

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No.472 of 2001.

Allahabad, this the 30th day of March, 2005.

Hon'ble Mr. V.K. Majotra, V.C.  
Hon'ble Mr. A.K. Bhatnagar, J.M.

Yogendra Narain Dwivedi,  
Son of Sri Ram Phal Dwivedi,  
Resident of Mohalla Ramed,   
City and District Hamirpur.

.....Applicant.

(By Advocate-Shri Jamal Ali)

Versus

1. Union of India,  
through General Manager,  
Central Railway, Bombay, V.T.
2. Divisional Mechanical Engineer,  
(O. and C.) Bhusawal.
3. Asstt. Mechanical Engineer,  
Office of D.R.M. (Personal  
Branch, Bhusawal.

....Respondents.

(By Advocate : Shri P. Mathur)

ORDER

By Hon'ble Mr. V.K. Majotra, V.C. :

The applicant has challenged <sup>the</sup> order dated 3.8.2000  
(Annexure-A-I) which is Appellate order in Disciplinary  
Proceedings against the applicant whereby penalty of  
removal from service, imposed upon the applicant, has been  
upheld.

2. Learned counsel for the applicant stated that the applicant was appointed as Class 'IV' Khalasi on the basis of Sports Quota. The disciplinary proceedings were initiated against him on the allegation that though the applicant was appointed under Sports Quota, he did not turn up on play ground for practice despite the orders of the Sports Authority. He also did not disclose or express any difficulty for not coming for practice on the play ground. The applicant had come up before this Tribunal through OA No.1753/92 when punishment of removal from service was imposed upon him in the disciplinary enquiry. Finding that the Appellate Authority had not given his own reasons or conclusion on the findings and had not passed a speaking order, the case was remanded to the Appellate Authority for reconsideration and passing a speaking order on applicant's appeal. It was also directed that the Appellate Authority shall also consider the question of adequacy or inadequacy of the punishment after hearing the applicant. <sup>A-XIII is lb</sup> / order passed in appeal <sup>100-A-11</sup> after the case was remanded to the Appellate Authority.

3. Learned counsel for the applicant has attacked the Appellate Authority on the following grounds :-

- 1) The Appellate Authority has again passed a non-speaking order in as much as the points raised by the applicant in the appeal has <sup>be</sup> not been considered by the Appellate Authority. To illustrate, learned counsel stated that in the appeal, the applicant has stated that although he has been selected under the Sports Quota, he was assigned shift duty between

*lb*




1-12-1987 and 3.6.1992. In spite of shift duty he managed to play Hockey for a period of six months but it became impossible thereafter to play Hockey despite shift duty. It could be possible only if he was assigned day duty. He had made a representation dated 11.2.1988 to this effect which remained unattended.

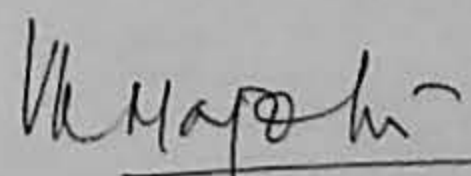
- ii) Despite clear direction of the Tribunal contained in the order dated 2.5.2000 to consider adequacy <sup>of the</sup> the quantum of punishment, the Appellate Authority has not considered this at all.

4. Learned counsel for the respondents states that request of the applicant for change of his duties to day duty was not found feasible, in view of the administrative exigency. He could not provide any information, how the representation of the applicant dated 11.2.1988, was dealt with and whether any decision thereon was communicated to the applicant, while, in the Appellate order, it is stated that no representation dated 11.2.1988 was received, in Paragraph 07 of the counter reply, it is admitted that the request of the applicant for change of his duties was not found feasible in view of the administrative exigency. There is a clear contradiction in the Appellate order and Paragraph 07 of the counter reply. It is deemed admission on the part of the respondents that a request has been received from the applicant for change of his duties to day duty so that he could play Hockey. However, no evidence has come from the respondents regarding communication of respondents decision on the applicant's representation/request.

5. The appellate order contains a bald statement that the decision to be imposed the punishment of removal from service is absolutely right and adequate. Such statement cannot be accepted as a proper consideration of the adequacy or inadequacy of the quantum of punishment. The Appellate Authority has not at all deliberated upon the gravity of the misconduct of the applicant and its relation ship with the punishment imposed upon the applicant.

6. In the above circumstances, the appellate order is un-reasoned and non-speaking order. Therefore, the points brought out above have not been appropriately dealt with. The punishment of removal from service in our considered view is certainly disproportionate to the gravity of the misconduct. Appellate Orders give an impression as if the Appellate Authority is obse ed by the notion of punishing the appellant so seriously while he does not make his orders reasoned and speaking despite our directions. In this back-drop these appellate orders are quashed and set-aside and the case is remanded again to the Appellate Authority to consider in the facts and circumstances of the case awarding a lesser punishment than the punishment of removal from service. The applicant shall be reinstated in the service within a period of 15 days from the date of communication of this order. However, while the period from the date of removal from service till resumption of charge shall be regularised under the appropriate rules, The applicant shall not be entitled for any back-wages. The O.A. is disposed of in the above terms. No order as to costs.

  
Member-J

  
Vice-Chairman

30.3.05

RKM/