.09.1994 and 31.12.1994. It appears that after submitting explanation, applicant did not appear before the enquiry officer. The enquiry officer closed the enquiry and submitted his report (Annexure- 26). A copy of the enquiry report was sent to the applicant. He submitted his explanation. The disciplinary authority passed the 4 lines order removing the applicant from service. The applicant filed an appeal against the order which was also dismissed on 05.05.1998 without taking into account the relevant facts.

3. The noticiable facts in the case are that the enquiry officer recorded his conclusion that absence during the period in question was on account of the illness of the wife of applicant and on account of his family circumstances. The relevant part of the finding of the enquiry officer is



being reproduced below :-

" कम्बियारी का अवकाश रकात देखने से प्रतीरु होता है कि कम्बियारी गैरहाजिर रहने का आदि है। परन्तु यहाँ तक 6.04.94 से 21.03.97 तक गैरहाजिर रहने का प्रश्न है तो कम्बियारी की पली के इलाज एवं परिवारिक परिस्थितियों के कारण ही दिन 11.03.96 को पी. डब्ल्यू. आर्द्ध-चुनार के पास स्थानान्तरण होकर आया है। दर्ख संलग्न (12)।"

4. The charge against the applicant was for the period of absence from 06.04.1994 to 04.01.1997. For this period the explanation of the applicant was accepted by the enquiry officer. The disciplinary authority and the appellate authority have however, not noticed this important fact and have passed the punishment order. The effect of acceptance of the explanation of the applicant was that extreme penalty of removal from service awarded to the applicant could not be justified. It may be noticed here that ~~no~~ memorandum <sup>of charge or at absence of applicant on purpose</sup> to this effect was served on the applicant indicating the action of the disciplinary authority, appellate authority and the enquiry officer, which was necessary before passing the order. The legal position is well settled in this regard. The enquiry officer has also noticed the absence of the applicant from 26.09.1997 onwards. However, this fact is not relevant in the enquiry as the charge against the applicant was confined to 06.04.1994 to 04.01.1997. Much has been said on behalf of the respondents about sending of the application under postal certificate to the applicant. However, the enquiry officer himself had sent the notice to the applicant under postal certificate and not under Registered cover. though the respondents in their counter reply have stated that in Railways applications are submitted not by ~~any~~ postal certificate, <sup>but</sup> only by the Registered post. In these

—

circumstances, in our opinion, the ends of justice requires<sup>3</sup> that this matter may be sent back to the authorities for passing fresh order with regard to punishment in the light of observations made above.

5. For the reasons stated above, this O.A is partly allowed. The order dated 15.01.1997 confirmed by the order dated 05.05.1998 of the appellate authority and awarding punishment of removal is quashed. The disciplinary authority shall pass a fresh order after hearing applicant which shall be confined to the quantum of punishment, within a period of three months from the date a copy of the order is filed.

6. There shall be no order as to costs.

Member - A.

Vice-Chairman.

/Anand/