

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

T.A.No.256 / 86

Nepal Singh

....

Applicant

Vs.

Union of India & Others

....

Respondents.

Hon. Mr. A.B. Gorthi, A.M.

Hon. Mr. S. N. Prasad, J.M.

(By Hon. Mr. A.B. Gorthi, A.M.)

~~Late~~ Shri Nepal Singh filed a Civil Suit in the Civil Court, Agra, praying <sup>for</sup> the order of ~~his~~ dismissal dt. 12-9-79 passed against him was illegal. He also prayed for a decree of Rs.16,000/- on account of arrears of pay together with interest at the rate of 12% per annum. The Suit <sup>was</sup> transferred under section 29 of the Administrative Tribunal's Act, 1985 <sup>and</sup> is listed before us. <sup>husband</sup> ~~On the death of her~~ Smt. Susheeladevi, widow of late Nepalsingh became the substitute for the plaintiff, as the legal representative.

2. The applicant joined the Railways as a Khalasi and was continuously serving in Carriage & Wagon at East Bank, Jamuna Bridge Railway Station Agra. He was alleged to have left the place of duty on 26-5-1975 and thereafter on 27-5-1975 he came one hour late and started abusing and beating one Shri Abdul Majid. He was placed under suspension w.e.f. 28-5-1975. A charge Memo. was served upon him which was followed by a regular departmental enquiry for the imposition of a penalty and at the conclusion of the enquiry, the disciplinary authorities <sup>1</sup> agreeing with the finding of the Enquiry Officer, found the applicant not guilty of assaulting Shri Abdul Majid, but found <sup>him</sup> guilty of absence <sup>1</sup> without leave. Notwithstanding the acquittal <sup>of</sup> of the plaintiff of the major <sup>charge</sup> ~~complaint~~ of assault, the disciplinary authorities <sup>1</sup> vide order dt. 12-9-79 imposed the penalty of removal from service and vide order dated 4-9-79, his appeal against the penalty was rejected by the D.R.M., Kota, as can be seen vide D.R.M.(C), Kota's letter dated 26-2-1980.



3. We <sup>have</sup> heard Counsel for both the parties. When the case was pending the plaintiff died and subsequently his widow was substituted as a legal representative.


4. The Learned Counsel for the applicant has mainly stressed on the harshness of the penalty of removal imposed upon the applicant who was found guilty of the absence without leave, that too for a few hours. It is apparent that the disciplinary authority, as also the appellate authority were unduly swayed by the alleged assault made by the applicant upon his superior officer. In view of the fact that the Enquiry Officer found the applicant not guilty of assaulting <sup>the</sup> Superior Officer, both the disciplinary authority and the appellate authority should have <sup>completely</sup> ~~concluded~~ disabused in their minds of the facts related to the said assault and determined the quantum of punishment ~~to~~ to be imposed. Learned Senior <sup>Shri</sup> Counsel for the Railways has contended that there was no technical or legal defects in the enquiry proceedings and the penalty of removal imposed on the applicant was legally sustainable.

5. It is apparent from the facts of the case that the penalty of removal imposed upon the applicant was thoroughly disproportionate to the gravity of misconduct of which he was proved guilty. The penalty of removal from service for the offence of absence without leave for a few hours is undoubtedly disproportionate and is indeed very harsh. In the case of Union of India Vs. Paramananda <sup>AIR</sup> 1949 - S.C. 1185, the Hon'ble Supreme Court has clearly laid down that the Tribunal could exercise only such powers which the Civil Court or the High Court could have exercised by way of judicial review. Since the Tribunal is just a substitute to the Civil Court and the High Court, it cannot, therefore, interfere with the penalty imposed on a delinquent employee by the competent authority on the ground that the penalty is not commensurate with the delinquency of the employee. In view of <sup>the position</sup> ~~these facts~~ we are reluctant to interfere with the

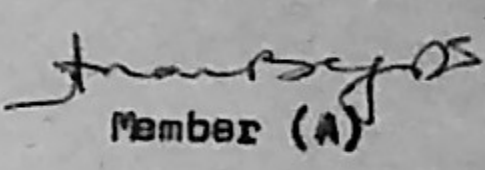


quantum of punishment although we are convinced that it is not commensurate with the gravity of offence. The offence of which he was found guilty is one which ordinarily would have merited a minor penalty. We, therefore, remit the matter to the Divisional Railway Manager, Kota, to make a careful review of this case and consider reducing the penalty to an appropriate one so that the ends of justice are adequately met. The respondents shall complete the proceedings and pass an order within a period of 3 months from the date of communication of this order.

5. The application is disposed of in the above terms without any order as to cost.



Member (J)



Member (A)

Dated 18th May, 1992, Allahabad.

(tgk)