

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 26th day of August 2003.

Original Application no. 1355 of 1995.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Zafar Ahmad, S/o Sri Hidayat Ali,
R/o Opp. Harpur Hall, Civil Lines,
Banda.

... Applicant

By Adv : Sri R Trivedi, Sri V.C. Dixit
Sri O.P. Mishra

Versus

1. The Union of India, through its General Manager,
Central Railway, C.P.O. Office,
Bombay VT, Bombay.
2. The Chief Project Manager,
Railway Spring Karkahana,
Sithauli, Gwalior.
3. The Chief Workshop Manager,
Rail Spring Karkahana, Sithauli,
Gwalior.

... Respondents

By Adv : Km Sadhna Srivastava

ORDER

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

In this ^{OA}case, filed under section 19 of the A.T. Act, 1985, the applicant has prayed for following reliefs:-

- a. a declaration may issue declaring the impugned orders dated 30.8.1995 passed by the Deputy Chief Mechanical Engineer/Workshop Manager, Rail Spring Karkahana, Sithauli, Gwalior as null and void and also order dated 6.2.1992 passed by the Works Manager, Rail Spring Karkahana, Gwalior as null and void and inoperative and also highly disproportionate.
- b. a declaration may issue commanding the respondents

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to deem the applicant as holding the post of Artisan Grade III in Rail Spring Karkhana, Sithauli, Gwalior.

- c. issue any other order or direction as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case to protect the interest of the applicant.
- d. Award the cost of the application to the applicant as against respondents."

2. The facts, in short, are that the applicant was appointed as Artisan Grade III in Rail Spring Karkhana, Sithauli, ^{Gwalior} ~~Gwalior~~ on 15.09.1989. As per applicant he fell seriously ill due to acute Jaundice on 11.06.1990. He sent application for leave for one week on 12.6.1990 followed by another application on 15.6.1990 for extension of leave for 20 days. Since condition of the applicant did not improve on 5.7.1990, he sent another application for extension of leave for one month followed ^{by} ~~for~~ two more applications dated 4.8.1990 and 7.9.1990 for extension of leave. On recovery from the disease, the applicant reported for duty on 11.10.1990 with fitness certificate and ^{was} ~~he~~ allowed to resume his duty. A major penalty charge sheet was issued on 23.10.1990 for alleged unauthorised absence from duty. The applicant submitted his reply on 16.11.1990. The Disciplinary Authority passed the punishment order on 6.2.1992 imposing the penalty of removal from service. The applicant filed appeal and the Appellate Authority vide its order dated 27.8.1992 rejected the appeal of the applicant. The applicant filed OA no. 613 of 1993 which was decided by order dated 2.6.1995. The appellate order was quashed and the matter was remitted to appellate authority to decide the matter afresh in accordance with Rule 22 (2) of the Railway Servant (Disciplinary and Appeal) Rules 1968. It was also directed to the Appellate Authority to consider the adequacy of punishment imposed by the Disciplinary Authority. The Appellate Authority dismissed

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the appeal by the impugned order dated 30.8.1995. Hence, this OA.

3. Sri R Trivedi, learned counsel for the applicant submitted that the applicant was absent just for four months i.e. from 11.6.1990 to 10.10.1990 because ~~of~~ he was suffering from jaundice ^{which} ~~with~~ is a very serious disease. The applicant applied for the leave and in absence ^{of} ~~from~~ any communication from the respondents, the applicant presumed that the leave applied had been granted. However, if he was treated to be ~~absent~~ unauthorisedly, the respondents should have issued notice and sent the same on his address at Banda. The respondents could have also issued the press communication. No such action was taken by the respondents and, therefore, the stand taken by the respondents later^{on} that the applicant was absent unauthorisedly has no substance. The applicant was also allowed to join on 11.10.1990 when he was declared medically fit to resume his duties.

