CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 490 OF 1992
~~**T.A.NO.**~~

DATE OF DECISION 10.7.98

Shri Vinodrai Jamnadas Vithlani, Petitioner

Mr. M.K. Paul, Advocate for the Petitioner [s]

Versus

The Union of India & Ors. Respondent s

Mr. N.S. Shevde, Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. Laxman Jha, Judicial Member.

JUDGMENT

1, Whether Reporters of Local papers may be allowed to see the Judgment ? No

2, To be referred to the Reporter or not ? No

3, Whether their Lerdships wish to see the fair copy of the Judgment ?

4, Whether it needs to be circulated to other Benches of the Tribunal ? No

Shri Vinodrai Hamnadas Vithlani,
Ex. Fitter,
Carriage & Wagon Department,
Near Ambaji Matha Mandir,
Gandhinagar,
Okha Port - 361 350 .... Applicant.

(Advocate: Mr. M.K. Paul)

Versus

1. The Union of India,
Owning: Western Railway,
Through: The General Manager,
Western Railway,
Churchgate, Bombay-20.

2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot. .... Respondents.

(Advocate: Mr. N.S. Shevde)

ORAL ORDER

O.A.No. 490 OF 1992

Date: 10.7.1998.

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

We have heard Mr. Paul for the applicant and Mr. Shevde for the Railway Administration.

2. The applicant, who was the Fitter at Okha in the Western Railway, has challenged the order dated 18.12.91 issued by the disciplinary authority which removes him from service as also the order of the appellate authority dated 31.1.92, Annexure A-28 which confirms the order of the disciplinary authority.

3. The applicant was sanctioned five days leave from 19.11.89 to 3.12.89 and in the normal course he should have resumed duty from 4.12.89. It is the applicant's case that he was ill on account of

Chronic Asthama and the place where he was posted being a highly industrial area aggravated his condition and he fell very ill and was under medical treatment. He, however, reported for duty on 22.1.91 after getting the fitness certificate dated 21.1.91 from the Railway Doctor as at Annexure A-10. He was however, allowed to resume duty only in July 1991 and the charge sheet was served on him for his unauthorised absence for over 13 months. However, we find that charge sheet was dated 7.8.90 which charged him with unauthorised absence and this was during the period when he was absent. An enquiry officer was appointed in July 1991 and the proceedings continued after the applicant was allowed to resume duty which eventually culminated in the order of removal. Mr. Paul says that the applicant was seriously ill and the period of absence of 13 months could have been regularised by grant of leave due. He says that the penalty of removal is excessively harsh in the facts and circumstances of the case. He also states that when he reported for duty in January 1991 the Railway Admn. did not permit him to resume duty and he could join duty only in July 1991. Mr. Paul contends that the respondents had been most unsympathetic and the orders are very harsh and punishment is excessive and wipes out 23 years of service put in by the applicant. He refers to some court decision which lay down that the authority should impose the penalty of removal from service only sparingly. He also contends that falling sick is not a misconduct which could be proceeded against by the Railways. For these reasons he says that the applicant

is entitled to some relief.

4. Mr. Shevde for the Railways resists the O.A. He says that the charge against the applicant is not for falling sick but for remaining absent unauthorisedly without intimation. He also takes the stand that the applicant had not taken treatment under the Railway doctor but if at all, he was under the treatment of a private doctor. The Standing Counsel also draws attention to the scope of judicial review in such cases and says that when there are sufficient materials to establish the charge of unauthorised absence, it is within the discretion of the respondents to take an appropriate decision. He refutes the allegation that the enquiry was not properly done and says that the enquiry report and the order of the disciplinary authority had been issued after following prescribed procedure and after due application of mind. He also refers to the various decisions of the Supreme Court to the effect that the Tribunal should not interfere with the quantum of punishment in such cases. He says that the authorities relied upon by Mr. Paul for interfering with the quantum of punishment as brought out in the O.A. are of no assistance to him, in the context of the Supreme Court decision in Paramananda's case, 1989 SCC (L&S) 303. He submits that there is a further decision of the Supreme Court in the case of Chatturvedi, where the position has been reiterated and it has been laid down that the Tribunal can interfere only when the quantum of

punishment is such as to shock the judicial conscience. The unauthorised absence of 13 months of a person who is engaged in a technical job is a serious matter and according to him, the penalty of removal from service in such a situation cannot be termed as shocking.

