

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 19TH DAY OF MAY 2009)

PRESENT

HON'BLE MR. JUSTICE A.K.YOG, MEMBER (J)

HON'BLE MR. S. N. SHUKLA, MEMBER (A)

**ORIGINAL APPLICATION No. 316 OF 2002.
(Under Section 19, Administrative Tribunal Act, 1985)**

Pancham Singh
Son of Sri Jhamman Singh
Resident of House no. 435, Sugar Factory
Road, Subhas Nagar, Bareilly.

.....Applicant.

By Advocate: Sri S. K. Om

Versus

1. U.O.I. through the G.M/N. Rly/HQ/New Delhi.
2. Union of India through the senior Divisional.
3. Divisional operating manager,
Office of the Divisional Railway Manager,
N. Rly, Moradabad.


..... Respondents

By Advocate: Shri P. Mathur.

ORDER

(Delivered by Justice A.K. Yog, Member-Judicial)

Heard Shri S.K. Om Advocate on behalf of the applicant and Shri P. Mathur on behalf of the Respondents. This OA was filed by the applicant (an employee of the railway) against order dated 16 July 2001



imposing penalty of reduction in 'Rank' for a period of two years on lower post under Railway Servants (discipline and appeal) Rules 1968 after inquiry was conducted by the inquiry officer who submitted report; and Disciplinary Authority, after following the procedure in law-awarded punishment vide impugned order.

2. This case has a long-chackered history. The applicant filed a writ petition No. 46316 of 2002 Pancham Singh Vs. Union of India and others (being aggrieved against the impugned order referred to above), ~~order~~ ^{Writ} Writ Petition which was disposed of with direction to decide Appeal expeditiously vide order dated 10/11/12/2001. (see Annexure A-8-filed with MA No. 2215/2006) i.e. Deptt.'s letter dated 03.03.2003.

3. Perusal of letter dated 03.03.2003 (as Annexure-A-8 to Amendment Application No. 2651 of 2006) information of Appellate order dated 12.12.2001 was sent to the Applicant by Regd. Post-but letter was-returned undelivered.

4. By amendment (vide amended Para 20) appellate order dated 10.12.2001 is sought to be challenged. Said **Para 20** of the OA reads :-

- i. *That, against the order dated 16.07.2001, petitioner filed an appeal before the Senior Divisional Operations*

See

Manager (SDOM) on 08.09.2001, which was dismissed vide order dated 10/12.2001, copy of which was served on petitioner vide his letter dated 03.03.2003. Copy of letter dated 03.03.2003 is annexed herewith and is marked as Annexure No. A-8 to Compilation-II, and copy of order dated 10.12.2001 is annexed herewith and is marked as Annexure No. A-1a to compilation-I.

5. It is to be noted that the Applicant admits knowledge as per receipt of letter dated 03.03.2003 (referred to above) but Amendment Application was filed in the Registry on 19.09.2006 which was allowed on 20.04.2007 receiving Amendment to be incorporated within 2 weeks Amendment was carried out incorporated on 28.09.2007 (see order sheet) on 01.04.08 Tribunal passed following order :-

Sri. S.K. Om, Learned Counsel for the Applicant stated that the amendment was necessitated because the applicant was required to challenge the order passed on appeal, which was communicated during the pendency of the OA. He further stated that no new facts have been incorporated & the applicant shall not rely any new fact. Except the legal grounds on which the appellate order is sought to be challenged through this OA.

6. Now, in view of order dated 01.04.2008, OA is confined to following grounds- (added under Amendment but without referring to Amended Paras) which reads :-

c. Because, the action of respondents in appointing the enquiry officer without

Ans

affording any opportunity to give reply to show cause is arbitrary and violative of principles of Natural Justice.

- d. Because, in the course of enquiry, enquiry officer did not appreciate the statements made by prosecution witnesses V.K. Mishra, officiating Station Master and Traffic Inspector to effect that petitioner had furnished information with regard to his absence and his arrest and the same were furnished to Division Officer at Moradabad.
- e. Because, the enquiry report is wholly perverse, erroneous and is based on misreading of evidence on record.
- f. Because, the order dated 10.12.2001 has been passed mechanically without any application of mind and, as such, the same is liable to be quashed.
- g. Because, although Senior Division Operations Manager while passing the order dated 10.12.2001 had specifically observed that no financial burden would be caused to petitioner but while implementing the punishment order petitioner's salary has been reduced.

