

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

O.A.No. 288 of 2003
Cuttack, this the 20th day of October, 2006

CORAM:

HON'BLE MR.JUSTICE M.A.KHAN, VICE-CHAIRMAN
AND
HON'BLE MR. V.K.AGNIHOTRI, MEMBER (ADMN.)

Sri Babaji Sahu, aged about 52 years, son of late Sagar Sahu, At-Bhapuriapada, P.S.Bandala, Via-Nanjuri Road, Dist. Bhadrak
.....
Applicant

Vrs.

1. Union of India, represented through General Manager, South Eastern Railway, At-Garden Reach, Calcutta.

2. Deputy Chief Signaltelecom Engineer (Dy.CSTE),
Construction (1), South Eastern Railway, At-Chandrasekharpur, Bhubaneswar.
.....
Respondents

For Applicant - Mr.Niranjan Panda
For Respondents - Mr.R.C.Rath

ORDER

HON'BLE MR.JUSTICE M.A.KHAN

In this Original Application the applicant is seeking the following

relief::

“(a) The applicant prays that this Hon'ble Court considering the above said facts and grounds the order passed on 01.1.2003 by DYCSTE/CON/BBS vide Annexure-2 may be quashed.



X

- (b) A direction may be issued to Opp. parties to allow the applicant to resume in duty as before.
- © A direction may be issued to Opp. parties to pay the salary of the petitioner with full back wages and petitioner may be treated as P.C.R. staff counted from 1972 from the date of his joining."

2. The background of the case is as follows:

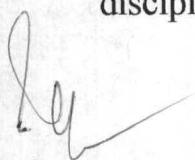
The applicant joined the Railway administration as a Casual Khalasi on 5.12.1972. He was conferred with temporary status with effect from 1.1.1984 (as per the allegation of the applicant and with effect from 1.1.1981 as per the averment of the Respondents contained in paragraph 2 of the counter reply). He remained unauthorizedly absent from duty from 18.6.1987 to 1999 when a charge memo was served on him for conducting disciplinary proceeding for major penalty against him under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant joined the disciplinary proceedings. On the conclusion of the enquiry proceedings, no action was taken on the enquiry report. The applicant approached this Tribunal by filing O.A. No.37 of 1998 seeking direction to the Railway administration to allow him to join his duty. This O.A. was disposed of by a direction to the authorities of the Railway to decide the disciplinary proceeding by passing final order. Certain findings on the status of the applicant as Casual Khalasi with temporary status and with regard to his remaining absent without leave were also recorded by the Tribunal.

[Handwritten signature]

Thereafter the applicant had filed O.A.No.425 of 2001 challenging the order of the disciplinary authority wherein he was removed from service. The said O.A. was decided on 6.11.2002 allowing the applicant to submit an appeal against the order of the disciplinary authority which was to be decided by the appellate authority within a period of sixty days. The appellate authority has dismissed the appeal affirming the order of the disciplinary authority. The present O.A. has been filed by the applicant against that order.

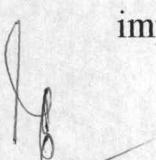
3. In the Original Application the applicant has alleged that he had fallen sick and in fact had suffered a stroke in the year 1987 and so he had obtained sick leave from the authority and remained under the treatment of private doctors. It is submitted that after he recovered and obtained a fitness certificate, he had approached the Respondents in 1992 for allowing him to resume duty, but his joining report was not accepted. Thereafter again in 1997 he had approached the authorities for allowing him to resume duty, but again he was not permitted to work. Thereafter he had to file Original Application before this Tribunal.

4. The applicant has challenged the penalty order on diverse grounds, but before us the learned counsel for the applicant has challenged it on three grounds. The first ground is that the officer who had conducted the disciplinary enquiry proceeding, the disciplinary authority who has imposed



the penalty of removal from service on the applicant, and the appellate authority, who has decided the appeal are one and the same person, namely, Shri P.K.Ghosh, which has vitiated the entire proceeding. The next submission is that there is twelve years inordinate delay in initiating the disciplinary proceeding against him. So the proceedings suffer from gross delay and laches and should be quashed by the Tribunal. The third submission is that the Tribunal, by order dated 6.11.2002 passed in OA No. 425 of 2001, had allowed the applicant to appear before the appellate authority and submit the appeal and that though the applicant had submitted the appeal and approached the appellate authority for giving him an opportunity of personal hearing, no opportunity of personal hearing was provided to him.

5. The Respondents, in their Counter Reply, have refuted the allegations of the applicant that the applicant had obtained sick leave from the authority or that he had furnished any medical certificate. They have also denied that the applicant had tried to join duties and he was not allowed to do so. They have also controverted that the proceedings suffer from delay or laches or that Sri P.K.Ghosh who has decided the appeal is the same person who had conducted the enquiry and as disciplinary authority, had imposed the penalty on the applicant. It is stated that the written statement



of defence of the applicant received by post was given due consideration by the disciplinary authority before passing of the order of penalty. They have also refuted that the disciplinary proceedings suffered from any procedural irregularity, defect or deficiency which caused prejudice to the applicant.

