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1CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCHALLAHABAD.Allahabad this the 28th day of August 1998.Original Application no. 565 of 1993.Hon'ble Mr. S. Dayal, Administrative Member
Hon'ble Mr. S.L. Jain Judicial MemberGhanshyam Indradeo Kane, S/o Shri Indradeo Kashinath Kane,
R/o Village Gopal Pur Post Kamal Sagar Distt. Mau now
resident of care Shri Bindra Prasad D-1/5 PWD Colony,
Rajendra Nagar, Lucknow.

.... Applicant

C/A Shri M. Islam
Shri S. Lal

Versus

1. Union of India through the Chairman, Railway Board
Baroda House, New Delhi.
2. The General Manager, Western Railways, Church Gate,
Bombay.
3. The Divisional Railways Manager, Western Railways,
Bhavaagar-Para Gujarat.
4. The Additional Divisional Railways, Western Railway
Divisional Office, Ghavnagar-Para, Gujarat.
5. The Sr. D.P.O. Office of the D.R.M., Western Railways
Bhawnagar-Para, Gujarat.

.... Respondents.

C/R Shri A.K. Gaur

ORDERHon'ble Mr. S. Dayal, Member-A.This is an application under section 19 of the
Administrative Tribunal's Act. 1985.

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The applicant has approached the Tribunal

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through this application for the following reliefs:-

- i. a direction to the respondents to reinstate the applicant on his job with all consequential benefits after quashing orders of disciplinary authority dated 03.03.92.
- ii. a direction to the respondents to pay cost of the application to the applicant.

3. The facts as given by the applicant are that while the applicant was working as Senior Clerk in the Office of Divisional Railway Manager, Bhavnagar-Para, he suffered from Extreme Hypertension and, therefore, applied for 120 days leave from 01.04.89 on 14.03.89. The applicant continued to work till 03.04.89. The applicant was not informed that the leave applied for has been refused or sanctioned and on the contrary his Section Incharge verbally told him that his leave has been sanctioned. The applicant got severe attack of hypertension on the night of 03.04.89 and his friends rushed him to his village, Gopalpur, in Distt. Mau in Uttar Pradesh in semi conscious condition. He took treatment in Lucknow by specialised doctors of Homeopathy, who are registered Medical Practitioners. He remained under treatment and sent medical certificates from doctors alongwith applications for leave. He was given the charge sheet in SF-5 which aggravated his illness. He claims to have approached the Railway doctors for treatment but they declined to give any treatment without reference from D.R.M., Bhavnagar-Para. He intimated to the inquiry officers that he was sick and could not participate in the inquiry and that inquiry should be postponed. But exparte inquiry was conducted denying the opportunity to the applicant to defend himself. The Senior Divisional Personnel Officer,

Bhavnagar para passed impugned order of removal from service without jurisdiction as applicant was appointed by D.R.M., Bhavnagar.

4. Argument of Shri M. Islam, learned counsel for the applicant and Shri A.K. Gaur learned counsel for the respondents have been heard. Pleadings on record have been taken into consideration.

5. A perusal of the case of the applicant as given by him and the reply there to given by the respondents reveals that the applicant has not come clean with all facts in this case. The story given by the applicant is quite implausible. While the applicant has claimed that he had applied for leave as he was suffering from extreme hypertension, a copy of the application produced by the respondents annexed to their counter affidavit dated 14.03.89 shows that he has applied for leave to look after their ailing parents with effect from 01.04.89. He has mentioned that he was informed by his Section Incharge that his leave was sanctioned. But entire case against the applicant is that of unauthorised absence. The applicant had been in service for nearly a decade and was working on the post of senior Clerk. He can not be naive enough to rely upon verbal information given by any one. He makes out a case that he was rushed to his village by his friends in a state in which he was not in a position to exercise any volition but no well wishing friend would rush a person in such critical condition from a city where medical facilities are available to a village. The distance between Bhavnagarpara and Gopal Pur would be more than 1000 miles. The applicant remained on leave till his dismissal order. dated 09.12.91 and appellat

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order dated 03.03.92 which makes period of all most 3 years and in this case the applicant claims to have sent application for leave alongwith medical certificate given by private doctors. The inquiry report dated 22.07.97 shows that the letter sent to him by inquiry officer were not received by him but had come back with remarks that addressee has gone and it was not known as to when he would return. The applicant was under obligation to inform the respondents of his movements and non service of dates of inquiry was entirely due to default on the part of the applicant. The applicant has claimed in his application that the inquiry against him should have been conducted in Gopalpur i.e. village in U.P. by the inquiry officer and that by not doing so, he was denied opportunity. He has mentioned that he can not get his certificate counter signed by Railway doctors because he had not carried his medical identity card, as he has left it in Bhavnagarpara when he was moved in a semi conscious condition. There is not a whisper as to why the applicant could not get them or apply for a duplicate from his village. The story tests the credulity of even the most credulous person.