7. For convenience we reproduce-impugned Appellate order :-

"No. 383-T/UA/RYS.74/99
Dated: 10-12-2001

Office of the,
Divl. Rly. Manager,
Moradabad.

Shri Pancham Singh
Ex. Switchman/RYS
Now Cabin Man /

Sub : Your appeal dated 8.9.2001 in SF-5 case No. 383/UA/RYS/74/99 dated 29.09.99.

I have thoroughly gone into the entire case and your appeal dated 8.9.2001 and find



that there is no dispute about your absence from duty from 4.5.97 to 30.11.2000 i.e. for a period of three years six months and 28 days and that no leave was sanctioned to you by any competent authority for this period.

There is also no evidence to show that you informed the Railway Administrative about your absence for the period. Your statement that you informed the Station Master/RYS under postal certificates sent through a Post Office situated at a distance of seven (7) Kilometers from your residence in not convincing. Your submission that you had been sick and had remained under the treatment of different Doctors from 4.5.97 to 1.12.2000 is hard to believe in face of the fact that you had been in District Jail Bareilly from 29.12.1999 to 4.4.2000 in criminal cases No. 190/98, 87/97 and 1850/99. Thus the certificates and the postal orders as said to have been submitted by you during the aforesaid period can not be trusted.

I also find that proper procedure laid down under the rules has been followed and complied with and there is no violation of rules of natural justice in the case.

As regards the quantum of penalty of reduction from the post of Switchman (now re-named as Cabin Master) grade 4000 – 6000 to Cabin Man grade 3050 – 4500 for two years at the same pay Rs. 3425/- which you were drawing by the DOM/MB – the Disciplinary Authority vide NIP No. 383- /UA/RYS/74/99 dated 16.7.2001, I find that there is no financial loss in the notional pay which you have been drawing. Simply you have been relieved of the burden of granting and taking line clear while remaining in the cabin as Cabin Man.



In consideration of the above facts of the case and your appeal I find no justification for any relaxation in the penalty already awarded by the Disciplinary Authority. Your appeal is therefore rejected.

(SANJAY BAJPAL)
Sr. Divl. Optns. Manager
Northern Railway
Moradabad."

(Underlined to lay emphasis)

8. We find, there is no ground to interfere with the same particularly in view of the Legal ground-"c to g" quoted above. Except ground 'g'- others ground seek to vitiate " Enquiry proceedings' and Enquiry Officer". Ground 'g' is matter of 'fact' which cannot be adjudicated in absence of requisite pleadings of the Applicant and opportunity to rebut was given to the Respondents.

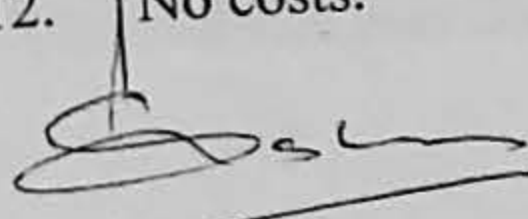
9. The Appellate Authority has taken into account various facts and circumstances and disbelieve the explanation offered (by the Applicant) for long absence from duties- without ensuring sanction of leave as per Rules.

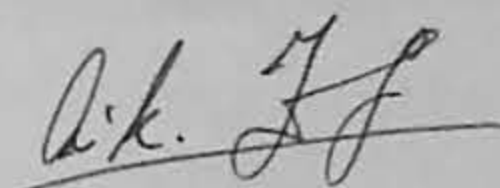
10. We must also place on record that the Applicant concealed relevant facts regarding his ^{arrest} ~~arrest~~ pendency of criminal

proceedings and also did not challenge Appellate order for a few years and hence there is neither law nor 'equity' in his favour.

11. We find no ground to interfere with impugned order. OA has no merit and accordingly dismissed.

12. No costs.


MEMBER (A)


MEMBER (J)

/S.Verma/-