

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 22nd day of FEBRUARY 2005.

Original Application no. 368 of 2002.

Hon'ble Mr. D.R. Tiwari, Member A
Hon'ble Mr. K.B.S. Rajan, Member J

Mool Chandra, S/o Late Kalloo,
R/o House no. 58, Bada Gaaon, Gate Andar,
Katas Dev Chabugtra Ke Pass,
JHANSI.

... Applicant

By Adv : Sri R. Verma

VERSUS

1. The Union of India, through the General Manager,
Central Raialway, Chhatrapati Shivaji Terminus,
MUMBAI.
2. The Additional Divisional Railway Manager,
Central Railway,
JHANSI.
3. The Senior Divisional Signal & Telecommunication
Engineer, Central Railway,
JHANSI.

... Respondents.

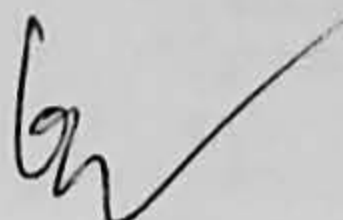
By Adv : Sri Anil Kumar.

ORDER

By K.B.S. Rajan, JM

The applicant through this OA challenges the legality of the following orders :

- a. order dated 13.12.2001 passed by the Disciplinary Authority whereby penalty of reduction in pay and fixing the pay at Rs. 2610/- in the pay of Rs. 2550-3200 was imposed.
- b. Order dated 24.1.2002 whereby appeal filed by the applicant was dismissed.



A thumb nail sketch of the facts of the case is given in the subsiding paragraphs:

- i. As per the applicant he could not attend the office from 04.04.1999 to 18.05.1999 and from 25.05.1999 to 31.07.1999 on account of illness of his spouse. The office superintendent was also stated to have been informed. The spouse of the applicant had to undergo a major operation (of the Liver and Genetic organs) . It is also stated that the applicant too became very much disturbed due to such domestic inconveniences. After normalcy was restored in the house, the applicant joined duty on 1.8.1999.
- ii. The applicant was served with a charge sheet on 15.9.1999 under major penalty proceedings for his alleged unauthorized absence from 4.4.1999 to 18.05.1999 and from 25.05.1999 to 31.07.1999. The applicant had denied the charges and regular enquiry was conducted. The Inquiry Officer by following procedure filed the enquiry report dated 29.9.2001 and the same was made available to the applicant on 15.10.2001. The same is reproduce below :

*"SSE(Sign)'s office, JHS
Dt : 29.9.2001*

DRM (S&T), JHS

Sub : Findings of enquiry conducted in connection with SF 5
No. JHS/N/120/Sa Dated 15.9.99 issued to Sri
Moolchand Kalla, Khalasi, CTI (CTO), JHS

After going through the details of documents and examination of the delinquent employee as well as witness, I reach at the conclusion that Sri Mool Chand Kalla is guilty of remaining unauthorized absent during the period from Dt 4.4.99 to 18.5.99 and from 25.5.99 to 31.7.99 as the charges framed against him in the above referred SF 5 on the following facts:

- a. *In Q No. 2, Sri Mool Chand Kalla has accepted the charges of remaining unauthorized absent for the said period.*
- b. *In Q. No. 3 Sri Mool Chand Kalla accepted that after receipt of various documents he demanded from the department on 21.12.99, he failed to submit his explanation within 10 days or give names of ARE in his protection.*
- c. *In Q No. 5, 6 &7, Sri Mool Chand Kalla stated that, he has only given intimation on phone on Dt 4.4.99 to his office for not attending duty but did not ask for leave. Further he neither submitted any sick certificate/intimation nor he gave any*

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interim certificates of being continued in sick in between his absentee period.