4. Learned counsel for the applicant further submitted that the medical certificate submitted by the applicant was not challenged during the enquiry. Learned counsel for the applicant finally submitted that the enquiry was held in violation of principles of natural justice, ~~the~~ applicant was not given any opportunity to cross-examine the witnesses and he was also not afforded any opportunity of hearing either by the Disciplinary Authority or by the appellate authority. The punishment ~~of~~ removal from service imposed upon by the applicant for absence ^{of} ~~for~~ four months ~~for~~ genuine reasons is too harsh and is certainly disproportionate to the gravity of the charge ^{as} ~~established~~ ^{is} ~~established~~. Learned counsel for the applicant has placed reliance on the following cases:-

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- a. (1993) UPLBEC 425, Rajesh Kumar Tripathi Vs. State of UP and another.
- b. (1993) UPLBEC 488, Shamsher Bahadur Singh Vs. State of UP and others.
- c. 1994 Supp (3) SCC 755, Union of India & Ors. Vs. Giriraj Sharma.
- d. 1995 ALL.L.J. 1896, Vijay Bahadur Singh Vs. State of U.P. & Ors.
- e. (2000) 3 SCC 450, UP State Road Transport Corpn. and others Vs. Mahesh Kumar Mishra & Others.
- f. (2002) 1 UPLBEC 325, N.K. Musafir Yadav Vs. Commandant 47, B.N., CRPF, Gandhi Nagar (Gujarat) and others.
- g. 2002 (3) AWC 2339, Mirja Barkat Ali Vs. Inspector General of Police Allahabad & Others.

5. Resisting the claim of the applicant, the learned counsel for the respondents Km. Sadhna Srivastava, submitted that the applicant filed OA no.613 of 1993. This Tribunal while disposing of the OA vide order dated 2.6.1995 held in para 6 of the judgment that it is not within domain of the Tribunal to adjudicate upon the quantum of punishment by the Disciplinary Authority. However, the Tribunal further observed that the Appellate Authority did not scrutinise the appeal as per the requirements of Rule 22 (2) of Railway Servant (Disciplinary and Appeal) Rules 1968 and on this ground the Appellate order dated 27.8.1992 was quashed. The Tribunal remitted the case to the Appellate Authority for passing fresh order in accordance with law after giving personal hearing to the applicant. The applicant was given personal hearing and after going through the entire record the Appellate Authority passed a reasoned and speaking order on 30.8.1995.

6. Learned counsel for the respondents further submitted



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that the applicant is making an attempt to get the judgment dated 2.6.1995 in OA no. 613 of 1993, reviewed, which is not permissible under the law.

7. We have heard learned counsel for the parties, considered their submissions and perused records. We have also gone through the order of this Tribunal dated 2.6.1995 passed in OA no. 613 of 1993. Findings given by this Tribunal in its judgment dated 2.6.1995 have already ~~been~~ attained the finality. The grounds taken by the applicants in this OA had already been raised in OA 613 of 1993 and which were considered by the Tribunal while deciding the OA no. 613 of 1993 and passing the order. The Tribunal passed the following order :-

By law

"In view of the principle of ~~law~~ laid down by the Supreme Court in case referred to above, and having regard to the fact that the Appellate Authority has passed the order in appeal without complying with the requirements of the Rule 22 (") of the Railway Servants Discipline and Appeal Rules and without giving personal hearing to the applicant, we allow this application in part and quash the appellate order dated 27.8.1992 (Annexure A-2) and remit the case with a direction to the Appellate Authority for passing fresh order in accordance with law after giving ^{to the} personal hearing to the applicant within a period ^{to the} three months from the date of communication of the order. The appellate authority will also consider the adequacy of the punishment imposed by the disciplinary authority with reference to the conduct complained of and other circumstances of the case."

