

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No.OA 1113 of 96

Date of order : 4.1.2005

Present : Hon'ble Mr.A.V.Haridasan, Vice-Chairman(J)  
Hon'ble Mr.G.R.Patwardhan, Administrative Member

KAMALAKANTA SINGH SARDAR

VS

UNION OF INDIA & ORS.

For the applicant : Mr.B.Chatterjee, counsel

For the respondents: Ms.U.Sanyal, counsel

O R D E R

A.V.Haridasan, VC(J)

The applicant ex-TNC has filed this application being aggrieved by the penalty of removal from service which has been conferred by the Appellate Authority by order dated 10.5.96. The facts briefly stated are as follows. The applicant was served with the memorandum of charge. The only article of charge reads as follows :

"It is reported that Sri K.K.Singh Sardar, Sr.TNC/BKSC whimsically absented unauthorisedly from duty for 476 days. The details of absence period are as under :-  
(1) 01.1.92 to 25.1.92 = 25 days, (2) 26.1.92 to 21.2.92 = 27 days, (3) 12.4.92 to 15.4.92 = 4 days, (4) 29.4.92 to 27.7.92 = 90 days (Sick/PMC), (5) 12.8.92 to 6.5.93 = 268 days, (6) 5.8.93 to 5.10.93 = 62 days.  
Such long absence from duty amply shows that he is not interest in the Rly. service and this absence dislocated the work of Rly. administration. This is gross misconduct of service."

In the enquiry the applicant admitted his unauthorised absence. The Enquiry Officer submitted his report finding the applicant guilty which was accepted by the Disciplinary Authority who by the order at Annexure 'A/2' dated 9.8.94 awarded the applicant penalty of removal from service. Aggrieved by the same the applicant submitted an appeal which was rejected by the order at Annexure 'A' dated 10.8.94. It is alleged by the applicant that the penalty of removal was imposed on the applicant without application of mind to the compelling circumstances under which the applicant remained absent from duty and that mere absence from duty under compelling circumstances would not amount to any misconduct and that the penalty of removal from service

was awarded by the Disciplinary Authority taking into account certain previous period of absence which was regularised by grant of leave without that being made a part of the charge. The order of the Disciplinary Authority as also of the Appellate Authority confirming the punishment of removal from service is arbitrary, irrational and unjustified and hence the application.

2. We have heard the ld.counsel for both the parties and perused the pleadings and other materials on record. Ld.counsel for the applicant argued that the Disciplinary Authority found the applicant guilty of the misconduct of unauthorised absence without considering to the applicant's plea that he was absent under compelling circumstances. He further argued that assuming that the misconduct of unauthorised absence has been established in the enquiry a penalty of removal from service could not have been imposed on the applicant specially taking note of previous absence which had already been regularised by grant of leave and without calling upon the applicant to answer such an allegation on the charge memorandum. Ld.counsel for the respondents on the other hand argued that the arguments of the ld.counsel for the applicant that the findings that the applicant was guilty of misconduct is not proper because the absence of the applicant was under compelling circumstances, has no force because the applicant had admitted the charge where it was alleged that he was whimsically and unauthorisedly absent. Meeting the second limb of arguments of the ld.counsel for the applicant that the penalty is imposed after taking into account the extraneous facts and circumstances which was not mentioned in the charge, the ld.counsel argued that the use of the word 'whimsically' in the memorandum of charge would show the nature of absence and therefore it cannot be said that the penalty of removal is totally unjustified.

3. We find considerable force in the arguments of the ld.counsel for the respondents that the applicant having admitted being whimsically and unauthorisedly absent from duty he cannot argue that his unauthorised absence was not a misconduct and was under compelling

circumstances. However, we find equal or more force on the arguments of the ld.counsel of the applicant that penalty of removal has been imposed on the applicant taking into account certain materials which were not made part of the charge and outside the scope of the enquiry. It is pertinent to extract the order of the Disciplinary Authority at Annexure 'A/2' to see that the facts which were not alleged in the charge and which the applicant did not get an opportunity to dispute or explain, have been relied on by the Disciplinary Authority in deciding that the applicant was a person unfit to be retained in service. The order of the Disciplinary Authority at Annexure A/2 reads as follows :

'I have gone through the case in detail and the representation dated 18.5.94 made by you. I have also went through the Enquiry Report dated 4.8.94 of the Enquiry Officer in which you have admitted that you unauthorisedly absented from duty. Within a period of two years from 1.1.92 to 5.10.93, you have absented from duty for 476 days in total out of which for 90 days a PMC was produced by you.

A case history study of yours show that earlier you were reverted from Head TNC to a post of Sr.TNC in scale of Rs.1200-2040/- (RP) with effect from 17.1.90 only for unauthorisedly absenting yourself from duty during the period of 11.9.85 to 27.6.86 in phases. Hence you are guilty on the following charges :-

- i) unauthorised absence from duty from 1.1.92 to 25.1.92, 26.1.92 to 21.2.92, 12.4.92 to 15.4.92, 29.4.92 to 27.7.92, 12.8.92 to 6.5.93 and 5.8.93 to 5.10.93;
- ii) you have not improved after once you were reverted from a higher post in the year 1990;
- iii) not producing any documentary evidence or case progress during the period of ill-health;
- iv) you have not improved over your wrong habit of absenting yourself unauthorisedly from duty.


I view of the above fact, I consider you unfit to be retained in Rly. service. Hence you are removed from Railway's service with immediate effect."

In the memorandum of charge exhibited in page 1 above, no reference at all had been made to the case study of earlier reversion or previous unauthorised absence. The conclusion of the Disciplinary Authority that the applicant was unfit for retention in service obviously has been reached taking into account the misconduct of unauthorised absence mentioned in the charge alone but also considering the earlier alleged reversion, unauthorised absence, as also the failure to show improvements. If the Disciplinary Authority

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intended to consider these aspects too in determining the penalty either these aspects should have been mentioned in the charge or at least notified to the applicant before deciding the quantum. That having not been done the quantum of penalty determined taking into extrenuous matters into consideration is arbitrary, illegal and unjustified. The Appellate Authority also has not adverted to this position. Therefore while the finding that the applicant is guilty of the misconduct is unexceptionable, the penalty of dismissal from service upheld by the Appellate Authority has got to be set aside as illegal and arbitrary.

4. In the result in the light of what is stated above, we set aside the orders at Annexure 'A' & 'A/2'. The respondents are directed to reinstate the applicant in service forthwith within one month and to pay his full back wages for the period he was kept out of service on the basis of the impugned orders. The Disciplinary Authority shall then pass an order awarding any suitable penalty to the applicant not being dismissal, removal or compulsory retirement from service but commensurate with the proved misconduct of unauthorised absence. This direction shall be complied within two months from the date of receipt of the copy of this order. No order as to costs.

  
MEMBER(A)

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VICE-CHAIRMAN(J)