

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: Allahabad, this 9th day of November, 2000

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, VC

Hon'ble Mr. S. Dayal, AM

Original Application No. 497 of 1995

Bishwambhar Nath Mishra,
aged about 59 years,
s/o Sri Rameshwar Mishra,
Ex-Senior Clerk, Diesel Shed,
Central Railway, Jhansi,
c/o Shri Santosh Kumar Trivedi Putani,
M/S. Kiran Canvass Stores,
260, Azad Market, resident of
90551, Gali Neelwali,
Azad Market, Delhi-6.

. Applicant

(By Advocate Sri H.P. Chakravorty)

Versus

1. Union of India, through the Chairman,
Railway Board, Ex-Officio Principal Secretary,
Government of India, Ministry of Railway,
Railway Bhawan, New Delhi-1.
2. Mr. R.S. Rajoriya,
Assistant Mechanical Engineer,
(Diesel) II, Diesel Shed,
Central Railway, Jhansi.
3. The Divisional Railway Manager,
Central Railway, Jhansi.
4. The Chief Mechanical Engineer,
Central Railway, Bombay.

. Respondents

(By Sri A.K. Gaur, for respondents)

ORDER (Open Court)

(Hon'ble Mr. S. Dayal, A.M.)

This application has been filed for declaring
charge-sheet dated 17.4.84, removal order dated 4.12.85
and appellate order dated 30.4.94 as illegal and to

consider the applicant's services with full back wages, seniority and promotion at par with his juniors till his superannuation in September, 1993 and retirement with pensionary benefits therefor.

2. The applicant was served with a Memo of charges for having remained absent unauthorisedly from 22.5.83 to 13.7.83, 27.10.83 to 18.3.84 and from 3.1.84 to 4.4.84 and thereby contravened the relevant Railway Rules. An enquiry was held against the applicant and the disciplinary authority passed an order of removal. The appeal made by the applicant thereafter was rejected by the appellate authority. This brings the applicant's case to us.

3. We heard Sri A.K. Dube for the applicant and Sri A.K. Gaur for the respondents. The learned counsel for the applicant has contended that the absence of the applicant was pursuant to the period of authorised leave and was for reasons beyond his control. The applicant had sent applications along with requisite certificates for his period of absence from his place of leave. Yet the applicant was proceeded against harshly and removed from the service. The learned counsel for the applicant has drawn the attention to the statement of Sri B.D. Punit, Senior Clerk Personnel made before the Enquiry Officer, although the respondents had cited no evidence against the applicants and the respondents had admitted that the applicant had applied for extension of leave from 22.5.83 to 7.6.83 and for grant of leave from 7.6.83 to 13.7.83 along with medical certificates of private doctor. Similarly, the applicant was on leave with pay from 25.10.83 to 26.10.83 and

was absent from 27.10.83 to 28.11.83. He was under under the treatment of a private doctor during this period and his case for sanction of leave was sent to DRM, Jhansi, but no reply was received from DRM, Jhansi. The applicant had proceeded on Casual Leave thereafter on 2.1.84 and remained absent upto 3.1.84. He sought extension of leave from 3.1.84 to 18.1.84 and thereafter remained under sickness certificate of a private doctor. He had given different information during his absence of leave. He has also admitted that periods 25.5.83 to 13.7.83, 27.10.83 to 28.11.83 were covered with extension of leave or sickness, except one case for the period from 3.1.84 to 18.1.84 where extension was given by Loco Foreman Diesel. He has also admitted that no date or reason was given in rejection of extension of leave application by the Loco Foreman.

4. The Enquiry Officer in his findings has mentioned that the applicant remained absent but cannot be said to be on unauthorised leave between 22.5.83 to 13.7.83 since the entire case was sent to DRM, Jhansi for regularisation of leave. He has considered the period from 27.10.83 to 18.11.84 as the period of unauthorised absence because the private medical certificate was banned during 1.10.83 to 15.11.83. As regards the absence from 3.1.84 to 18.1.84, the period for which the applicant had produced private medical certificate should have been considered for sanction of leave.

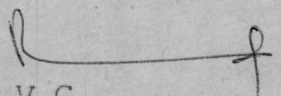
5. We, thus, find that the applicant had remained absent but had sent application for leave with medical

certificate for the periods he remained absent but his application was not processed by the authority empowered to sanction leave barring the period from 3.1.84 to 4.4.84.

6. We also find that the applicant had raised the issue of quantum of punishment by stating that the evidence against him was not such as to justify the penal action taken against him. The order of the appellate authority shows that the question of adequacy and inadequacy of quantum of punishment was not considered by the appellate authority at all.

7. The applicant has since attained the age of superannuation. In normal course, the matter could have been remanded to the appellate authority to consider the question of quantum of punishment and pass order afresh, but in the present case where ends of justice would be met if the punishment is changed to compulsory retirement with pensionary benefits in place of removal. We, therefore, direct the respondents to treat the applicant as having retired compulsory and grant him pensionary benefits from the date of removal. The respondents are further directed to comply with this order within a period of four months. No order as to costs.


A.M.


V.C.

Nath/