

Reserved

Central Administrative Tribunal, Allahabad.
Registration T.A.No, 1160 of 1986 (Civil Appeal No.23 of 1982)

Ram Parichan Singh ... Applicant

Vs.

Union of India ... Respondent.

Hon. Ajay Johri, AM
Hon. G.S. Sharma, JM

(By Hon. G.S. Sharma, JM)

This transferred application is a civil appeal against the judgement and decree dated 13.5.1982 passed by the Civil Judge Gorakhpur and has been received from the Court of ^{III} Addl. Civil Judge Gorakhpur under Section 29 of the Administrative Tribunals Act ^{XIII} of 1985.

2. The applicant Ram Parichan Singh (hereinafter referred to as the plaintiff) while working as Senior Clerk (Establishment) under the administrative control of Chief Personnel Officer N.E. Railway Gorakhpur was posted in the same capacity under the Principal, R.P.F. Training Centre N.E. Railway Gorakhpur in 1975. As he was not provided with a railway quarter, he had to attend his office by 87 UP train in 1975 for which Clerk's Train Ticket (for short CTT) was provided to him. Under the railway rules, the railway employees who are given CTT for attending office, are allowed to attend office late if the train gets late and such delay is condoned. It is further alleged that on account of his illness, the plaintiff could not attend his duties from 20.1.75 to 16.5.75 and had furnished the certificates of private medical practitioner as permitted under the rules for the period of his illness. The plaintiff was suspended by the Principal of the R.P.F. Training Centre vide his order dated 11.8.1975 for his alleged unauthorised absence and late coming and he was served with a charge sheet dated

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20.5.76/4.6.76 for major punishment by the Security Officer R.B.F. The documents required by the plaintiff for preparing his statement of defence were not supplied to him and as such, there was a delay in the submission of his statement of defence. The suspension of the plaintiff was revoked vide order dated 2.12.1977 of the Security Officer and on 31.7.1978, he was awarded the punishment of censure and his pay and allowances for the period of suspension over and above the subsistence allowance were forfeited. The appeal preferred by the plaintiff could not be decided before his filing the suit. He has accordingly sought a declaration that the order of punishment and forfeiture of his pay and allowances is illegal and void and for the treating of the period of his absence as medical leave with all consequential benefits.

3. The suit was contested on behalf of the defendant and in the written statement filed on its behalf by the Dy.Chief Personnel Officer, N.E. Railway Gorakhpur, it was stated that on the sickness of the plaintiff from 20.1.1975, which was intimated by him to his controlling officer on 30.1.1975, he was directed by the controlling officer to get his medical certificate counter signed by the Civil Surgeon or the Railway Medical Officer and when he was reported fit by the Railway doctor, he was allowed to join the duties from 16.5.1975. As the plaintiff did not furnish the required medical certificate for the period of his absence from 20.1.1975 to 16.5.1975, he was served with a charge sheet. The plaintiff was a habitual late comer and his work was never upto date. He was, therefore, also suspended by the Principal of the Training Centre which was subsequently approved by the Security Officer.

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The plaintiff had submitted his statement of defence after a lapse of more than 3 years on 3.7.1978. After considering his statement of defence, the Security Officer proposed the punishment of withholding of his increment for one year and issue of notice to him and after considering the reply, he was awarded only the penalty of censure. The pay and allowances for the period of suspension of the plaintiff were rightly forfeited and all the actions were taken against the plaintiff in accordance with law and departmental rules and he has no case.

4. After a consideration of the oral and documentary evidence produced before him the learned Civil Judge came to the conclusion that the plaintiff could be asked by the controlling authority to get the medical certificate issued by the private doctor countersigned by the railway doctor and as the plaintiff did not comply with his direction and he unduly took a long time for submitting his statement of defence and he was not discharging his duties sincerely on account of his coming late and proceeding on leave without getting the same duly sanctioned, the punishment awarded to him was proper and the authority who had placed him under suspension and had imposed the penalty was competent to do so. His suit was accordingly dismissed.