5. We have carefully considered the rival contentions As brought out by Mr. Shevde we find that the enquiry officer had held an enquiry and came to the finding that the charge of unauthorised absence had been established. He specifically refers to the statement of the applicant in his reply to question No.10 while being examined on 11.10.91 to the effect that he had not informed the ADMO Okha about his sickness and treatment under the private doctor. In the circumstances, he had held that the charge of unauthorised absence was established and and disciplinary authority proceeded to issue the impugned order. There is ~~not~~ an admission on the part of the applicant that he had remained absent but had not informed the ADMO.

We find no procedural infirmity in the enquiry proceedings. We however take note of Mr. Paul's contention that the applicant's absence was on account of serious medical problems. We also find that in his appeal he has brought out a number of pleas requesting the appellate authority to take a lenient view. In his appeal he submits that he has realised his mistake of not observing for reporting sick and for lapse of irregularity in not following the relevant instructions. He however submits that he was really under the treatment of a private doctor. He has prayed for a sympathetic

consideration of the matter and for taking a lenient view on his lapses as seen from his appeal dated 2 January, 1992 as at Annexure A-27. The appellate authority by his order dated 31.1.92, Annexure A-28, has rejected the appeal and has reiterated the position that he remained absent without proper intimation. The appellate authority goes on to observe in para 3 of the order of the appellate authority as under:

> "The speaking order of the DA & Sr.DME is very clear. The speaking order is about the fact that whether charge has been proved or not and not on the penalty. The penalty mentioned in NIP is based on the decision of Disciplinary Authority and not in the speaking order".

He concludes that the penalty of removal from service awarded by the disciplinary authority is commensurate with the offence and needs no revision. It would be seen from the appellate order that he had summararily disposed of the quantum of punishment. Prima facie it would seem that if the applicant who had put in about 23 years of service was really sick and had been under the treatment, a more lenient view could have been taken. We take note of Mr. Shevde's contention that it is not for the Tribunal to interfere with the quantum of penalty. We however hold that the appellate authority has not applied his mind properly to the various contentions regarding the quantum of penalty and has also not given a personal hearing which was sought for. In our view, the orders of the appellate authority particularly regarding the quantum of penalty is ~~sympathetic~~ somewhat cryptic and it seems that it has not been passed after due application of mind.

We accordingly quash the appellate order dated 31.1.92, Annexure A-28 and remand the case back to the appellate authority. In the facts and circumstances of the case, we direct that the applicant should be given a personal hearing. The appellate authority in particular should consider the request for reducing the quantum of punishment of removal from service. The entire exercise should be completed within six months from the date of the receipt of a copy of this order.

6. Mr. Paul also brings out that even though the applicant reported for duty in January 1991 he was permitted to join duty only in July 1991. The enquiry officer in his report states that the absence for the period from 22.1.91 to 21.7.91 was on administrative account. The applicant could rejoin duty on 22.7.91 even though the fitness certificate has been given by the Railway doctor on 21.1.91 and the applicant reported for duty on 24.1.91. Mr. Shevde is not able to throw light regarding the treatment of this period and reasons for delay in taking back the applicant ~~and that~~ Mr.Paul contends that the applicant had not been paid the wages for that period and he could not report for duty earlier on account of the lapse of administration. In the circumstances we direct the Railway Administration to go into this aspect and come to an appropriate finding and if it transpires that the applicant was not taken on duty only due to administrative lapses and not due to any fault on his part, they shall proceed to pay to the applicant whatever ~~excess~~ are to his legitimate dues for this period. The decision in this regard should be

taken within three months from the date of the receipt of a copy of the order and the same should be communicated to the applicant by means of a speaking order.

7. With the above directions, the O.A. is finally disposed of. No costs.

(Laxman Jha)
Member(J)

(V.Ramakrishnan)
Vice Chairman

vtc.