

(6)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

O.A. No. 221/89  
Tax No.

**DATE OF DECISION** 19/1/1994

Shri Rafik Ahmed A. Petitioner

Mr. K. K. Shah Advocate for the Petitioner(s)

**Versus**

Union of India & Anr. Respondent

Mr. R. M. Vin Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. N. B. Patel : Vice Chairman

The Hon'ble Mr. V. Radhakrishnan : Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

O. A. 221 189

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Date	Office Report	Order
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15-12-93

At the joint request of the  
parties advocates adjourned to 19-1-94

R. D. McCarthy  
MEMBER [A]

(N. B. Patel)  
Vice Chairman

Shri Rafik Ahmed A.,  
Bhavna-Nagar,  
Behind Rly. School,  
Near Three Temple,  
Udhna Railway Yard,  
Surat - 394 210 (Gujarat).

..... Applicant

Shri K.K. Shah

..... Advocate

Versus

1. The General Manager,  
Western Railway,  
Churchgate, Fort,  
Bombay - 395 020.

2. The Secretary,  
Union of India,  
Western Railway,  
Churchgate,  
Bombay.

..... Respondents

Shri R.M. Vin

..... Advocate

ORAL JUDGMENT

IN

O.A. No. 221 of 1989

Date:- 19-1-1994

Per Hon'ble

Mr. N.B. Patel

Vice-Chairman

The applicant challenges the legality of the order of punishment dated 12-4-88 passed by the Senior Divisional Mechanical Engineer, Bombay Central, whereby he is removed from service and also the appellate order dated 8-7-88 passed by the Divisional Railway Manager, Western Railway, Bombay by which his appeal against the removal order is rejected.

2. It appears that at the relevant time the applicant was working as Fireman-I and he was charged with absence from duty for a total period of 960 days in different spells between 6-1-82 and 20-4-87. Because of this absence in different spells during the aforesaid period, the charge

levelled against the applicant was that his attendance was irregular. Inquiry was held against the applicant on the charge of irregular attendance and, at the conclusion of the enquiry, the charge of irregular attendance or absence for the period preceding 7-3-1985 was found not proved as records such as musters etc. for the period from 6-1-82 to 9-2-84 were not available. It was held proved that, for the period from 7-3-85 to 20-4-87, the applicant was absent and, therefore, irregular in attendance for a total period of 572 days. However, at the same time, it was recorded by the **Disciplinary Authority** that, for some of the days on which the applicant was absent, he had produced certificates showing that he was sick and, therefore, in fact, he was found absent and irregular in attendance for a total period of 411 days. The **Disciplinary Authority** having held the charge proved to this extent, awarded the punishment of removal to the applicant. It appears from the order passed by the **Disciplinary Authority** that the applicant had pleaded before the **Enquiry Authority** and the **Disciplinary Authority** that, at the relevant time, he was frequently down with synus trouble and it was, therefore, that he was constrained to remain away from duty. In respect of this plea, the **Disciplinary Authority** has observed that if the applicant was frequently afflicted with synus trouble, he should have gone for a specialised treatment by consulting Railway Doctor". The justification for the punishment for removal as stated by the **Disciplinary Authority** was that the period of absence of the applicant was abnormal and he had failed to observe medical rules and remained absent without permission and authority. The order passed by the appellate authority only states that the said authority had applied its mind in the case and has come to the

conclusion that the applicant had been correctly held responsible and the punishment, removal from service, awarded to him "is adequate".

3. In the present application before us, Shri K.K.Shah, appearing for the applicant, did not assail the correctness or legality of the finding that the charge of absence or irregular attendance for 411 days was proved. He only submitted that the extreme punishment of removal from service awarded to the applicant was grossly dis-proportionate looking to the nature of the charge and the mitigating circumstances and that the matter requires a review on the question of punishment to be awarded to the applicant.

4. Sh. Vin, for the respondents, contended that the applicant was highly irregular in attendance and had remained absent for a total period of 411 days without proper authority and, therefore, the order of punishment passed against him did not call for any interference.

5. We are inclined to accept the submission of Mr. Shah that the overall circumstances of the case did not call for such an extreme penalty as removal from service of the applicant who had put in 21 years' of service by the time the impugned order was passed. We also find that neither the Disciplinary Authority nor the Appellate Authority has fully applied ~~their~~ mind to the question whether the plea of the applicant, that he <sup>had been</sup> ~~contended to be~~ irregular in attendance on account of serious physical ailment, was genuine and, if that plea was genuine, whether it did not require <sup>a</sup> somewhat lenient view to be taken of the delinquency of the applicant. The report of the Enquiry Authority

itself indicates that, on quite a number of occasions of his absence, the applicant was producing ~~some~~ medical certificates but there is no reference <sup>to</sup> ~~of~~ aspect of the matter while considering the question as to what punishment would be appropriate and would meet the ends of justice in the case. We do not find ~~such~~ <sup>such</sup> circumspection on the part of the Disciplinary Authority and the Appellate Authority, in the matter of awarding punishment, as was required to be shown by them specially in view of the plea of sickness raised by the applicant. If the applicant was genuinely sick, as indeed he appears to be on quite a number of occasions of his absence, there cannot be the slightest of doubt that his removal from service is ~~callous~~ <sup>callous</sup> and out of all proportion. If after long service without any blemish, an employee like the applicant, who is a Class-III servant, does not remain very punctual in attendance, we feel that the disciplinary authority should have considered whether a lesser punishment would not meet the ends of justice. The applicant has been out of job since April, 1988 and it was stated before us by Shri K.K. Shah, under instruction from ~~the~~ the applicant who is personally present in the court, that if the loss of wages suffered by the applicant so far, is treated as sufficient punishment and the applicant is reinstated, the applicant will not have any grievance in the matter.

6. In the result, the application is allowed to the extent of setting aside the impugned appellate order dated 8-7-88 passed by the Divisional Railway Manager, Western Railway, Bombay (Annexure A-5) ~~and the application is remitted to the said Appellate Authority to re-consider the application of the applicant~~ and the matter is remitted to the said <sup>Appeal</sup> Appellate Authority to re-consider the ~~application~~ of the applicant

on the question of quantum of punishment in the light of the observations made ~~above~~ <sup>above</sup> by us and to decide the appeal within a period of 3 months from the date of receipt of a copy of this order by the said authority.

No order as to costs.

  
( V. Radhakrishnan )  
Member (A)

  
( N.B. Patel )  
Vice-Chairman.

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