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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A No. 732/2006

, this the 30th day of November, 2012.

CORAM

**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR SHASHI PRAKASH, ADMINISTRATIVE MEMBER**

Umesh Chandra Shukla, S/o Sri M.R. Shukla, R/o Shahpur, Geeta Vatika, Gorakhpur.

... Applicant

By Advocate : Shri T.S. Pandey & Sri S.K. Om

VERSUS

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Assistant Divisional Railway Manager, N.E. Railway, Lucknow.
3. Divisional Electrical Engineer, N.E. Railway, Lucknow.
4. Assistant Divisional Electrical Engineer, N.E. Railway, Gorakhpur.
5. A.K. Sarkar, presently working as Assistant Electrical Engineer, O/o Chief Electrical Engineer, N.E. Railway, Gorakhpur.
6. Senior Divisional Electrical Engineer, N.E. Railway, Lucknow.

... Respondents

By Advocate : Shri Anil Kumar

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, while working as Air-Conditioned Coach in Charge
was ~~served~~ with a chargesheet dated 24-04-2003 for his alleged absence

from duty without leave for certain period from 18-03-2003 onwards. According to the applicant, even without giving sufficient time for reply inquiry officer was appointed who was directly working and the respondent No. 3. During inquiry he was compelled by the inquiry officer to admit the charges but the applicant did not accept the same and submitted to the disciplinary authority for change of inquiry officer. Annexure A-8 dated 22-07-2003 refers. The inquiry officer was not changed. The inquiry officer continued in the same fashion of insisting the applicant to admit their^w guilt. According to the applicant, prosecution witnesses though examined, the applicant was not given opportunity to cross examine them. No notice was given for closure of inquiry and the inquiry report was later understood to have been submitted by the inquiry officer. Even after the filing of the inquiry report^{was}, the applicant ~~was~~ compelled and insisted that he should admit the guilt and he was forced to give in writing a letter vide Annexure A-10. By Annexure A-1 order dated 6-11-2003, the applicant, by way of penalty, was removed from service. Applicant filed an appeal against the order of removal, vide Annexure A-11. OA No. 274 of 2004 was filed and the Tribunal directed that the appeal be disposed of, vide Annexure A-12. As the applicant was removed from service, he requested the ADRM, through Annexure A-13 dated 12-05-2004 that he may be excused in case there was any misconduct committed by him. But the authorities managed to paste a pre-dated order dated 09-02-2005 (Annexure A-2) on the notice board, Thus, the applicant had to file a revision petition on 01-06-2004 vide Annexure A-14. By Annexure A-3, the respondent No. 2 reduced the penalty of removal to

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one of compulsory retirement. Thus, the order of penalty of removal, the dismissal order of appeal by the appellate authority and modification of penalty to one of compulsory retirement by the Revisional authority have all been challenged in this OA. The relief sought is as under:-

- (i) To issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 6.11.2003, 9.2.2004 and 8.9.2004 passed by respondents (Annexure Nos. A-1, A-2 and A-3 respectively to Compilation-I).
- (ii) To issue a writ, order or direction in the nature of mandamus granting all the consequential reliefs to which the petitioner is entitled for including arrears of salary, seniority etc.
- (iii) To issue any other writ, order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Respondents have contested the OA. According to them, there is a delay of 7 months in filing the OA. They have stated that the applicant is an arrogant person and always absenting himself without due leave sanctioned and had not been obeying the orders of the higher authorities. They have also contended that the applicant has tried to link up his earlier OA with the present case only to prejudice the mind of the Tribunal.

3. Applicant has filed his rejoinder reiterating his earlier contention as contained in the original application and adding that he was under duress to submit the letter dated 07-05-2003 and in fact by a subsequent

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communication to the higher authority he had explained the entire position vide Annexure RA 2.

4. Counter to the above rejoinder has also been filed by the respondents.

5. Counsel for the applicant vehemently argued that principles of natural justice have been violated in this case. Right from the fact that the appointment of inquiry officer even preceded the explanation given by the applicant, non-supply of documents despite repeated requests, non-grant of sufficient time to submit representation against the inquiry report, compelling the applicant during the course of inquiry itself as well as thereafter to admit guilt, non-maintenance of attendance register at all, and cryptic appellate order all are against the rules and thus this application deserves to be allowed. counsel has also relied upon a decision reported in 2010(2) SLJ 59, State of UP vs Saroj Kumar Sinha and also 2010(2) SLJ 286 Krishna Pal vs Union of India.