8. The Appellate Authority was required to give personal hearing to the applicant before passing the appellate order as per law. We have carefully gone through the impugned appellate order dated 30.8.1996. The applicant was given personal hearing on 21.7.1996. The appellate authority....6/-

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has observed that as many as nine chances on different dates were given to the applicant by the Enquiry Officer, the applicant did not appear in any of the enquiry sitting with his ARE. The last chance was given to the applicant on 17.9.1991 and he was informed well in advance. The applicant failed to appear before the Enquiry Officer on 17.9.1991 as well and, therefore, the case was decided ex-parte. We do not agree with this submission. The enquiry proceedings were conducted ex-parte beyond the back of applicant. The applicant had given an application for adjournment of the date since he had to put his case through ARE. The genuine request of the applicant was not considered and without rejecting application of the applicant for adjournment on 17.09.1991, the enquiry officer proceeded ex-parte against the applicant. In our opinion the applicant has not been afforded opportunity to put his defence and cross examine the witnesses of department.

9. It has also been stated in the impugned order that DAR enquiry report was despatched to the applicant on 16.10.1991 which ^{was} ~~were~~ received by the applicant on 20.10.1991, but the applicant did not file ^{any} ~~a~~ reply. Since the applicant was not afforded opportunity to put his defence through ARE and cross examine the witnesses, in our view applicant could not reply to the enquiry report.

10. The appellate authority has illegally observed that "The Disciplinary Authority before passing the order dated 6.2.1992 has considered his past performance as well as present performance of the employee and feels that no improvement has occurred. Therefore orders of removal from service by disciplinary authority was effected."

We do not find substance in this. Respondents have failed to bring on record any case of past performance of the applicant of such nature entailing initiation of

disciplinary proceedings against the applicants for any mis-conduct and anything before termination of his services. It ^{h.v.h} has also relevant to mention here that the present matter relates only to the alleged absence from 11.6.1990 to 10.10.1990. Therefore, alleged past or future performance has nothing to do with the present matter. We would like to deal with certain relevant cases on which the learned counsel for the applicant has placed reliance. The Hon'ble Allahabad High court in the case of Shamsheer Bahadur Singh (Supra) remanded the matter for lesser punishment for unauthorised over stayal of 57 days holding that the quantam of punishment of removal was ^h tooharsh. In another case of Vijai Bahadur Singh (Supra) Hon'ble Allahabad High Court held that removal from service for absence of 132 days without leave was a punishment ^h tooharsh and disproportionate to charge. In this case also the matter was remanded for award of lesser punishment. Even in the case of Mirja Barkat Ali (Supra) the Hon'ble Allahabad High Court held that punishment was ^h tooharsh and clearly disproportionate to charge on account of authorised absence of 109 days established. In this case also the Hon'ble High Court remitted the matter to the punishing authority to award lesser punishment. In another case of U.P. State Road Transport Corporation (Supra) the Hon'ble Supreme Court in para 7 has observed as under:-

"A three-judge Bench of this court in B.C. Chaturvedi V. Union of India laid down as under : (SCC p. 762, para 18)

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate

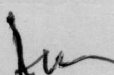
authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

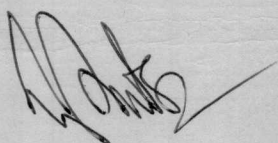
The law laid down by Hon'ble Allahabad High Court and also Hon'ble Supreme Court squarely applies in the present case also and, therefore, we hold that the punishment of removal from service is quite harsh and the Tribunal can legally interfere in regards to ^{quantum} of punishment.

11. This Tribunal Vide order dated 02.06.1995 clearly directed the appellate authority to decide the matter fresh and also to consider the adequacy of punishment imposed by the disciplinary authority. The appellate authority has neither decided the matter fresh nor considered the adequacy of the punishment. The applicant submitted the copies of his application for leave as well as the medical certificate and all other related documents but the appellate authority has not considered the relevance of any of the documents.

12. In the facts and circumstances and our aforesaid discussions the O.A is allowed. The punishment order dated 6.2.1992 and appellate ~~authority~~ order dated 30.08.1995 are quashed. Since no useful purpose will be served in remitting the case back to the disciplinary authority we direct the respondents to reinstate the applicant within four weeks from the date of communication of this order. The applicant shall not be entitled for any backwages which itself will be enough, to meet the ends of justice. The intervening period from the date of removal to the date of reinstatement shall be regularised as per rules.

13. There will be no order as to costs.


Member-J


Member-A