However, during the cross examination of witness No. 1 Sri Md. Hanif OS II/CTI (CTO)/JHS, the following flaws in the official procedures being followed in the depot of CTI (CTO)/JHS were observed for the employee reporting sick/PMC and keeping of records of debit sheets--

- d. In Q. No 1, Sri Mohd Hanif stated that Sri Mool Chand Kalla was in fact absent from Dt. 15.3.99 but in lieu of debit sheet, absentee reported from Dt. 4.4.99. Thus reporting of absentee period itself is incorrect.*
- e. In Q. No. 2, Sri Md Hanif stated that in the debit sheet submitted with the report wrongly marked M8 & 9B No. A470779 from 17.4.99 to 24.4.99 instead of 19.5.99 to 24.5.99. Here also It shown carelessness in submitting documents.*
- f. In Q No. 3 & 4, Sri Md. Hanif stated that the employees remaining sick are not going pre intimation but while joining duty after sick (In fact absent), they submitted the certificate which was not correct procedure.*

Since Ssri Mool Chand Kalla also followed the same procedure of remaining absent and finally submitting sick and fit certificate, while joing duty, this gives benefit of doubt in favour of the delinquent employee.

This is for your information and further n/a pl.

*Sd/-
(D. Dutta)
Inquiry Officer
SSE(Sig), JHS"*

iii. The rival contentions have been heard. The applciant's counsel submitted that the penultimate sentence of the enquiry report completely goes in his favour. The counsel for the respondents however, states that at the very beginning of the enquiry report the Inquiry Officer had held that the charge remained proved.

iv. The question now for consideration is what is the correct finding of the Inquiry Officer.

v. The applicant had on the basis of the observations; "this gives benefit of doubt in favour of the delinquent employee" appearing as the penultimate sentence of the enquiry report, understood the same as in his favour and submitted his representation accordingly. The Disciplinary

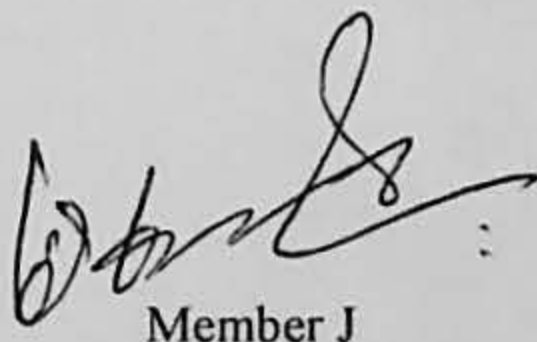
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Authority however, took the findings of the enquiry report that the charges were proved and passed a penalty of removal from service. On appeal the penalty had been reduced to reduction in the pay as stated in para 1 above.

2. In the course of the arguments the applicant had taken us through the entire enquiry report. It will seen there from that through the Inquiry Officer had held at the very beginning of the report, " I reached the conclusion that Sri Mool Chand Kalla is guilty of remaining unauthorized absent..." and also stated that in question no. 2 Sri Mool Chand Kalla has accepted the charge of remaining unauthorizedly absent, the penultimate sentence of the enquiry report tilts ultimately in favour of the applicant. In case the applicants had accepted his guilt, at the very beginning of the enquiry, there is no need to proceed further. The Inquiry Officer had proceeded further which means that the applicant wanted the enquiry to be conducted and as such no guilt was admitted; and on ascertaining that the procedure followed by the applicant in making available the medical certificate at the time of his joining the duty has been in practice, the Inquiry Officer held that the benefit goes in favour of the applicant this means that ultimately the report goes completely in favour of the applicant notwithstanding the initial observation of the Inquiry Officer.

3. In view of the above, the OA is allowed. The order dated 13.12.2001 (Ann 1) and order dated 24.1.2002 are hereby quashed and set aside. The respondents are directed to work out the pay and allowances due to the applicant as if no penalty was imposed upon the applicant. The arrears of pay and allowances on account of this order shall be paid to the applicant within a period of four months from date of receipt of certified copy of this order.

4. Under these circumstance there shall be no order as to costs.


Member J


Member A