

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 16th day of January 2002

Original Application no. 25 of 2001.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman  
Hon'ble Maj Gen K.K. Srivastava, Administrative Member

Krishna Verma, S/o Sri Harpal Verma,  
R/o Bunglow No. 17 D.L.W.,  
VARANASI.

... Applicant

By Adv : Sri S.K. Yadav  
Sri Amit Sthalekar

V E R S U S

1. Union of India through a Secretary Ministry  
of Railway,  
NEW DELHI.

2. Chief Samagree Manager,  
D.L.W.,  
VARANASI.

3. General Manager,  
D.L.W.,  
VARANASI.

... Respondents

By Adv : Sri Amit Sthalekar

ORDER

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

By this OA under section 19 of the A.T.Act, 1985  
the applicant has challenged order dated 02.12.1997  
(Ann 20) by which disciplinary authority (respondent no. 3)  
dismissed the applicant from service of Bunglow Peon on

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conclusion of disciplinary proceedings. The appeal against the aforesaid order was dismissed by Chief Samagree Manager (respondent no. 2) vide order dated 30.4.1998 (Ann 22), by which he confirmed the order of dismissal. This order has also been challenged.

2. The facts in short giving rise to this OA are that the applicant was serving as Bunglow Peon. On 30.6.1997 while he was travelling alongwith Sri A.K. Malhotra, Chief Mechanical Engineer (M) (in short CME) he fell down from the train and was seriously injured. He was admitted in hospital. The case of the applicant is that though he was not fit for discharging his duties he was forcibly relieved from the Railway hospital on 14.7.1997. Thereafter, he had to go ~~to~~<sup>to</sup> private hospital for treatment of his injuries. The applicant was served memo<sup>+</sup> of charge dated 22.8.1997 alleging that why he may not be punished for remaining absent without leave from 15.7.1997 to 21.8.1997. The applicant as usual filed his reply to this memo of charge and denied the charges. The enquiry officer proceeded with the enquiry and submitted his report dated 3.11.1997. He found the charges against the applicant proved. The disciplinary authority agreed with the conclusion of the enquiry officer and passed the order of punishment dated 2.12.1997 and awarded extreme penalty of dismissal from service. The order has been confirmed by the appellate authority. None of the authorities including the enquiry officer have recorded any finding as to in what circumstances the applicant was injured, what were the nature of injuries and whether the 14 days period was sufficient to cure such injuries. It is a case where we find that the defence



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of the applicant has not been mentioned even by the enquiry officer. The defence evidence has not been considered. The facts indicates that the Railway Authorities were in great haste to close this matter ~~and~~ in order to get rid of the applicant. Absence for the period from 15.7.1997 to 21.8.1997 in the above circumstances was not such serious mistake to award extreme penalty of dismissal from service. The disciplinary authority and appellate authority have found it proper to award this penalty which is shockingly disproportionate to the alleged misconduct. Though at one stage we wanted to remit the entire matter for a fresh enquiry, but considering the fact that the applicant belongs to a low category of employees, it may not be in his interest to reopen the whole enquiry, as it may involve a lot of time and money which the applicant may not be in a position to afford. For this fact, we only enter into the question of punishment which is shockingly disproportionate to the charge .

3. It is not disputed that the applicant was on Railway duty when he fell from running train and was seriously injured. In his reply the applicant clearly stated that he was busy in preparing food and was sitting on a stool and was cutting vegetable. While the train was running he was asked to open the door of the coach of the officer. After some time, while the train was heading towards Aligarh Jn, some lady from the officers family, hit the stool and the applicant fell down from the running train and became unconscious. His one hand was fractured and he suffered serious injuries



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in whole of the body. This part of the defence was not examined by any of the authorities including enquiry officer. Even <sup>if</sup> it was partially true and the injuries were caused in such a serious accident the healing of injuries could have taken much longer time and the view taken that the applicant was reported sick only upto 14.7.1997 by itself was doubtful. The case of the applicant was that he got himself treated in private nursing home, has also neither been considered, nor disbelieved. He examined the defence witnesses to show that he was forcibly thrown out of the Railway Hospital has also not been considered. All these were mitigating circumstances to take a lineant view and to award minor penalty.

4. As the penalty of the dismissal is shockingly disproportionate, we have heard learned counsel for the parties on the question of punishment, and considering the entire facts and circumstances of the case, and the manner in which departmental proceeding have been concluded, extreme penalty of dismissal cannot be sustained and withholding of 2 increment for a period of one year without cumulative effect, shall be just and suitable punishment for the alleged misconduct of absence from duty.

5. The OA is accordingly allowed. Though the order of punishment dated 2.12.1997 and 30.4.1998 are being maintained so far as they hold the applicant guilty of misconduct, <sup>however</sup>, the punishment awarded is quashed, it shall stand substituted by penalty of withholding of two increments for a period of one year without cumulative



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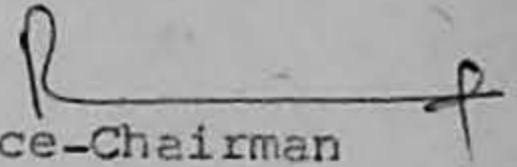
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effect. The applicant shall be immediately reinstated on the post and the period for which the applicant has been out of service in pursuance of the impugned order, he shall be treated in service but he shall be entitled for 50% of the wages which shall be paid to him within a period of three months from the date of communication of this order. The OA is decided accordingly.

6. There shall be no order as to costs.



Member (A)



Vice-Chairman

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