

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No.572 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

Sri Naru Gopal Mandal, S/o Late Krithibas Mandal, Dy. Shop Superintendent, P.C.O. II, Carriage under Dy. C.M.E(L/W), in S.E. Railway Workshop, Kharagpur, residing at Village Kalipur, P.O. Bisinda, P.S. Gangajalghat, Dist.Bankura

.... Applicant

VS

1. Union of India, service through the General Manager, S.E. Railways, Garden Reach, Calcutta-43
2. Chief Personnel Officer, S.E. Rly. Garden Reach, Calcutta-43
3. Chief Mechanical Engineer, S.E. Railway, Garden Reach, Calcutta-43
4. Dy. Chief Mechanical Engineer (M&P), S.E. Railway Workshop, Kharagpur-721301
5. Workshop Personnel Officer, S.E. Railway Workshop, Kharagpur-721301

... Respondents

For the Applicant : Mr. P.C. Maity, counsel  
Mr. T.K. Biswas, counsel

For the Respondents: Mr. S. Chowdhury, counsel

Heard on 06.06.2000

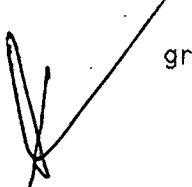
: : Date of order: 29.06.07-2000

O R D E R

D. Purkayastha, JM

The applicant, Shri Naru Gopal Mandal, Dy. Shop Superintendent under Dy. C.M.E. (L/W), in S.E. Railway, Kharagpur had challenged the validity of the impugned order of compulsory retirement on the applicant from service with effect from 13.9.94 on the basis of the chargesheet filed against him vide memo dated 11.2.1994, Annexure 'A1' to the application alleging that Shri Mandal during the period of his work from 13.7.1993 to 29.12.1993 remained absent from duty which amounts to misconduct and was very irregular in the attendance during

the period from 31.1.92 to 12.7.93. He availed 45 LAP, 26 days LHAP and 111 days LWP. According to the applicant, the enquiry proceeding conducted by the enquiry officer was not in accordance with the law and the charge has not been proved against the applicant on the basis of the enquiry report submitted by the enquiry officer on 17.7.1994, Annexure 'A/3' to the application. It is stated by the applicant that the enquiry officer took extraneous matter of consideration which was not subject matter of the chargesheet and the enquiry officer took into consideration the fact which are not mentioned in the chargesheet. Therefore, the applicant has been seriously prejudiced during the enquiry conducted by the enquiry officer. The disciplinary authority on receipt of the report of the enquiry officer forwarded the same to the applicant for making representation within 15 days from the date of the receipt of the letter vide letter dated 17.7.94, Annexure 'A/3' to the application. Accordingly the applicant submitted representation on 13.9.94, Annexure 'A/5' against the enquiry report. Thereafter the disciplinary authority i.e., Dy. CPM (P&M), S. E. Railway, Kharagpur by a letter dated 13.9.94 (Annexure 'A/5') issued order of removal from service with immediate effect with full compassionate allowance (2/3 of pension) as a special case without gratuity. Feeling aggrieved by and dissatisfied with the order of removal the applicant made an appeal to the Chief Project Manager, S.E. Railway, Kharagpur on 14.9.94, Annexure 'A/6' to the application against the order of punishment. Thereafter Dy. Chief Mechanical Engineer (M&P) by a letter dated 12.11.94, Annexure 'A/6' intimated the applicant that after careful consideration of the appeal dated 14.9.94 the appellate authority has modified the punishment of removal from service with effect from 13.9.94 to that of compulsory retirement w.e.f. 13.9.94 on humanitarian grounds. Thereafter the applicant preferred a review



application before the authority by a letter dated 30.11.94, Annexure 'A/7' to the application and that review application has also been rejected by the authority by a letter dated 16.05.1995, Annexure 'A/8' to the application. It is contended by the applicant that the allegation made in the chargesheet could not be proved by the Department in accordance with the rule and procedure adopted by the respondents for holding departmental proceeding and for awarding punishment on the applicant. The applicants contends that the entire disciplinary proceedings are violative of the D&A Rules and principle of natural justice. It is also stated by the applicant that the impugned order of punishment as well as the order of appellate authority and revisional authority are devoid of reason and are not sustainable in law and they are arbitrary and discriminatory and, therefore, those are bad in law and liable to be quashed.

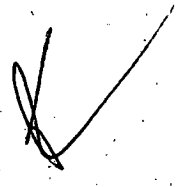
2. The respondents filed written reply denying the allegation brought by the applicant in this application against the disciplinary authority as well as the appellate authority. It is stated that the applicant was in the habit of absenting himself unauthorisedly from the date of his appointment as per attendance sheet placed in the D.A. case. The applicant being a senior supervisor and being in occupation of the Railway quarters his departure from the headquarters without prior approval is considered as a serious offence and accordingly, major penalty chargesheet was issued vide letter 11.2.94, Annexure 'A/1'. After issue of the chargesheet the enquiry officer conducted the enquiry on 22.3.94 and 13.5.94 respectively and submitted his finding on 14.7.94. A copy of the enquiry report was also served upon the applicant on 25.7.94. As regards his allegation regarding non-furnishing of proceedings of the enquiry it is submitted that the same were given to him after conclusion of each day's enquiry and also no

