

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 3rd DAY OF DECEMBER, 2001

Original Application No.826 of 2000

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.C.S.CHADHA, MEMBER(A)

Bindu Tewari, S/o Shri Uma Shanker  
Tewari, R/o loco Colony,  
Mughalsarai district Chandauli.

... Applicant

(By Adv: Shri S.K.Dey)

Versus

1. Union of India through the  
General Manager, Eastern  
Railway, Calcutta
2. The Addl.Divisional Railway  
Manager, Eastern Railway  
Mughalsarai, district  
Chandauli
3. The Divisional Mechanical  
Engineer(P), Eastern Railway  
Mughalsarai.

... Respondents

(By Adv: Shri A.K.Gaur)

O R D E R (Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

Applicant by this OA u/s 19 of A.T.Act 1985 has challenged the order of punishment dated 22.9.1999(Annexure 2) by which he has been removed from service from the post of Call Man on conclusion of the disciplinary proceedings. Appeal filed by him has been dismissed by order dated 8.12.1999(Annexure 4) which has also been challenged.

The facts of the case are that applicant joined Railway service in 1979 as Loco Substitute. Subsequently he was posted as Call Man under Loco Foreman ER/MGS in the scale of Rs.2650-4000. He was served with a memo of charge for major penalty with the allegation that he remained unauthorised absence from duty on 26.5.1996 to 30.9.1996. Applicant filed

his reply and contested the proceedings. The Enquiry Officer submitted report(Annexure A1). The Enquiry Officer concluded that though applicant remained absent from 27.5.1996 to 30.9.1996 but he has given explanation for absence that he was busy <sup>in</sup> looking after his ailing wife. He has also recorded finding that the evidence of illness of wife is on record and he informed Loco Foreman through post office from time to time about his helplessness and absence. With these findings the Enquiry officer recommended that a lenient and sympathetic view may be taken in respect of the applicant who has given an undertaking that he will not commit such a mistake. The Disciplinary Authority however, passed the order of punishment of removal which ~~has~~ been confirmed in appeal. In his memo of appeal applicant submitted that he was absent from 27.5.1996 to 30.9.1996 but he ~~has~~ produced authentic proof of absence from duty and gave information to office from time to time. There was question of life and death of his life partner. The Appellate Authority however decided the appeal by the following order:

"Your above quoted appeal was put up before the undersigned and after careful consideration observed as under:

"I have gone through the appeal and the enquiry report .Shri Bindu Tewari's removal of service is appropriate for his guilt of remaining unauthorisedly absent from 27.5.96 to 30.5.96 without any intimation. I do not find anything in his appeal to defend the charges which also have been accepted by him."

From the order of the Appellate Authority, thus, it is clear that he has not applied his mind to the defence that he was absent due to illness of his wife and he was helpless as the condition of his wife was serious. He also stated that



<sup>or there was a</sup>  
sufficient authentic evidence on record. It is important to note here that this plea of the applicant had<sup>e</sup> been accepted by the Enquiry officer as mentioned above. In these circumstances, it was obligatory on the part of the disciplinary authority as well as the Appellate Authority to record a finding after serving a dissent note on the applicant as to whether his defence with regard to his absence was justified or not. In this case, this has not been done. There is <sup>note</sup> a word either in the order of disciplinary authority or the appellate authority that finding of the Enquiry officer was not correct or was contrary to the material on record. In these circumstances, the impugned orders cannot be sustained.

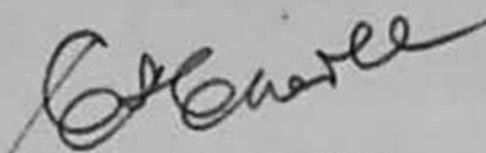
The next related question is whether this case be sent back to the authorities for passing a fresh order or matter may be closed here. The learned counsel for the applicant submitted that more than five years have already passed and no useful purpose will be served if the matter is sent back as the applicant will be kept involved in the litigation for a long time again.

The learned counsel for the respondents on the other hand, submitted that matter may be sent back to the authorities for passing fresh orders. After considering the submissions made by the counsel for the parties<sup>and</sup> the finding of the Enquiry officer, we are of the view that no useful purpose will be served in sending the matter back to the respondents. Considering the nature<sup>of</sup> of the misconduct and the period of absence and the finding of the Enquiry officer, we are of the view<sup>that</sup> that ~~a suitable punishment may be given to him~~ <sup>ends of justice shall be served if</sup> if he is deprived of a part of his salary.

For the reasons recorded above, we allow this OA. The impugned orders dated 22.9.1999 and 8.12.1999 are quashed.

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The applicant shall be reinstated on his post with all consequential benefits. However, he will be entitled only for 50% of the salary for the period he has not been working on the post . The order shall be complied within four months. however, there will be no order as to costs.

  
MEMBER(A)

  
VICE CHAIRMAN

Dated: 03.12.2001

Uv/