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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O. A. No. 350/000 1501 of 2015

IN THE MATTER OF:

PURAN,

son of Late Giridhari, aged about 45 years,
residing at 16B, Monoharpukur Road, Post
Office- Kalighat, Police Station- Tollygunge,
Kolkata- 700026 and working as Porter under
the Traffic and Commercial Department of
Eastern Railway, Howrah Division;

...Applicant

-Versus-

1. UNION OF INDIA service through the
General Manager, Eastern Railway, 17,
N.S. Road, Fairlie Place, Kolkata-
700001;

2. THE DIVISIONAL RAILWAY
MANAGER, Eastern Railway, Howrah
Division, Post Office and District-
Howrah-712201.

3. THE SENIOR DIVISIONAL
PERSONNEL OFFICER, Eastern
Railway, Howrah Division, Post Office
and District- Howrah-712201.

4. THE SENIOR DIVISIONAL
OPERATIONS MANAGER (G), Eastern
Railway, Howrah Division, Post Office
and District- Howrah-712201.

5. THE DIVISIONAL OPERATIONS
MANAGER (G), Eastern Railway,
Howrah Division, Post Office and
District- Howrah-712201.

6. THE ASSISTANT OPERATIONS
MANAGER (T), Eastern Railway,
Howrah Division, Post Office and
District- Howrah-712201.

...Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/1501/2015

Date of order : 19.1.2021

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Tarun Shridhar, Administrative Member

PURAN
VS.
UNION OF INDIA & OTHERS
(Eastern Railway)

For the applicant : Mr. P.C. Das, counsel
Ms. T. Maity, counsel

For the respondents : Mr. A. Das Gupta, counsel

ORDER

Bidisha Banerjee, Judicial Member

This O.A. has been preferred to seek the following reliefs:-

- "a) To quash and/or set aside the impugned Memorandum of Charge-sheet issued by the Assistant Operations Manager(T), Eastern Railway, Howrah Division vide charge-sheet memo dated 25.02.2014 on the ground of unauthorised absent along with Article of Charges against the applicant which is against the decision passed by the Hon'ble High Court at Calcutta being Annexure A-27 of this original application;
- b) To quash and/or set aside the impugned Enquiry Report submitted by the Enquiry Officer dated 14.07.2014 which was communicated to the applicant vide letter dated 25.08.2014 being Annexure A-30 of this original application;
- c) To quash and/or set aside the impugned office order of punishment of removal from service dated 16.01.2015 issued by the Divisional Operations Manager(G), Eastern Railway, Howrah against the applicant which is against the decision passed by the Hon'ble High Court at Calcutta in the case of Maitrayee Ghosh-Vs-Kolkata Port Trust & Ors. dated 18th September, 2007 in F.M.A.No.348 of 2008 reported in 2008 Volume 2, Calcutta High Court Notes, Page 85 and in the case of Haren Bauri-Vs-Coal India Limited & Ors., dated 8th December, 2010 in G.A.No.2892 of 2010 and A.P.O.T. No.513 of 2010 and in the case of Sukumar Dey-Vs-Union of India & Ors. vide order dated 21.02.2012 in W.P.C.T. No.31 of 2012 being Annexure A-31 of this original application;
- d) To pass an appropriate order directing upon the respondent authority to reinstate your applicant in service in the light of the same orders and directions passed by the Hon'ble High Court at Calcutta in the case of



