

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 16TH DAY OF MARCH, 2004

Original Application No. 650 of 2003

CORAM:

HON.MR.JUSTICE S.R.SINGH,V.C.

HON.MR.D.R.TIWARI, MEMBER(A)

A.K.Pushkar, son of Shri S.R.Pushkar
Resident of H.No.336/36 A,
Mazdoor Nagar, Near post office
Lucknow.

.. Applicant

(By Adv: Shri Bindra Singh)

Versus

1. Union of India through the
General Manager, Central Railway,
Bombay C.S.T
2. Divisional Operative Manager,
D.R.M. Office, Central Railway, Jhansi
3. Senior Divisional Operative Manager,
Railway D.R.M Office, Central Railway
Jhansi.
4. General Manager, Central Railway
Bombay CST.
5. The Enquiry Officer, Movement
Branch, D.R.M.Office, Central
Railway, Jhansi.
6. Sri Shailendra Kumar, Station
Manager, Khairar Railway Station
District Banda.
7. The Appellate Authority/Additional
Divisional Railway Manager,1st)
Central Railway, Jhansi.

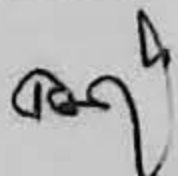
.. Respondents

(By Adv: Shri K.P.Singh)

O R D E R(Oral)

JUSTICE S.R.SINGH,V.C.

Heard counsel for the parties and perused the



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pleadings.

The applicant was served with a charge memo. The imputation of misconduct and mis behaviour alleged against him was unauthorised absence from duty w.e.f 28.10.97 to 12.1.1998. The applicant submitted his reply to the charge memo but it appears that he did not participate in the inquiry and the Enquiry officer submitted inquiry report, a copy of which was sent to the applicant vide letter dated 21.6.01. The applicant submitted his representation dated 18.8.01 in reply to the inquiry report. On consideration of the inquiry report submitted by the Enquiry officer and the representation dated 18.8.01 submitted by the applicant, the Disciplinary Authority held the applicant guilty of the charge levelled against him and imposed the penalty of removal from service vide order dated 13.5.02 which reads as under:-

"I have gone through the charges, the report of inquiry by E.O., and representation of D.E. received on E.O's report carefully. One thing is very clear from the report of inquiry. The D.E. has failed to co-operate in inquiry and has failed to appear in enquiry for which an exparte enquiry was conducted despite date of enquiry being displayed on Station Notice Board at Writing place for enquiry, to be conducted on 22.10.2000 & 2.1.01 and 20.4.01. As per the enquiry report, an enquiry conducted exparte, the D.E. was found guilty of remaining unauthorisedly absent from duty from 28.10.97 to 12.1.98 while he was posted as ASM SHIK without any pre-intimation to Railway Administration. I impose upon him the punishment of "Removal from service" for this gross act of indiscipline & negligence, which shows his lack of devotion of duty.




Sd/Sanjay Mohanty
SR.DCM, Jhansi

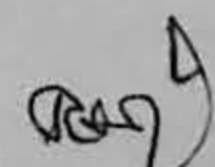
The applicant preferred appeal against the order of removal which came to be dismissed in terms of the following order:-

"I have gone through the case and appeal filed by DE, I hold him guilty of charges and the punishment imposed holds good."

The learned counsel for the applicant has submitted that the inquiry conducted by the Enquiry officer was not fair and reasonable and that the punishment of removal from service was disproportionate to the charge levelled against the applicant. The counsel submits that the appellate authority did not consider the points raised by the applicant in his memo of appeal and dismissed the appeal by a cryptic order without proper self direction to the relevant factors enumerated in Rule 22(2) of the Railway Servants(Discipline&Appeal) Rules 1968. We are of the view that the word "consider" occurring in sub-rule(2) of Rule 22 of the said Rule enjoins a duty on the appellante authority to address itself to the points raised by the delinquent in his memo of appeal and advert itself to various factors enumerated in sub-rule (2) of Rule 22 and then decide the appeal in accordance with law. The appellate order is not in conformity with the requirement of the rule.

Accordingly, the original application succeeds and is allowed in part. The Appellate order is set aside and the appellate Authority is directed to decide the appeal afresh in accordance with law within a period of three months from the date of receipt of the order. Parties shall bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: 16th March, 2004