assurance was given by the disciplinary authority. So, as per Railway Board's decision the enquiry report has been furnished to the applicant and after giving an opportunity of representation to the charged Railway servant against the finding of the enquiry officer, the reasons for disagreement with the findings of the inquiry officer, can be communicated in the final order of punishment, in such cases, the punished Railway servant can appropriately challenge the conclusion of the disciplinary authority through an appeal and that order of punishment dated 13.9.94 is at Annexure 'A/5' to the application. The applicant had preferred an appeal against the order of punishment. So, findings of the Inquiry Officer were furnished to the applicant and the disciplinary authority passed his final order on 13.9.94, Annexure 'A/5' to the application removing him from service with full compassionate allowance (2/3 of pension) as a special case without gratuity. The applicant also preferred an appeal on 14.9.94 (Annexure 'A/6') to the Chief Project Manager, Appellate Authority in this case and the Chief Project Officer after giving personal hearing to the applicant and after perusing full D&A case has passed a reasoned and speaking order on 6.11.94 duly highlighting the points to come to the conclusion and the respondents produced the aforesaid speaking order at the time of hearing and the appellate authority considered all aspects which will be evident from the decision of reducing the punishment of removal to that of compulsory retirement on humanitarian ground and as such the said punishment should not be alleged as harsh and disproportionate and his review application is also rejected after due consideration of all the materials. Therefore, the application is devoid of merit and liable to be dismissed.

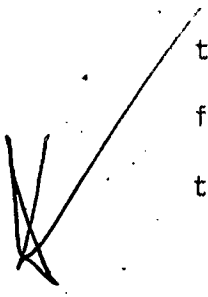
3. Learned advocate of the applicant contended before us that the respondents acted illegally and passed the punishment

order without affording reasonable opportunity to hear and without supplying the copy of the D&A proceeding. On the contrary, learned advocate of the respondents contended that the D&A proceeding was duly supplied to the applicant and copy of the enquiry report was also furnished to the applicant in accordance with the rules vide letter dated 17.7.94, Annexure 'A/3' to the application for making representation against the inquiry report which is evident from the letter of punishment dated 13.9.94, Annexure 'A/4' to the application and the disciplinary authority after disclosing the reasons for non-acceptance of the enquiry report awarded the punishment by an order of removal from the service with immediate effect vide letter dated 13.9.94, Annexure 'A/5' to the application. So, the applicant cannot have any grievance in respect of award of punishment which has been issued upon the applicant in accordance with the rule.

4. We have considered the aforesaid arguments and find that the applicant could not show that the D&A proceeding has not been furnished to him, but the respondents in the written reply had categorically stated that the enquiry officer conducted the enquiry on 22.3.94 and 13.5.94 respectively and submitted his report on 14.7.94 and the enquiry proceeding was given to the applicant after completion of each day's proceeding and no assurance was given by the disciplinary authority. We have gone through the enquiry report which has been forwarded to the applicant for making representation. In the enquiry report the enquiry officer held that the applicant is very irregular in attendance during the period from 31.1.92 to 12.7.93. He was sanctioned with 111 LWP. Though the applicant was awarded with punishment for unauthorised absence, he has not been rectified himself. It is not clear from the defence of the disciplinary authority that whether the leave for the period of 31.1.92 to 12.7.93 had been sanctioned or



not. The respondents could not produce any record to show that the leave was not sanctioned for the period from 31.1.92 to 12.7.93. If the leave is sanctioned by the authority, thereafter it cannot be said by the respondents that the applicant remained in unauthorised absence from duty. Order of sanctioning leave for the period from 31.1.92 to 12.7.93 itself implies that his absence was sanctioned by the authority. So, we find that findings made by the disciplinary authority that "I, however, do not agree with the findings of Enquiry Officer that he was not responsible for unauthorised absence. Absence is only treated as authorised, only when the competent authority sanctions the period of absence as regularised leave. The mere intimation, as in this instance case is, therefore, cannot be deemed as authorised absence." It is not clear from the findings of the enquiry officer as well as from the disciplinary authority whether the applicant remained absence without any reasonable cogent reason. If he remained absent unauthorisedly, willfully and without any sufficient cause, such unauthorised absence amounts to misconduct. We find that there is no findings that the applicant remained in unauthorised absence willfully and without intimation to the authority. Thereby no finding has been made against the applicant that such absence amounts to misconduct. The respondents must reach to the clear cut findings before imposition of punishment on the applicant that he remained unauthorised absence wilfully and without any reasonable cause and such unauthorised absence amounts to misconduct. In the absence of such finding it cannot be said to be unbecoming of the the Railway servant due to absence from duty. We are of the view that in the absence of such findings it cannot be said that the disciplinary authority had applied his mind to the facts for the purpose of imposition of punishment as awarded in this case holding the disciplinary proceeding against him on



the basis of the allegation that he remained unauthorised absent from duty. The allegation of charge must be brought within the ambit of misconduct. We find that ingredient has not been considered by the disciplinary authority and we are of the view that in the absence of such findings the order of the authority dated 13.9.94 is not sustainable. So, without entering into the other points we are of the view that the order of the disciplinary authority dated 13.9.94, Annexure 'A/5' to the application, which was affirmed by the appellate authority on appeal preferred by the applicant is also not sustainable and therefore, we are of the view that the instant order of punishment is liable to be quashed.

5. In view of the aforesaid circumstances we set aside the order of disciplinary authority dated 13.9.94 and all subsequent orders, i.e., order of the appellate authority and reviewing authority communicated to the applicant vide letter dated 16.5.95, Annexure 'A/8' to the application ~~are liable to be quashed~~. However, we are sending back <sup>to the disciplinary</sup> authority to consider all the facts as observed by us in this case and come to a fresh finding on the basis of the enquiry report and representation against the the enquiry report filed by the applicant and the applicant should be reinstated in service forthwith. We also direct following the judgment of the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation & Ors. vs. Bhagwati Prasad Pathak, reported in 2000(2)A.T.J. 167 that the applicant should be paid back wages at the rate of 25% of the arrears of pay and salary from the the date of removal till the date of reinstatement. With this observation the application is allowed. No cost.

(G. S. Maingi)

MEMBER (A)

(D. Purkayastha)

MEMBER (J)