Maitrayee Ghosh-Vs-Kolkata Port Trust &Ors. dated 18th September, 2007 in F.M.A.No.348 of 2008 reported in 2008 Volume 2, Calcutta High Court Notes, Page 85 and in the case of Haren Bauri-Vs-Coal India Limited & Ors., dated 8th December, 2010 in G.A.No.2892 of 2010 and A.P.O.T.No.513 of 2010 and in the case of Sukumar Dey-Vs-Union of India & Ors vide order dated 21.02.2012 in W.P.C.T. No.31 of 2012 along with all consequential benefits;

e) To declare that the punishment imposed by the railway authority in terms of Annexure A-31 of this original application is a harsh one and instead of removal from service the authority can consider your applicant's case by way of giving lesser punishment in the light of the decision passed by the Hon'ble High Court at Calcutta in the case of Maitrayee Ghosh -Vs-Kolkata Port Trust & Ors. dated 18th September, 2007 in F.M.A.No.348 of 2008 reported in 2008 Volume2, Calcutta High Court Notes, Page 85 and in the case of Haren Bauri-Vs-Coal India Limited & Ors., dated 8th December, 2010 in G.A.No.2892 of 2010 and A.P.O.T. No.513 of 2010 and in the case of Sukumar Dey-Vs-Union of India & Ors vide order dated 21.02.2012 in W.P.C.T.No.31 of 2012;

f) Any relief/reliefs and/or order/orders and/or direction/directions as Your Lordships may deem fit and proper."

2. Ld. counsel were heard and the records were perused.
3. The sum and substance of the grievance of the applicant is that although he was issued charge sheet thrice for unauthorised absence, the penalty of dismissal from service due to such unauthorised absence inflicted at the culmination of the third proceeding was shockingly disproportionate. He prayed that the respondents be directed to take a lenient view in terms of the following decisions:-

(i) Maitrayee Ghosh -Vs-Kolkata Port Trust & Others in F.M.A.No.348/2008 wherein the Hon'ble High Court at Calcutta decided that "prolonged absence from duty without sanctioned leave although an act of indiscipline and misconduct, it does not justify punishment of removal from service and that removal was shockingly disproportionate to the charge in the circumstances of the case. Further, the charge of misconduct for unauthorised absence without intimation cannot amount to desertion from service and that the employees under an obligation to return to duty after expiry of sanctioned leave absenting from duty by over staying is a misconduct calling for penal consequences. However, removal from service is shockingly disproportionate.

(ii) Haren Bauri -Vs-Coal India Limited and Others in G.A.No.2892 of 2010 and A.P.O.T.No.513 of 2010 where the petitioner had remained absent from duties without any prior intimation for a considerable period of almost 8 months. The Hon'ble Court took note



of the case of **Madhusudan Chowdhury v. State of West Bengal** reported in **2006(1)CLJ(Cal)386** wherein the Hon'ble Division Bench held:-

"24. Following that ratio, this Court cannot come to the conclusion that in the instant case the alleged misconduct of remaining absent for the period as stated in the charge-sheet amount to an offence connoting moral turpitude.

*25. That this Court, therefore, approves the ratio in the case of **Nirode Roy v. D.I.G. & Ors.**, and holds that the punishment of dismissal from service should not have been imposed in the facts and circumstances of this case by the respondent."*

The Hon'ble Court held that such prolonged absence is an act of indiscipline and misconduct but does not justify punishment of dismissal from service especially when the misconduct of remaining absent from duties does not come under the category of offence relating to moral turpitude. Hon'ble Court held that the punishment of dismissal from service was shockingly disproportionate and directed the Disciplinary Authority to reconsider imposition of penalty other than that of termination, discontinuation by way of dismissal, removal or compulsory retirement so that the petitioner can be reinstated in service in spite of imposition of penalty.



(iii) **W.P.C.T.31/2012(Sukumar Dey v. Union of India & Others)** where the writ petitioner had been absenting from duties between 3rd February, 1999 and 27th November, 1999 without sanction from the competent authority. The petitioner was in hospital and thereafter under treatment of private medical practitioner who had asked him to take rest. Therefore, the Hon'ble Court held that he was not guilty of the charges of unauthorised absence. Relevant portion of the judgment reads as under:-

".....we are of the opinion that absenting from duties by reason of overstay would not amount to misconduct for which he could be removed from service.

Therefore, the order proposing punishment of the disciplinary authority, the order of the appellate authority and the order of tribunal are set aside in so far as they relate to punishment of removal from service is concerned.

