

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

ORIGINAL APPLICATION NO. 1021 of 2002.

Allahabad, this the 03rd day of January, 2006.

HON'BLE MR. D.R. TIWARI, A.M.

Diwakar Mishra
Son of late N.N. Mishra,
Resident of 208 Old Katra, District Allahabad.
.....Applicant.

(By Advocate: Sri Satish Dwivedi)

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Addl. Divisional Railway Manager, Northern Railway, Allahabad.
3. The Sr. Security Commissioner, Railway Protection Force, Northern Railway, Allahabad.

.....Respondents.

(By Advocate : Sri A.K. Gaur)

O R D E R

By this O.A. filed under section 19 of A.T. Act, 1985, the applicant has prayed for the following relief:

"That the order dated 16.5.2002 and 22/23.8.2002 passed by Sr. Security Commissioner, Northern Railway, Allahabad and Additional Divisional Railway Manager, Northern Railway Allahabad respectively (Annexure A-1 and A-2) may be declared illegal and the same may be quashed and further respondents be directed to pay all the consequential benefits with suitable interest to applicant".

2. Briefly stated, the applicant was appointed on the post of Clerk in the office of Assistant Security Commissioner, Northern Railway, Lucknow Division, Lucknow w.e.f. 17.3.89. While working at Lucknow, he met with road accident and suffers severe leg injury and multiple

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fractures as a consequence of which he became physically handicapped and Senior Divisional Medical Officer assess the disability of the applicant as more than 40%. Medical certificates are at Annexures A-3 and A-4. Since he became disable and is permanent resident of Allahabad, he applied for his transfer to Allahabad and thereafter Railway Administration considering his request transferred him to Allahabad in the office of Assistant Security Commissioner, Northern Railway, Allahabad vide order dated 24.1.1995 (Annexure A-5). During his posting at Allahabad, he suffered severe pain in his leg and was on leave from 10.3.2001 to 15.3.2001 and even during his illness he attended the office on 16.3.2001. To his utter surprise, he was spared on transfer to Tundla at about 0745 hours by order dated 16.3.2001 (Annexure A-6). It has been pleaded that Department of Personnel and Training vide its order dated 10.5.1990 has clearly provided that request from physically handicapped employee for transfer to or near their native places may be given preference (Annexure A-7). Despite such directions contained in aforestated circular, he was transferred to Tundla which is against the direction of the Central Government. He remained on leave from 16.8.2001 upto 26.8.2001 and the applicant vide his letter dated 27.8.2001 submitted the fitness certificate issued by Dr. Sachan. Thereafter he was sent to Senior D.M.O Northern Railway, Allahabad by the Chief Security Commissioner, Northern Railway, Allahabad for getting medical certificates. It has also been pleaded that before he was declared fit, his transfer order dated 16.3.2000 was cancelled by order dated 23.8.2001 (Annexure A-9).

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3. Subsequently, minor penalty chargesheet was served upon him by charge memo dated 10.1.2002 (Annexure A-10) and the main charge leveled against him was his unauthorised absence with effect from 19.3.2001 to 27.8.2001 the charge also included the charge of not handing over the key of the almiraha. Vide its letter dated 14.2.2002 the applicant denied all the charges (Annexure A-11).

4. On receipt of the reply from the applicant, the Disciplinary Authority imposed the penalty of reduction of pay by three stages with non-cumulative effect in the same pay scale of Rs.3050-4590 vide order dated 16.5.2002 (Annexure A-1) against this order of the Disciplinary Authority, he preferred an appeal to the Appellate Authority which was also rejected and penalty was affirmed (Annexure A-2).

5. Aggrieved by the above orders, the applicant has filed the instant O.A. and has challenged the impugned orders on various grounds mentioned in para 5 of the O.A. The main grounds are mentioned below:-

- "(i) Because the allegation of unauthorised absence from duty is serious misconduct for which the regular enquiry should have been conducted but in the present case the respondents without conducting any enquiry only on the basis of reply of chargesheet imposed punishment on applicant which is contrary to law.
- (ii) Because applicant was seriously ill during the relevant period and in support thereof he had submitted medical certificate and with regard to his illness the authorize were informed/communicated and they were fully aware about this fact.
- (iii) Because the action of respondents in not considering the submission of applicant in the reply of chargesheet and also in the

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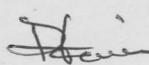
departmental appeal properly is highly arbitrary, discriminatory, unreasonable, unjustified and illegal in law.