6. Counsel for the respondents based his entire arguments on the counter as well as additional reply to the rejoinder filed by the respondents.

7. Arguments were heard and documents perused. That there had been an earlier litigation in which contempt notice was issued has not been disputed. It is a case of the applicant that issue of chargesheet against the applicant is the immediate reaction of the respondents to the successful

launching of the contempt petition by the applicant before the Tribunal. This contention however, has not been supported by any other material; the counsel for the applicant also rightly has not pressed the point. Appointment of inquiry officer prior to explanation being called is also not supported by any material and in any event such an appointment of inquiry officer may not be construed to mean that the disciplinary authority had decided to punish the applicant. It is only a decision to conduct the inquiry and nothing else. This point also has not been pressed by the Counsel and rightly so. Giving inadequate time for replying to the inquiry report has been touched upon by the Counsel for the applicant and the same has substance. For, the statutory provision refers to fifteen days' time to respond to the inquiry report, vide Rule 10(2) (a), while the time afforded was half the same i.e. one week. The rule *inter alia* stipulates "*The disciplinary authority shall forward.... a copy of the report of the inquiring authority.... to the Railway Servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant.*" (Emphasis supplied)" Thus, this is one of the legal flaws in meeting the principles of natural justice. Of course, this alone is not fatal to hold that the inquiry is thoroughly vitiated, but sure enough, its contribution in working out the cumulative deficiency in conducting the inquiry is sizable.

8. The disciplinary authority has relied upon the admission by the applicant in his letter dated 07-05-2003 that he was absent from duty from

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19-03-2003 onwards due to illness. Obviously, this does not form part of the relied upon documents, as the charge sheet had been issued on 24-04-2003. However, if the same is treated as voluntary admission (though disputed by the applicant who maintained that he was forced to so admit), then the case is similar to the case of *Chairman-cum-Managing Director, Coal India Limited v. Mukul Kumar Choudhuri, (2009) 15 SCC 620* wherein the Apex Court has held as under:-

"21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations."

22. Ordinarily, we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if Respondent 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorised absence for six months.

23. Consequently, both these appeals are allowed in part. The appellants shall reinstate Respondent 1 forthwith but he will not be entitled to any back wages from the date of his removal until reinstatement. Parties will bear their own costs."

9. The observation of the Apex Court "In a "In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such

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misconduct, he fairly admitted his guilt and explained the reasons..."

goes to show that the judgment could well be followed as a precedent in this case. In fact, in the above case, the period of absence is six months while in the present case, it is five weeks. Thus, when in the above case of identical nature, there was no punishment of removal or compulsory retirement, but only loss of backwages, in the instant case also, such a quantum of penalty or nearly the same would meet the ends of justice. However, in the above case it was the Apex Court which had passed the direction for reinstatement, whereas in the instant case, the Tribunal does not intend to pass such an order. Save holding that the case deserves reconsideration on the quantum of penalty in view of the decision in the above case by the Apex Court, the Tribunal leaves it to the Appellate authority to consider and decide the quantum of penalty. The applicant has already enjoyed the terminal benefits etc., but these could be directed to be refunded, in case the applicant is reinstated and a lesser punishment is awarded. The same is left to the discretion of the Appellate authority.

10. In view of the above, the OA is partly allowed. The order of compulsory retirement passed by the Revisional authority and the orders of the appellate authorities are quashed and set aside. The matter is remitted to the Appellate authority for reconsideration of the case of the applicant for awarding a lesser penalty keeping in view the decision of the Apex Court in the case of *Chairman-cum-Managing Director, Coal India Limited v. Mukul Kumar Choudhuri, (2009) 15 SCC 620*.

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11. Time calendared to comply with this order is four months from the date of communication.

12. No costs.

S. P. K.
SHASHI PRAKASH
ADMINISTRATIVE MEMBER

K. B. S. Rajan
Dr K.B.S.RAJAN
JUDICIAL MEMBER

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