5. In appeal before us, it was contended on behalf of the plaintiff that he was punished by the Security Officer without conducting any inquiry against him and he having been awarded the minor penalty, the pay and allowances for the period of his suspension could not be forfeited under the letter ^{no. 11012/15/85-Estt.(A)} dated 3.12.1985 issued by the Department of Personnel and Training and circulated by

the Railway Board vide its letter dated 21.3.1986. It was also contended that the findings recorded by the trial Court about the counter signing of the medical certificate and the power of suspension etc., are not correct and in accordance with rules. The appeal has been contested on behalf of the defendant-respondent.

6. It is true that on 3.12.1985 the department of Personnel and Training had issued the memorandum, a copy whereof has been filed ^{by} the plaintiff before this Tribunal stating that where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of minor penalty, the suspension can be said to be wholly unjustified in terms of F.R.54-B. It is also not in dispute that the Railway Board had accepted the guidelines of this O.M. We are, however, of the view that this was not the position in 1978 when the impugned order was passed against the plaintiff by the Security Officer. We further find that there was a long delay on the part of the plaintiff himself in getting the disciplinary proceedings concluded as he unduly insisted for obtaining the copies of certain documents which, in fact, were not essential for preparing the statement of defence and at the most could be relied upon only at the stage of defence. The grievance of the plaintiff, thus, does not appear to be genuine. We are, however, of the view that when, after serving the plaintiff with a charge sheet for major punishment and only on the perusal of the statement of defence, it was found by the competent authority that it was not a fit case for major penalty and for the same reason to keep under suspension, some leniency should have been shown in determining the nature of the period of suspension for the purpose of payment of his pay and allowances under the relevant F.R. It further appears from the impugned order

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that the Security Officer had imposed the minor penalty of censure keeping in view the fact that the plaintiff had remained under suspension for a long time. On account of this consideration, the proposed penalty of withholding his increment for one year was not awarded. It is further apparent that on account of plaintiff's remaining under suspension for a long time, the punishing authority could not award any severe punishment to him. In case, we ourselves pass any order regarding the payment of the dues of the plaintiff for the period of suspension ignoring the fact that on account of this fact the plaintiff was awarded a minor ^{or nominal} punishment, it may cause miscarriage of justice. We will, therefore, like to remand the matter to the disciplinary authority for passing a proper order of punishment keeping in mind the facts and circumstances, as stated above.

7. Regarding the insistence of the authorities for getting counter signatures on the certificates of the private doctors furnished by the plaintiff, we do not want to express any opinion as the order of the disciplinary authority on this point is silent. In our opinion, a probe could be made in this respect only when the disciplinary authority would have passed a speaking order after considering the material against the plaintiff on merits. The impugned order having been passed on-ly on the perusal of the statement of defence submitted by the plaintiff, it is not necessary for us to express our opinion about the correctness or otherwise of the procedure followed in connection with the absence of the plaintiff due to his alleged sickness.

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8. The dispute raised by the plaintiff regarding his appellate authority in this case is not relevant as the appeal filed by the plaintiff has not been decided by any authority and it is not necessary to examine the competence of the appellate authority in this case. Letter no. E/545/4(iv) dated 7.7.1971 issued by General Manager Northern Railway, a copy whereof has been filed on behalf of the defendant before the trial Court goes to show that the disciplinary proceedings of D(P) Branch staff of Extra Divisional Offices ^{were to} ~~will~~ be initiated and dealt with by the departmental officers. The same principle should apply in respect of N.E. Railway staff. The Security Officer of the R.P.F., thus, could act as the disciplinary authority of the plaintiff and we find no lack of jurisdiction in this connection in the suspension approved by him. There is no other point for determination in this appeal.

9. In view of the above considerations, we allow the appeal and set aside the judgement and decree of the trial Court as well as the impugned order dated 31.7.1978 passed by the Security Officer (H.Q) R.P.F. Gorakhpur and direct him to pass a fresh order ^{find &} in the disciplinary proceedings against the plaintiff within a period of 3 months. ^{Keeping in view the observations made above} He will be at liberty to take further steps ^{or other} for completing the disciplinary proceedings for major penalty according to rules, if so desired. In case, no such action is proposed, he will also pass a suitable order in connection with ^{and} payment of dues of the plaintiff for the period of suspension when final order in the inquiry is passed. The parties are directed to bear their own costs throughout.

