

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No.1154 of 1999.

Allahabad this the 14th day of October, 2004.

Hon'ble Mr. A.K. Bhatnagar, Member (J)
Hon'ble Mr. D.R. Tiwari, Member (A)

Smt. Kamayani Nigam,
W/o Ajit Nigam,
R/o 16/2, Shyampur By Pass,
near N.D.S. School P.O.
Satyanarayan, Shyampur
District- Dehradun.

.....Applicant.

(By Advocate : Shri Vinay Khare)

Versus

1. Divisional Railway Manager,
Northern Railway, Moradabad
Division, Moradabad.
2. Senior Divisional Operations Manager,
Northern Railways, Moradabad.
3. Divisional Operations Manager,
Northern Railway, Moradabad. Respondents.

(By Advocate : Shri P. Mathur)

ORDER

By Hon'ble Mr. A.K. Bhatnagar, J.M. :

By this O.A. applicant has sought for
the following reliefs:-

- (i) The Hon'ble Court may kindly be please to
quash the penalty of reduction in the lowest
stage in the existing time scale of pay viz
Rs.950-1500/- with future effect and affecting
her seniority accordingly for the period of
three years imposed by the impugned orders
dated 19.8.94 and 22.12.94 and 27.10.98.
- (ii) The Hon'ble Court may kindly be pleased to
direct the respondents to condone the penalty
by regularising the period of penalty in view
of the regularisation of the period of alleged

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unauthorised absence from 6.10.92 to 3.1.93 as maternity leave by the competent authority.

(iii) The Hon'ble Court may kindly be pleased to direct the respondents to give all consequential service benefits after condoning the penalty."

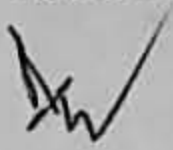
2. The brief facts giving rise to this O.A., as per the applicant, are that the applicant was working on the post of Clerk in the respondents establishment. His services were terminated by dismissal order dated 16.02.94 passed by respondent no.3 on the ground of unauthorised absence from duty, under Rule 6 of the Railway Servants (Discipline and Appeal) Rules, 1968(for short Rules) (annexure A-1). The applicant preferred statutory appeal before respondent no.2 on 16.03.1994 which was partly allowed vide order dated 19.08.1994(annexure A-2) by reducing the punishment of dismissal to "reduction in the lowest stage in the existing time scale of pay viz. Rs.950-1500/-" with future effect and affecting her seniority accordingly. The applicant then filed revision against the order dated 19.08.1994 before respondent no.1 and the Revisional Authority decided the same by order dated 22.12.1994(annexure A-3) by modifying it to the extent specifying the period of penalty for three years from the date of imposition of penalty with future effect. The applicant again sent a representation to respondent no.1 for condoning the penalty awarded to her on 11.08.1998, which was rejected by order dated 27.10.1998, stating therein that the review petition has already been disposed of and nothing can be done now. So, she filed this O.A.

3. Learned counsel for the applicant submitted that action of the respondents in passing the orders dated 27.10.1998, 19.08.1994 and 22.12.1994 are arbitrary and

illegal. He further submits that applicant was entitled for maternity leave of 90 days under Rule 2266 R-II (Fifth reprint) and instruction of the Railway Board contained in letter no. F(E) III 76E 1/1 dated 24.10.1978. It is further submitted that the period from 06.10.1992 to 03.01.1993 was sanctioned as maternity leave subsequently so no case of unauthorised absence is made out against the applicant.

4. The respondents filed counter-affidavit, followed by rejoinder affidavit, filed by the applicant.

5. Learned counsel for the respondents submitted that the applicant was charge sheeted for her unauthorised absence since 24.08.1992 to 16.02.1994. The competent authority imposed penalty of dismissal from service w.e.f. 16.02.1994 which was served on the applicant on 05.03.1994. The applicant preferred an appeal before the competent appellate authority vide appeal dated 16.03.1994. The appellate authority after taking a lenient view modified the punishment by reduction in the lowest stage in the existing time scale of pay i.e. Rs.950-1500/- with future effect and also affecting the seniority. In pursuance of the order, the applicant joined the post on 19.09.94 and preferred a revision petition under Rule 22 on 17.10.94 to the revisional authority i.e. A.D.R.M. The Revisional Authority after giving a personal hearing to the applicant had also taken a lenient view by passing an order to the effect "since the period of penalty has not been specified, same may be operative for three years from the date of imposition of penalty with future effect." It is further submitted that the period of absence from 06.10.1992 to 03.01.1993 was decided as Maternity leave by the competent authority whereas total period of absence of the applicant



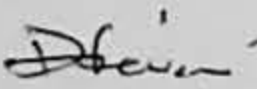
was
/from 29.08.1992 to 16.02.1994, for which she was served upon the major penalty charge sheet. Even if her said maternity leave period is excluded for counting her unauthorised absence, then also she was on unauthorised absence for a very long period between 29.08.1992 to 16.02.1994, for which the applicant has no explanation. It is abundantly clear that only the part of the unauthorised absence i.e. with effect from 06.10.1992 to 03.01.1993 has been decided as the Maternity Leave keeping a lenient view and the period prefixed to 06.10.1992 and suffix to 03.01.1993 are still period of unauthorised absence for which she had rightly been taken up and the necessary punishment was imposed upon her, which is commensurating to the offence committed by her. Learned counsel finally submitted that the respondents have taken a sufficient lenient view in considering the case of the applicant and the orders so passed by the respondents are just and proper.

6. Heard the learned counsel for the parties and perused the pleadings available on record.

67. Admittedly the applicant was charged for her unauthorised absence from 24.08.1992 to 16.02.1994 even if her maternity leave period is excluded even then she remained unauthorisedly absent for quite a long time. She was dismissed by the order dated 16.02.1994(Ann.A-1) for her unauthorised absence. She filed appeal and Appellate revision thereafter and the ~~appeal~~ as well as Revisional Authority were took lenient view and reduced her punishment of dismissal to reduction in the lowest stage in the existing time scale of pay vid. Rs. 950-1500, and then to 22.12.94 again modified by the order dated /of the Revisional Authority to be operative for 3 years from the date of imposition of penalty with future effect. It is well

settled legal proposition that Court or Tribunal cannot reappraise the evidence, while exercising the power of judicial review, and cannot normally substitute its own conclusion on penalty and impose some other penalty unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/Tribunal. This view finds support from the case 'B.C. Chaturvedi Vs. Union of India and Ors. J.T. 1995 (8) S.C. 65'.

8. In view of the above facts and circumstances and after careful consideration of the arguments raised by learned counsel for the parties, we are of the view that applicant has failed to make out a case for our interference. We do not find any illegality in the orders passed by the respondents. Accordingly, the O.A. is dismissed being devoid of merit. No order as to cost.


Member (A)


Member (J)

/M.M./