

Order dated 12.3.2002

Applicant, by filing this Original Application under Section 19 of the Administrative Tribunals Act, 1985, has sought for direction to quash and set aside the order of removal dated 30.12.1997 and to pay him consequential benefits.

The applicant, while working as Loco Shunter at Baripada Loco Shed in the District of Mayurbhanj was proceeded departmentally in contravention of Rule 3.1(i) (iii) of the Railway Servants (Conduct & Service) Rules, 1966. An enquiry was instituted and the Inquiring Officer was appointed to investigate into the charges. The Inquiring Officer concluded the enquiry holding the charges proved. The Disciplinary Authority, after taking into consideration the findings of the Inquiring Officer imposed the penalty of removal from service of the applicant vide order dated 30.12.1997. The applicant, thereafter preferred an appeal on 28.12.1999. His appeal having been rejected by the Appellate Authority, the applicant has approached the Tribunal seeking aforesaid reliefs.

Respondents in their counter have stated that the applicant was on unauthorised absence from 12.5.1997 and as such a disciplinary proceeding was initiated against him in August, 1997. The applicant was given ample opportunities to defend himself, but he did not avail of those opportunities nor did he participate in the enquiry. The Disciplinary Authority, after considering the report of the Inquiring Officer passed the order of removal from service

of the applicant w.e.f. 30.12.1997. The appeal filed by him was also rejected by the Appellate Authority. According to respondents, enquiry was conducted as per the prescribed procedure, rules and instructions, issued by the Department.

Heard the learned counsels for the contesting parties.

During the course of argument, the learned counsel for the applicant submitted that he has not received the copies of the relied upon documents in respect of which he made a request to the Disciplinary Authority and in fact, he ^{not &} has also been supplied with the copy of charge sheet and also copy of the order of removal passed by the Disciplinary Authority. On the other hand, the learned counsel for the respondents submitted that the copy of the charge sheet and the ^{letter dated 26-8-97 &} findings of the Inquiring ^{fixing the date of enquiry?} Officer were sent to the applicant, and the same ² were acknowledged by him. However, all other communications sent subsequently were received back from the postal authorities with the remark "Addressee refused to receive".

On perusal of these papers, we find that the applicant has been supplied all the required documents and was also given an opportunity of being heard. The principles of natural justice have been observed by the respondents while conducting the enquiry whereafter penalty of removal from service of the applicant was imposed. ^{It is the settled}

It is the settled legal position that the Tribunal cannot reappreciate the evidence nor can

it go into the quantum of punishment unless it shocks the conscience of the Tribunal (B.C. Chaturvedi vs. Union of India & Ors, reported in 1996 SCC (L&S) 80). In this case the applicant was on unauthorised leave for about three months from 12th May to 12th August, 1997, when the charge-sheet was framed against him. Merely on the ground of unauthorised absence for three months respondents have imposed the extreme penalty of removal from service, which, in our considered opinion, is disproportionate to the misconduct of the applicant. We, therefore, quash and set aside the order of the Disciplinary Authority dated 30.12.1997 and the order of the Appellate Authority dated 24.11.2000 and remit back the case to the disciplinary authority to consider imposition of ~~any other~~ penalty other than "the removal/dismissal from service". The above exercise shall be completed within a period of three months from the date of receipt of copy of this order.

The O.A. is disposed of in the aforesated terms, but without any order as to costs.

MEMBER (ADMINISTRATIVE)

~~MEMBER (JUDICIAL)~~

Copy of order
dt. 17.3.12 may be shown
to the court for
reference.

1
200