30/5/88

MEMBER(A)

Dated: 30th May 1988
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30/5/88

MEMBER(J)

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Court No.1

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration Rev.Appln.No.56/B/T/88
IN

Registration T.A. No.1160 of 1986

Union of India

Vs. Ram Parichan Singh

Hon. Justice Kamleshwar Nath, V.C.

Hon. K.J. Raman, Member (A)

This application is for review of the judgement dated 30.5.1988 passed by this Tribunal in T.A. No.1160 of 1986 which arises out of Civil Appeal No.23 of 1982.

2. A disciplinary proceeding on chargesheet was instituted against the opposite party R.P. Singh. He was under suspension initially. The suspension was revoked by an order dated 3.12.77. The disciplinary authority passed a punishment order on 31.7.78 imposing a penalty of 'Censure'. It was further directed that the Pay & Allowances during the period of suspension shall be forfeited.

3. Original Civil Suit filed by the plaintiff-opposite party for a declaration that the punishment order and forfeiture of Pay & Allowances were illegal, was dismissed by the Trial Court. The plaintiff-opposite party's appeal figures before this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. The Tribunal allowed the appeal, set aside the Trial Court's judgement and decree and also the impugned punishment order dated 31.7.78 and directed the Security Officer (HQ) R.P.F. Gorakhpur " to pass a fresh final order in the disciplinary proceedings against the plaintiff within a period of three months keeping in view the observations made above". There

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was also an observation that the Security Officer would be at liberty to take further steps for completing disciplinary proceedings for major penalty according to Rules if so desired, and in case no such action was proposed he would pass a suitable order in connection with the payment of dues of the plaintiff-opposite party for the period of suspension.

4. The grievance of the applicant is that in the body of the judgement a reference had been made to Office Memorandum No.11012/15/85-Estt.(A) dated 3.12.85 of the Department of Personnel & Training adopted by the Railway Board by letter dated 21.3.86 which laid down that whenever a minor penalty was imposed, the suspension period could be treated to be wholly unjustified in terms of F.R. 54 (B). It is said that in that light this Tribunal interfered with the disciplinary authorities order forfeiting the Pay & Allowances during the suspension period.

5. Notices issued to the plaintiff-opposite party are presumed served, but no appearance has been made on his behalf. We have gone through the record of the case and have heard the arguments of Shri A.V.Srivastava, the learned counsel for the applicant.

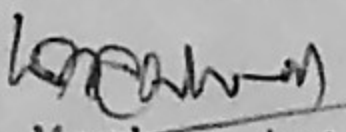
6. It is clear from the judgement under review that the Tribunal did not pass a final verdict upon how the period of suspension was to be dealt with and left it for determination by the Security Officer concerned. It is also clear that the Tribunal did not apply the provisions of Office Memorandum dated 3.12.85 and indeed

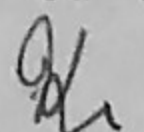
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observed that the position indicated by the Office Memorandum was not the position in 1978 when the impugned order was passed. The Office Memorandum itself made it clear that the decision contained therein would apply from the date of issue of the letter and that the previous cases will not be opened. The contention that the Tribunal is not competent to interfere with the penalties awarded in view of the recent decision of the Supreme Court is not acceptable because an order in respect of the period of suspension is not one of the penalties defined under Rule 6 of the Railway Servants (Discipline & Appeal) Rules, 1968; the order is for reasons other than penalty.

7. The only observation of the Tribunal of which grievance could be made by the applicant is that when "it was found by the competent authority that it was not a fit case for major penalty and for the same reason to keep him under suspension, some leniency ~~should~~ should have been shown in determining the nature of period of suspension for the purposes of Pay & Allowances under the relevant F.R." This observation does not record any final adjudication upon the exact order which the Department was expected to pass in the matter of Pay & Allowances for the suspension period. The question is still open for determination of the competent authority.

8. We do not find sufficient cause for interference in this review petition which therefore is dismissed. The competent authority may pass appropriate orders in compliance of the Tribunal's judgement within a period of three months from the date of receipt of the copy of this order.


Member (A)


Vice Chairman

Dated the 9th Jan., 1990.