6. At the hearing, as observed above, the order of the appellate authority has been challenged on three grounds. As regards the first ground that the enquiry officer, the disciplinary authority, and the appellate authority are one and the same person is not correct. Firstly, the applicant in the present O.A. or in the previous O.A. did not assail the disciplinary proceedings or the penalty order on any such ground. Secondly, the order of the appellate authority, copy of which has been filed by the applicant, itself shows that the enquiry officer and the disciplinary authority were Shri P.K.Ghosh, DSTE/CON/BBS. The disciplinary authority conducted the enquiry himself. The Rules do not mandate that the enquiry officer should be a different person. But the appeal of the applicant has been decided by Dy.Chief Signal & Telecom Engineer (Construction)-I, South Eastern Railway, Bhubaneswar. The learned counsel for the Respondents submitted that his name is not Shri P.K.Ghosh and furthermore DSTE/CON/BBS and Dy.Chief Signal & Telecom Engineer (Construction)-I, S.E.Railway,

See

Bhubanesware are two different authorities. We, therefore, do not find any merit in the first contention of the learned counsel for the applicant.

7. As regards the second contention, from the order of the appellate authority it appears that the charge against the applicant was that he remained unauthorizedly absent from duty with effect from 18.10.1986 to 22.10.1986, 28.10.1986 to 02.11.1986, 10.11.1986 to 23.11.1986, 24.11.1986 to 27.11.1986, 11.12.1986 to 23.12.1986, 24.12.1986 to 05.01.1987, 16.01.1987 to 19.01.1987 and 28.01.1987 to till date, i.e., 12.05.1999 when the charge memo was issued to the applicant. The charge against the applicant as such was, at least as per the averments made in the O.A. and the Counter Reply, that the applicant had remained unauthorizedly absent from 1987 till 12.05.1999. The applicant in the O.A. has admitted that he did not attend to duty from 1987 to 1992 because of his illness and that he had produced the medical fitness certificate but was not allowed to join duty in 1992. However, from the averments made in the O.A. it appears that the applicant had again fallen sick and did not join the duty. His allegation is that he had again gone to the Respondents for joining the duty in 1997, but was not allowed to resume duty. In order to examine this statement of the applicant, we have called for the records in O.A.No.425 of 2001. With the O.A.No.425 of 2001 the applicant had attached the photocopies of two

[Handwritten signature]

medical certificates, the one issued by Dr. Bhabani Shankar Dash, M.M.S.M., who seems to be a private medical practitioner, and the other by Dr. Debendra Nath Mishra. The first certificate is dated 1.6.1992 which says that the applicant was under his treatment from 18.5.1987 and has now been completely cured and is fit to join his duty. The second certificate is dated 9.5.1997 in which it is stated that the applicant remained under the treatment of Dr. Debendra Nath Mishra from 3.7.1992 to 9.5.1997 and has now been fully cured. These two certificates read together show that the applicant remained sick from May 1987 to May 1997, full ten years. Therefore, the contention of the applicant that he had recovered from illness and approached the Respondents for allowing him to resume duty in 1992/1994 or 1997 does not seem true. Though in the O.A. the applicant has alleged that he had obtained sick leave from the authority, during the course of enquiry or before us he has produced no material for proving this allegation. In fact in the previous O.A. No.425 of 2001 the order of this Tribunal in OA No.37 of 1998, which was filed by the applicant, is available which also indicates that the applicant had not been able to prove the said allegation and the Tribunal did not believe his allegation that he was fit to resume duty in 1992 or 1997. As such the contention of the applicant that he was on sick leave has not been found favour with the disciplinary authority.

B

8. The power of this Tribunal for judicial review of the orders passed in the disciplinary proceedings is limited. The Tribunal reviews the decision making process and not the decision of the disciplinary authority. It does not appreciate or re-appreciate the evidence as an appellate court. The Tribunal examines the disciplinary proceedings with a view to ascertain whether fair treatment and hearing has been provided to the delinquent official and whether there is any irregularity in the disciplinary proceeding, which has caused prejudice to the charged officer in his defence or that the order of the disciplinary authority is based on no evidence or is perverse. In this context, it is apt to quote the observations of the Hon'ble Supreme Court in the case of B.C.Chaturvedi v. Union of India and others, AIR1996 SC 484, as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority

L

entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the

✓

strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal."

9. Applying the principles of law laid down by the Apex Court to the present case, we do not find any material irregularity in the disciplinary proceedings which has caused prejudice to the applicant in his defence and has vitiated the proceedings. It is neither stated before us nor has been alleged that the finding of the disciplinary authority are based on no evidence or that it is perverse. The applicant had remained unauthorizedly absent from duty without sanction of leave. The leave is not a matter of right and has to be sanctioned for availing it. We, therefore, do not find any ground for interfering with the order of the disciplinary authority or that the appellate authority on this score.

10. We do not find that the penalty imposed on the applicant, i.e., removal from service, is shocking to the conscience or disproportionate to the proven charge since the applicant was unauthorizedly absent from duty for over 10 years. In fact the quantum of penalty has not been questioned before us.

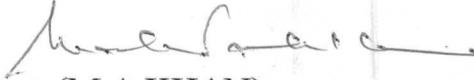
11. As regards the third contention raised by the learned counsel for the applicant, we do not find that there was any direction of this Tribunal in

✓

its order dated 6.11.2002 to the appellate authority to provide opportunity of personal hearing to the applicant before deciding the appeal. The appellate authority has taken into account the submissions made by the applicant and disposed it of by a reasoned order in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968.

12. None of the contentions of the applicant nor the grounds pleaded in the O.A. warrant any interference with the orders passed by the disciplinary authority and the appellate authority. Accordingly, we do not find any merit in the Original Application which is dismissed. No costs.


(V.K. AGNIHOTRI)
MEMBER(ADMINISTRATIVE)


(M.A. KHAN)
VICE-CHAIRMAN

PPS