The matter is relegated to the disciplinary authority for reconsideration as to the nature of punishment, commensurate with the nature of misconduct, to be imposed upon the delinquent employee.

Let the disciplinary authority take the decision within three months."

Citing the decisions as extracted supra Id. counsel for the applicant would strenuously urge that due to identical reasons the present applicant deserves some leniency.

4. Per contra, Id. counsel for the respondents would submit that the authorities have shown identical leniency on the earlier two occasions when charge sheets were issued to him and he was let off with minor penalty. That due to his unauthorised absence from duty for 754 days from 16.03.2004 to 17.09.2007, a major penalty charge sheet was issued to him vide SF-5 No.T/CC/Staff/34/07 dated 29.10.2007 and a penalty of stopping of two years increment with cumulative effect was imposed at the culmination. Subsequently, he was again absent from duty from 18.11.2008 to 10.08.2009 unauthorisedly for which he was sent for Special Medical Examination as a staff of safety category, absent for more than 90 days. A major penalty charge sheet was issued to him vide SF-5 No.T/CC/Staff/35/09 dated 06.10.2009. A minor penalty of stoppage of increment for two years with non-cumulative effect was imposed. Again a major penalty charge sheet memorandum was issued to the applicant vide SF-5 No.T/CC/Staff/03/12 dated 19.04.2012 for his unauthorised absence from duty from 16.11.2011 to 22.02.2012. He appeared on 10.05.2012 for joining duty. He was once again sent for special medical examination as per rule. After declaring him fit by Railway Medical Authority, he joined duty. The Disciplinary Authority punished him by stopping increment for one year with cumulative effect. In this instant case, when he was absented from duty for 217 days in between 23.12.2012 to 20.01.2014 unauthorisedly, a major penalty charge sheet was issued to him vide SF-5 No.T/CC/Staff/06/14 dated 25.02.2014. As



he did not prefer any reply against the said charge, an Enquiry Officer was appointed. During the course of regular hearing on 12.06.2014, the applicant admitted the said charge as well as assured not to repeat such type of offence in future. After going through the representation against the Enquiry Report as well as his past records his absence post charge memorandum period, the Disciplinary Authority removed the applicant from Railway Service. The applicant preferred an appeal to the Appellate Authority and the Appellate Authority modified the punishment to that of "Compulsory Retirement from service" vide No.E/Appeal/32/2016 dated 08.04.2015. Since the applicant was found to be in a habit of absenting without intimation, the respondents sought to remove him from service. However, on his appeal the penalty order of removal was modified to that of compulsory retirement.

5. At that juncture, Id. counsel for the applicant would plead that no order of compulsory retirement has been served and the applicant being only 45 years old, would not even earn pension putting his entire family into financial distress, which submission would be countered by Id. counsel for the respondents.

6. From the rival contentions of the Id. counsel for both sides, we would discern that although the respondents have claimed to modify the penalty to that of compulsory retirement so that the applicant would earn the retirement benefits, no such order has been brought on record.



7. Taking cue from the decisions of Hon'ble High Court that the misconduct complained of was not that of a moral turpitude, we would direct the respondent authorities to communicate the order of compulsory retirement to the applicant forthwith and permit him to approach the next higher authority to seek benefit of the decisions extracted supra, within a period of 4 weeks. If such prayer is made by the applicant by filing a detailed representation, the competent authority would apply its mind on the implications of the decisions enumerated supra and pass appropriate orders as per law within a period of 2 months from the date of receipt of such representation.



Ld. counsel would allege that despite an order of modification of removal from service to that of compulsory retirement as claimed by the respondent authorities, no retirement benefits have been released to the applicant. Therefore, before we part, we would like to direct the authorities to release all admissible retiral benefits to the applicant in accordance with law within 4 weeks in the event such admissible dues have not been released as yet.

8. The O.A. is accordingly disposed of. No order as to costs.

(Tarun Shridhar)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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