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Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1047 of 2002

Wednesday, this the **20th** day of **February**, 2008

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mr. K.S. Menon, Member (A)

Munawwar, s/o. Munawar, Mohalla - Mirzapur, P.O. Geeta Press, Thana Rajghat, Gorakhpur, since deceased through Legal - representatives - a

Qu/1. Fatima Khatun (widow) wife of Late Munawwar, aged about 38 years.

Qu/2. Jalal Uddin (elder son) aged about 23 years

Qu/3. Sonoo (son) aged about 20 years.

Qu/4. Km. Rukhsana (daughter) aged about 12 years.

Qu/5. Km. Sonee (daughter) aged about 14 years.

All residents of Mohalla Sahabganj, Mirzapur, Post Office Geeta Press, Thana Rajghat (Near the Sonay Ki Galiwali Masjid), District Gorakhpur.

All above applicants were substituted on 01.02.2000 in Place of Original Applicant-Munaur.

Applicants

By Advocate Sri R.K. Khare

Versus

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Coaching Depo Officer, N.E. Railway, Gorakhpur.
3. (G.M.P.) General Manager (P) N.E. Railway, Gorakhpur.
4. Mandal Rail Prabandhak (Mechanical) N.E. Railway, Lucknow.

Respondents

By Advocate Sri D. Awasthi.

ORDER

By Justice A.K. Yog, Member (J) Qu.

The applicant has claimed the following reliefs: -

- (i) Order dated 24.1.2002 passed by Revisional Authority.
- (ii) Order dated 20.10.2000 passed by Appellate Authority.
- (iii) Order dated 31.3.2000 passed by Punishing Authority (Disciplinary Authority)

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This Hon'ble Tribunal may be pleased to direct the respondents to reinstate the applicant in the post of Safaiwala with back wages."

2. Admittedly, a charge sheet was given to the applicant. Primary charge against the applicant was that he remained absent without authorized leave/sanction. In other words, the applicant was charged of dereliction of duty on the ground of being unauthorized absent. The Inquiry Officer was appointed to submit his report/conclusion, copy of charge sheet is annexed as annexure-3 to the O.A. He was given a show cause notice dated 24.09.1999 (annexure-4 to the O.A.), requiring him to submit his explanation. The applicant submitted his explanation dated 07.10.1999 (annexure-5 to the O.A.). Inquiry Officer submitted his report/conclusion dated 20.01.2000 (annexure-6 to the O.A.). The report of the Inquiry Officer/conclusion apart from other things, which is being noted, that the Inquiry Officer disbelieved the case of the applicant that he has been sending information during his period of absence i.e. 25.05.1999 to 11.09.1999 (approximately for four months). While recording its conclusion (viz. whether the applicant had sent information of his being seek during the period in question), he relied upon the statement of one Sri Samay Pal. Copy of question-answers recorded before the Inquiry Officer is also annexed, which is part of said conclusion (annexure-6 particularly page 37 of Compilation II to the O.A.). On page 38 of Compilation No. II, last but one and last question answer shows that office did not receive any communication of leave of absence, as alleged by the applicant. The last question/answer also shows that applicant admitted that he was awarded punishment for his unauthorized absence in the past also. The Disciplinary Authority vide its order dated 31.03.2000 (annexure-2) relying upon the report of the Inquiry Officer held that charge was proved and he was awarded punishment of removal from service. It is true that the Disciplinary Authority has not given an elaborate order. It appears that the Disciplinary Authority, since it agreed with conclusion of the Inquiry Officer, passed an Order of affirmation. The applicant filed a departmental Appeal, which has been dismissed vide Appellate Order dated 20.10.2000 (annexure-2 to the O.A.). The Appellate Authority confirmed the Order of the Disciplinary Authority. Feeling aggrieved, the applicant filed a Review Petition, which has also been dismissed by means of the impugned order dated 24.01.2002 (annexure-1 to the O.A.).

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3. Learned counsel for the applicant argued that all the impugned orders, passed by the Disciplinary Authority, Appellate Authority and Reviewing Authority are non-speaking orders. However, after perusing the record, it is clear that the authorities in question were in agreement with the inquiry report, submitted by the Inquiry Officer and they were in affirmation with the order of Inquiry Officer, therefore, they have not passed the elaborate order.