(iv) Because the approach of respondents in considering the reply and appeal of applicant was malicious and was full of bias so impartial action was not taken against the applicant.

(v) Because principles of justice equity and good conscience in the facts and circumstances of the case requires that the impugned orders be quashed and applicant be allowed all the consequential benefits".

In view of the aforementioned grounds, it has been pleaded that the O.A. deserves to be allowed on merit.

6. Respondents, on the other hand, have filed a counter affidavit whereby all the claims made by the applicant have been strongly refuted. It has been argued that the applicant had been very negligent in performance of his duties and he was certainly absented himself without any authority as he was spared on 16.3.2001 with the direction to report for duty at Tundla on 19.3.2001 being Saturday and Sunday (closed day) i.e. 17.3.2001 and 18.3.2001 but he willfully did not proceed on transfer and absented from duty without any information to his controlling officer and remained absent upto 26.8.2001. It has also been argued that he did not get the treatment from Railway Doctor though the Railway Hospital is available at Allahabad and he did not submit medical certificate issued by the private medical practitioner to his controlling officer. It has been argued that the applicant was under private treatment with effect from 10.3.2001 to 26.8.2001 i.e. for more than 4 months but he did not submit monthly progress report or any interim sick certificates and remained absent without any information to the Controlling Officer. It has also been



argued that the lock of the Almiraha had to be broken to take out necessary papers. The reason for not handing over the key of the Almiraha by the applicant were not convincing. In view of these reasons, the action taken by the Railway Administration is correct and O.A. is devoid of merit and be dismissed.

7. During the course of the argument, the counsel for the parties reiterated the facts and the legal pleas from their respective pleadings. The counsel for the applicant, however, submitted that he could not come to the office under the compelling circumstances pleaded in the O.A. as he was under treatment and he used to move on crèches. He also submitted that his absence was not deliberate and willful. For this contention, he relied on the case of Balwant Raj Vs. Union of India decided by the Hon'ble High Court of Allahabad reported in Indian Factories and Labour Reports Vol-15 of the year 1967 at page 36. The head notes of the judgment in the case of Balwant Raj (supra) is as under:-

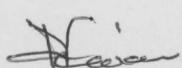
"Railway Establishment Code, R. 731 Note 3- "Fails to resume duty", meaning-Railway servant prevented from resuming duty from cause beyond his control such as illness-Period of maximum leave due him expiring-Employee, not to be penalized by termination of service".

Thus he concluded his argument by praying that the O.A. deserves to be allowed in view of the decision in Balwant Raj case (supra) and also because no full fledged enquiry was held to prove the allegations made against him.

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8. I have heard very carefully the rival submissions made by the counsel for the parties and perused the records.

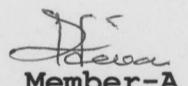
9. From what has been discussed above, the only point which arises for consideration and adjudication is the validity of the impugned orders. It is undisputed that in this case no detail inquiry was held which is against the Government of India instruction NO.1 below Rule 16 of the CCS (CCA) Rules, 1965. Rule 16 (1) (b) also provides to give reason for not holding any detailed enquiry even when minor penalty is imposed. It is no doubt true that to hold the detailed enquiry or not is the discretion of the Disciplinary Authority. However, for exercising this discretion the Disciplinary Authority has to form an opinion and this opinion has to be supported by reasons and in the instant case there is nothing on record to show that the Disciplinary Authority has recorded any reasons for dispensing with a full fledged enquiry as provided in Rule 16 (1) (b) ibid. Even the Apex Court in the case of O.K. Bhardwaj Vs. Union of India- 2002 SCC (L&S) 188 has held that even in the case of a minor penalty, an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with. I am also inclined to agree with the contention of the counsel for the applicant that it was beyond the control of the applicant to resume the duty as



explained by the Hon'ble High Court of Allahabad in the case of Balwant Raj (supra). If one has a look to the statutory provision and the legal position explained hereinbefore, one is bound to accept the contention of the applicant's counsel and the pleadings of the applicant. As such O.A. is liable to succeed on merit.

10. In view of the facts and circumstances mentioned above and the discussion made, the O.A. succeeds on merit and is accordingly allowed. The impugned punishment order dated 16.5.2002 (Annexure A-1) and the appellate order dated 23.8.2002 (Annexure A-2) are quashed and set aside. The applicant is entitled to all the consequential benefits without interest on them. Accordingly, the respondents are directed to take necessary action in this regard within a period of three months from the date of receipt of a copy of this order.

No order as to costs.



Member-A

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