

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 22th day of March 2001.

Original Application no. 322 of 1992.

Hon'ble Mr. Rafiq Uddin, Member-J

Hon'ble Maj Gen K.K. Srivastava, Member-A.

Sunder Lal,  
S/o Shri Ram Dass,  
R/o village and post office Hansari,  
JHANSI.

... Applicant.

C/A Sri R.K. Nigam

Versus

1. Union of India through General Manager,  
Central Railway,  
BOMBAY.
2. Additional Chief Mechanical Engineer,  
Central Workshop,  
JHANSI.
3. Assistant Workshop Manager (W.2),  
Cmehanical Workshop,  
JHANSI.

... Respondents

C/Rs Sri A.V. Srivastava.

...2/-

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O R D E R (Oral)

Hon'ble Mr. Rafiq Uddin, Member-J.

The applicant has filed this OA for declaration that his removal order dated 20.08.82 (Annexure A-1) and order passed by appellate authority dated 04.03.87 (Annexure A-2) are illegal and be set aside and quashed. It is also prayed that the applicant be allowed to reinstate in service with full back wages and also promotional benefits.

2. The case has checkered history and the applicant has approached this Tribunal in the second round of the litigation. The applicant was appointed on compassionate ground in the month of February 1978. The applicant while working as Yard Porter in the Central Railway, Work shop at Jhansi was removed from service vide order dated 20.08.1982 after departmental inquiry conducted against him. The applicant remained absent from duty unauthroizely during the period from 18.01.79 to 24.04.79. The appeal filed by the applicant against the aforesaid removal order was also dismissed by the appellate authority vide order dated 08.11.82. The applicant filed O.S. no. 703 of 1984 for quashing of the aforesaid punishment order dated 28.09.82 and appellate order dated 08.11.82 in the Court of Munsif, Jhansi. The aforesaid OS was received on transfer in this Tribunal and was registered as T.A. no. 713 of 1986. That TA was decided by this Tribunal vide order dated 07.01.1987. The relevant part of the order passed by this Tribunal is an under :-

"We are not quashing the punishment order but we now remit it to the appellate authority whose order is being quashed on account of it being

a non speaking order not indicating adequate application of mind resulting in denial of principles of natural justice to the plaintiff. The appellate authority is directed to consider all the facts as laid down in Rule 2 (2) of the Railway Servants (D&A) Rules, 1968 as also as brought out in the observations of Hon'ble Supreme Court in the case cited in para 7 and then give a considered decision on the appeal submitted by the plaintiff against the punishment order imposed on him. This may be done within two months. The plaintiff will be at liberty to come to the Tribunal again if he is still aggrieved by the disposal of his appeal.

In the result the application partly allowed and the appellate order dated 08.11.82 is quashed."

3. The appellate authority namely ACME, Jhansi (respondent no. 2) vide his order dated 04.03.97 (annexure A-3) has rejected the appeal of the applicant. The relevant part of the order is extracted as under :-

"In pursuance of the judgment dated 7.1.1987 Passed by the Hon'ble Central Administrative Tribunal, Bench at Allahabad in your above noted case, the undersigned, the appellate authority has perused your appeal in depth. Since the material facts have been brought out in your Appeal, the undersigned finds that the order of removal passed by AWM (R.II). the Disciplinary Authority holds good for the reasons:-

- i. That the procedures laid down in Railway servant Disciplinary and Appeal Rules 1968 have correctly been complied with in your case.
- ii. That the findings of the Disciplinary Authority are based on the evidence available on record.

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iii. That the penalty of removal from service imposed by the D.A. is adequate.

iv. That no fresh points have been brought out in your appeal dated 08.10.1982.

The appeal preferred by you in, therefore, rejected."

4. In the present OA the applicant interalia has challenged the punishment order on various grounds. However, the main ground on which the applicant has challenged the impugned appellate order ~~are~~ <sup>is</sup> that the appellate authority has completely ignored the direction given by this Tribunal while passing the appellate order. The impugned order has been passed on mechanical way and it is a cryptic order and has been passed without application of mind.

5. We have heard learned counsel for the rival contesting parties and perused the record.

6. It is worth mentioning at the out set that although the applicant has also challenged the punishment order in this OA, but in view of the directions and observations given by this Tribunal vide order dated 07.01.97, the validity of punishment order cannot be considered. It was specifically mentioned in the aforesaid order that the punishment ~~was~~ <sup>had</sup> not been quashed. The appellate order on the other hand was ~~consequently~~ <sup>clearly</sup> quashed and the case was remitted to the appellate authority <sup>by order</sup> only on account of ~~its~~ being non speaking order in which

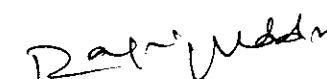
there was no indication that the appellate authority has applied his mind adequately. It was clearly stated that the appellate authority while considering all the facts has laid down in rule 22 (2) of the Railway Servant (D&A) Rules, 1968, <sup>and</sup> will pass order in the light of observation of the Apex Court in Ram Chandra vs. Union of India & Others, 1986 (2) S.L.R. 608.

7. It has now been urged by the learned counsel for the applicant that the appellate authority has not complied with the direction issued by this Tribunal in as much as no observation regarding "adequate, inadequate or severe" of the punishment order has been discussed by the appellate authority as required under Sub Rule (c) of Rule 22 of Railway Servant (D&A) Rules 1968, as well as in the judgment of the Apex Court in Ram Chandra's case (supra). We also find substance in the arguments of learned counsel for the applicant that in the impugned order the appellate authority has merely copied the above clause (c) of Railway Servant (D&A) Rules 1967. It is contended by learned counsel for the applicant that the applicant remained absent from duty/only 81 days and considering this short period of absence from duty the punishment of removal is obviously disproportionate to his misconduct. The appellate authority discharges a quasi judicial function while deciding the appeal and, therefore, <sup>is</sup> has expected to give reasons for his decision. The appellate authority has not given any reasons for disposing major punishment of removal of unauthorised absence from duty for 81 days only in its impugned order and has passed the order in mechanical manner. We are

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satisfied that the appellate authority has not passed the impugned order in the light of direction issued by this Tribunal. We, therefore, quash the same and remit the case to the appellate authority to reconsider the question of quantum of punishment within a period of four months from the date of communication of this order by passing detailed, reasoned and speaking order. The O.A. is partly allowed with no order as to costs.

  
Member-A

  
Member-J

/pc/