

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 22nd day of February, 2005.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. S. C. CHAUBE, A.M.

O.A. No. 1507 of 2000

Om Prakash Yadav, Son of Late Gaya Prasad, R/O H.No.909, Jata Shankar Chauraha,
Gorakhpur.....

.....Applicant.

Counsel for Applicant : Sri S. K. Om.

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Additional Divisional Railway Manager, North Eastern Railway, Lucknow.
3. Senior Divisional mechanical engineer, Diesel Shed, Gonda.
4. Loco Foreman, Loco Shed, Gorakhpur.

.....Respondents.

Counsel for Respondents : Sri A. Sthalekar.

ORDER (Oral)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri S.K. Om, learned counsel for the applicant, learned counsel appearing for the Respondents and perused the pleadings.

2. The applicant was served with a Charge Memo dated 5.1.1992. The Article of Charge, mentioned in Annexure-I to the Charge Memo, was that while working on the post of Pravar Chargeman, the applicant remained unauthorisedly absent from duty from 1988 to 31.12.1991 without any prior information or prior permission. In response to the said Charge Memo, the applicant submitted a letter dated 6.2.1992 stating therein that he had been intimating the Railway administration by sending Railway Medical certificates as well as medical certificates from private medical practitioners and, therefore, it would not be correct to say that he had been absenting from duty without intimating the Railway administration. By means of self same letter dated 6.2.1992, the applicant requested for acceptance of his earlier application dated 8.10.1991 seeking voluntary retirement from service. It appears that nothing was done on the basis



of Charge Memo dated 5.1.1992 nor was anything done in respect of the applicant's application dated 8.10.1991 seeking voluntary retirement. Another Charge memo dated 1/10.11.1994 was served to the applicant in which the Article of Charge framed against the applicant was that he remained absent from duty unauthorisedly from 1.2.1988 to 1.11.1994 which amounted to misconduct within the meaning of Rule 3(I)(II) of the Railway Servant Conduct Rules, 1966. The applicant submitted his reply dated 17.11.1994 in response to the said Charge Memo denying the allegations made against the applicant. During the course of inquiry, the applicant submitted a written brief before the Inquiry Officer stating therein that he had been sick from 7.9.1987 and had already submitted medical certificates from the Railway Hospital, Gorakhpur to the Loco Foreman, Gorakhpur and asserted that his absence from 7.9.1987 was on account of self sickness duly supported by medical certificates issued by the Railway Hospital, Gorakhpur. The Assistant Personnel officer, in his report dated 9.8.1994, submitted to Senior Divisional Personnel Officer in respect of the applicant's request for voluntary retirement, had stated that the applicant had been ill since 7.9.1987. The Inquiry Officer submitted his report holding the applicant guilty of the charge of unauthorised absence from duty. A copy of the inquiry report was supplied to the applicant in response to which the applicant filed his explanation. However, the Disciplinary Authority visited the applicant with the penalty of removal from service vide order dated 29.4.1999 holding the applicant guilty of unauthorised absence from duty with effect from 1.2.1988 to 1.11.1994. Aggrieved against the said order, the applicant appealed which came to be dismissed vide order dated 16.2.2000 which reads as under :-

"From the appeal of the candidate I find that the employee was absent unauthorisedly from the station of his duty from 1987 to 1995 and had not taken due care for informing the controlling authority properly. Therefore, the unauthorised absence of the employee from duty from 1.2.88 to 1.11.94, as concluded by the Inquiry Officer has been proved convincingly and, therefore, he is held guilty of charges for his carelessness to duty and also for violation of Railway Service Conduct Rule 1966 Rule 3(i)(ii) and (iii). I also find that the employee has tried to find unconvincing loop holes during conduct of inquiry and has maintained total silence on causes for absence. Therefore, I am of the opinion that there is no need to take any lenient view on the punishment imposed in this case, and therefore, the appeal for reducing the penalty is rejected."