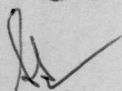
6. Learned counsel for the applicant has raised the ground that the order of removal has been passed by an authority which was not competent to do so. He has mentioned that appointing authority in his case was Divisional Railway Manager (E), Bhavnagarpara. While order of removal was passed by Senior Divisional Personnel Officer, Bhavnagar Para. As it is the contention of the learned counsel for the applicant that Senior D.P.O. is subordinate of D.R.M. and, therefore, was not the appointing authority. The respondents in their counter affidavit have stated that Senior D.P.O. was D.R.M.(E) of Bhavnagarpara and, therefore,

he was competent to pass order of removal in this case. An extract of the "Schedule of powers on Establishment Matters" produced by the learned counsel for the respondents, however, is of powers delegated by General Manager, Northern Railway, while the matter relates to Western Railway. This issue, therefore, remains open.

7. The second ground on which the learned counsel for the applicant has sought the setting aside of the order of disciplinary authority is that it is too harsh. While quantum of punishment can not be a part of judicial review unless it is perverse, it is one of the responsibilities cast upon the appellate authority to go specifically into this question.

8. The last contention raised by the learned counsel for the applicant is that the appellate order is non speaking order and deserves to be set aside. The appellate order dated 03.03.92 merely states that the applicant was in the habit of remaining absent unauthorisely for long stretches and that his performance was not satisfactory and that he was found responsible on the charge of unauthorised absence and, therefore, punishment of removal was allowed to stand.

9. The role of the appellate authority has been enlarged especially after the Constitutional amendment doing away with the second show cause notice in proceedings of major punishment. The responsibility of the appellate authority are given in rule 22 (2) of the Railway Servants (Disciplinary and Appeal) Rules, 1968, which reads as follows:-



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*In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

a. whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

b. whether the findings of the disciplinary authority are warranted by the evidence on the record; and

c. whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders.

i. confirming, enhancing, reducing or setting aside the penalty; or

ii. remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:

Provided that:-

i. the Commission shall be consulted in all cases where such consultation is necessary;

ii. if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an inquiry under Rule 9 has not already been held in the cases, the appellate authority shall, subject to the provisions of Rule 14, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of proceedings of such inquiry make such orders as it may deem fit;

iii. if the enhanced penalty which the appellate authority proposes to impose, is one of the penalties specified in clauses (v) to (ix) of Rule 6 and an

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of Rule 6 and an inquiry under Rule 9 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity as far as may be, in accordance with the provisions of sub-rule (5) of Rule 10, of making a representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and

iv. subject the provisions of Rule 14, the appellate authority shall-

a. where the enhanced penalty which the appellate authority proposes to impose, is the one specified in clause (iv) of Rule 6 and falls within the scope of the provisions contained in sub-rule(2) of Rule 11; and

b. where an inquiry in the manner laid down in Rule 9 has not already been held in the case,

It self hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 9 and thereafter, on a consideration of the proceedings of such inquiry, pass such orders as it may deem fit; and

v. no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 11, of making a representation against such enhanced penalty."

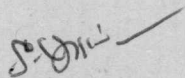
The Competent Authority should have given his findings on all the three aspects which are entrusted to him. Since this has not been done, we set aside the order of the Appellate Authority dated 03.03.92. The applicant shall send a copy of his appeal memorandum dated 31.01.92 alongwith copy of this order to the Appellate Authority and the Appellate Authority is directed to grant an opportunity of hearing to the applicant and consider the appeal of the


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applicant within a period of three months from the date of receipt of copy of appeal alongwith copy of this order. The Appellate Authority shall also consider the issue of the competence of the Senior Divisional Personnel Officer, Bhavnagar-Para to act as disciplinary authority and pass the order of punishment in case of the applicant. It shall also examine the issue of quantum of punishment and pass a reasoned and speaking order within the time specified earlier.

10. There shall be no order as to costs.


Member-J


Member-A

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