4. In the last, we have ourselves gone through the documents filed herewith and perused the inquiry report as well as other documents. In order to satisfy ourselves as to whether the Order passed by the Disciplinary Authority deserves to be interfered with.

5. The salient feature of the case is that the applicant, during disciplinary inquiry, took up the case that he has been informing his absence through post. The said defence of the applicant has however been disbelieved by the Inquiry Officer on the ground that in his application for joining duties after obtaining the certificate of being fit as per the certificate issued by the Medical Department of N.E. Railway, he did not mention that he has been sending information by post during the period of absence. The Inquiry Officer in his conclusion has categorically recorded that in joining report, the applicant furnished an explanation to the effect that no information could be sent to the department since there was no other person available in his family/home. This contradiction cannot be ignored. Normally this Tribunal would have remanded the case back to the authorities for passing a reasoned order in view of the argument of learned counsel for the applicant with reference to Rule 22 of Railway Servants (Discipline and Appeal) Rules, 1968, requiring the Appellate/Reviewing Authority to pass a reasoned order. Learned counsel for the applicant also referred to Rule 9 (25) (i) of Railway Servants (Discipline and Appeal) Rules, 1968, which required the Inquiry Officer to pass a reasoned order. We find that the Inquiry Officer has complied with all the requisite conditions, as referred and argument of learned counsel for the applicant on this score is not tenable. The argument of learned counsel that the Order passed by the Disciplinary, Appellate and Reviewing Authority are non-speaking order lost significance in view of the fact that we have ourselves gone through the record, brought out by the applicant and we find that the applicant has not come up with clean hand in seeking his defence in view of the contradiction, already noted

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above, and as also pointed out by the Inquiry Office in his concluding report.

6. Learned counsel for the applicant has placed before us three Judgments namely: -

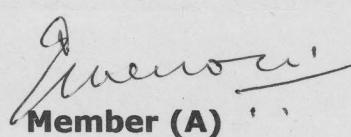
1. *R.S. Shroff Vs. Union of India and others (CAT, Jabalpur Bench/OA. No. 355 of 1987, decided on 31.03.1989) reported in [1989] 11 Administrative Tribunals Cases page 320*
2. *Anil Kumar Vs. Presiding Officer and Others (Civil Appeal No. 4692 [NL] of 1984, decided on May 8, 1985) 1985 Supreme Court Cases (L & S) 815.*
3. *Ram Chander Vs. Union of India and others (Civil Appeal No. 1621 of 1986 decided on May 2, 1986) 1986 Supreme Court Cases (L&S) 383"*

We need not burden our order by referring to the facts or ratio of the aforesaid situation as they are distinguishable on the points that in the instant case 'opportunity' is given to the applicant who submitted his reply before the Inquiry Officer.

7. As far as the question of passing a reasoned order is concerned, we have, on our own gone through relevant documents on record and find that the conclusion recorded by the Inquiry Officer is based on facts given in joining report (wherein he pleaded to have given no information) and this could not be assailed or disputed by the applicant before us. One reason is good enough to disbelieve the defence of the applicant. The Tribunal/Court cannot encourage the unauthorised absence.

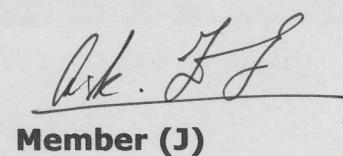
8. It may be noted that the applicant was died during pendency of the O.A. and legal heirs/representatives of the applicant have been substituted under Order of the Tribunal. Therefore, reinstatement, as claimed in the O.A. cannot be granted. The other relief (s) to set aside three orders (passed by Disciplinary, Appellate and Reviewing Authorities) also loose significance since we have ourselves gone through record, appreciated evidence and recorded our findings that the defence of the applicant has rightly been rejected in view of the glaring contradiction (pointed out above).

7. We dismiss the O.A. which lacks merit. No costs.



Member (A)

/M.M/



Member (J)