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3. Sri S.K. Om, learned counsel appearing ^{for} the applicant has submitted that the charge Memo and the orders impugned herein are liable to be set aside on the ground that the charges in the first Charge memo shall be deemed to have been dropped and, therefore, ^{the} ~~teh~~ charges in the second Charge Memo cannot survive. He has placed ^{reliance} on a circular No.E(D&A)/93 dated 1.12.1993 whereby it has been clarified that once the proceedings initiated under Rule 9 or 11 of the Rules, 1968 are dropped, the Disciplinary Authority would be debarred from initiating fresh proceedings against the delinquent officer unless the order dropping the proceedings appropriately mentioned that ^{the} ~~teh~~ proceedings were being dropped without prejudice to further action. Learned counsel has also placed reliance on a decision of the Principal Bench of the Tribunal rendered in O.A. No.1601/2000, T.D. Chandna Vs. Union of India & others. Learned counsel appearing for the Respondents, in reply, submits that the circular and the decision relied upon by the applicant has no relevance to the facts of the present case. We find substance in the arguments of the learned counsel for respondents. The circular would apply only if the charges in the two Charge memos are the same and the first charge memo was either dropped or cancelled. In the instant case, the charge against the applicant in the first charge memo was unauthorised absence from 1988 to 31.12.1991 whereas in the subsequent charge memo, the charge of unauthorised absence is in respect of the period from 1.2.1988 to 1.11.94 and there is no evidence to show that the proceedings on the basis of first charge memo were either dropped or cancelled. The mere fact that period of the unauthorised absence in the subsequent charge memo includes the period of unauthorised absence mentioned in the earlier charge memo, will not attract the circular or the decisions relied on by the learned counsel. We are, therefore, of the view that the impugned charge memo and the order impugned herein are not liable to be quashed.

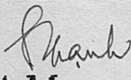
4. Sri S.K. Om, learned counsel appearing for the applicant then submits that the Disciplinary Authority as well as the Appellate Authority have failed to apply their mind to the explanation given by the applicant for his absence and have ^{mechanically} ~~mechanically~~ accepted the report submitted by the Inquiry Officer. It is further submitted by the learned Counsel that though the applicant had stated before the Inquiry Officer that he had been absent from duty due to illness, yet the Appellate Authority in its order, held that the applicant has totally maintained

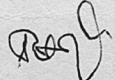
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silence on causes of his unauthorised absence. In paragraph 20 of the O.A., it has been averred that Inquiry Officer did not consider entire evidence on record including the report of the Assistant Personnel Officer (Machanical) dated 9.8.94 whereas he had informed the Respondent No.3 with regard to the applicant's sickness and medical certificates given by him. There is no specific denial to the averments made in para 20 of the O.A. That apart the Appellate Authority has erroneously held that during the inquiry the applicant had "maintained total silence on causes of absence". It is well settled that the Appellate Authority is required to apply its mind to the grounds taken in the memo of appeal and to the material on record. In Ram Chandra Vs. Union of India and others, AIR 1986 SC 1173, Supreme Court has very clearly held that the Appellate Authority has to record reasons in support of its order after proper self-direction to the material on record and Rule 22(2) of the Railway Servant Rules, 1968. We are of the view that since the appellate order is liable to be set aside on this ground alone, it is not necessary for us to go into the legality or otherwise of the order passed by the Disciplinary Authority. In our opinion, it is for the Appellate Authority to apply its mind to the evidence on record vis-a-vis the ground taken by the applicant in his memo of appeal and the factors enumerated in Rule 22(2) of Railway Service (Conduct & Appeal) Rules, 1968 and decide whether the order passed by the Disciplinary Authority could be sustained on the basis of material on record. The matter, in our opinion, deserves to be remitted to the Appellate Authority to decide the appeal a fresh in accordance with law.

5. Accordingly, the O.A. succeeds and is allowed in part. The Appellate Order dated 16.2.2000 is set aside and the Appellate Authority is directed to decide the appeal a fresh in accordance with law after proper self-direction to material on record and the provisions of Rule 22(2) of the Rules within a period of three months from the date of receipt of a copy of this order along with a copy of the memo of appeal.

No costs.


A.M.


V.C.

Asthana/