

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

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Date of order : 4.5.2000

O.A.NO.428/95

Nar Narain Sharma S/o Shri Amarjit Lal Ji aged about 34 years, R/o Goal Balon Ka Bas, Near Assmani Pol, Umaid Chowk, Jodhpur (Raj), last employed on the post of Mechanical Khallasi T.No.653, Diesel Shed, Bhagat Ki Kothi, Jodhpur (Raj).

.....Applicant.

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Mechanical Engineer (Diesel), Northern Railway, Bhagat Ki Kothi, Jodhpur.
3. Assistant Mechanical Engineer, Diesel, Northern Railway, Bhagat Ki Kothi, Jodhpur.

.....Respondents.

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Mr.J.K.Kaushik, Counsel for the applicant.

Mr.S.S.Vyas, Counsel for the respondents.

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CORAM :

HON'BLE MR.JUSTICE B.S.RAIKOTE, VICE CHAIRMAN

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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PER HON'BLE MR.JUSTICE B.S.RAIKOTE :

This application is filed being aggrieved by the order of removal from service of the applicant vide Annex.A/2 dated 7.8.92. The applicant also has challenged the order of the appellate authority dated 21.9.94 Annex.A/3 dismissing the appeal filed by the applicant.

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2. The learned counsel for the applicant submitted that both the orders cannot be sustained on the basis of the evidence on record. He also submitted that the alleged period of absence in the year 1991 (i.e. 175 days), has already been treated as leave without pay and once, leave is sanctioned without pay, departmental proceedings on the same cause, could not have been proceeded with. At any rate, he submitted that the punishment awarded is disproportionate to the alleged misconduct. On the other hand, the learned counsel for the respondents vehemently denied the contentions of the applicant. He also submitted that this Court cannot consider the case of the applicant as an appeal. In the instant case, both the charges have been held as proved on the basis of evidence, therefore, the impugned order do not call for any interference. Regarding the second contention, the learned counsel for the respondents submitted that as per the finding given in this case, the applicant did not submit leave application within 48 hours from the date of his alleged sickness in terms of the Para 535 (4) of the Indian Railway Medical Manual, therefore, this is not a fit case for interference. He further submitted that applicant has absented himself frequently in the year 1991, in all for 175 days. In those circumstances, it was difficult for the department to make arrangements for the work of the post. Moreover, his absence for number of days frequently in the year 1991, clearly shows that the applicant was guilty of the misconduct. Therefore, this is not a case of dis-proportionate punishment. Accordingly, the counsel for the department prays for dismissal of the application.



3. In order to appreciate the rival contentions, we think it appropriate to note few of the facts of this case. ^{was framed against the} A charge/applicant stating that between 20.8.91 to 29.9.91 the applicant absented

without informing the department. He was habitually remaining absent un-authorisedly and he rarely attended his duty. In the imputation of misconduct, it is further stated that, the applicant remained unauthorised absence during the year 1991 for 175 days and he did not attend the duties regularly. With reference to the charges, procedural inquiry was held by the department and ultimately the disciplinary authority passed an order imposing punishment of removal on the applicant and the same has been confirmed by the appellate authority.

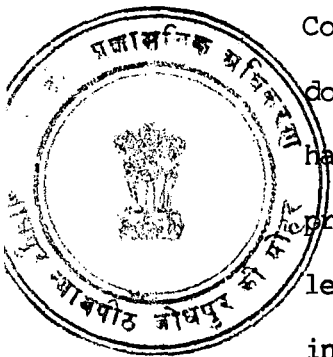
4. It is an established principle of law that this Court cannot be treated as an appellate court for re-assessing the entire evidence on record. However, the learned counsel for the applicant relying upon the judgment of the Hon'ble Supreme Court reported in 1999 (3) SLJ Page 1 submitted that when the applicant's absence was already treated as leave without pay, on the same allegations, the departmental proceedings could not have been initiated by framing the charges. On the other hand, the learned counsel for the respondents submitted that the said judgment does not apply to the facts of this case in as much as the applicant also has violated para 535 (4) of the Indian Railway Medical Manual, in the sense that he did not inform the department regarding his absence on sickness within 48 hours with a sick certificate from a registered medical practitioner. As against this argument, the learned counsel for the applicant submitted that the applicant had sent an intimation by postcard under certificate of posting and, therefore, has complied with the Rule 535 (4), and even on this aspect also the question of misconduct did not arise.

5. From the reading of the impugned judgments, we find that the applicant raised a plea before the disciplinary authority as well as before the appellate authority that he sent an intimation regarding sickness by a Post-Card. However, the applicant has not produced any original certificate of posting. A zerox copy of the certificate of posting has been produced in this regard which was not at all acceptable to the respondents.. Therefore, applicant's contention that he sent the

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intimation by a postcard under certificate of posting, has been disbelieved. The authorities have held that the applicant has not sent the intimation within 48 hours, as required under Para 535 (4) of the Indian Railway Medical Manual. This finding of the disciplinary authority as well as of the appellate authority does not call for our interference in this application.

6. On the basis of the findings arrived at, we find that the applicant has been granted leave for his unauthorised absence and he has not sent the intimation in terms of the aforesaid rule of the Medical Manual within 48 hours. The Judgment of Hon'ble Supreme Court, relied upon by the applicant, reported in 1999 (3) SLJ 1, does not support his case in as much as the Hon'ble Supreme Court has not laid down a clear law that no departmental inquiry can be proceeded with in regard to unauthorised period of leave, if the leave has been granted for such period without pay. That was a case in which Hon'ble Supreme Court allowed the appeal by exercising its power of doing complete justice. The learned counsel for the applicant further relied upon a Judgment of this Tribunal passed on 11.9.98 in O.A.No.494/94. It is not in doubt that in this Judgment this Tribunal has taken the view that once the period of absence has been regularised by grant of leave, no disciplinary action can be taken against the delinquent for unauthorised absence during the period of dispute. By applying the ratio laid down in this order of the Tribunal, we may hold that the departmental proceedings could not have been issued against the applicant when the unauthorised absence was already treated as leave without pay in awarding punishment. Keeping in view of the applicant has been granted leave without pay for the unauthorised period of absence, but at the same time, the violation of Para 535 (4) remains, in sense that the applicant did not send the intimation within 48 hours. We think it appropriate to extract Para 535 (4) of the Indian Railway Medical Manual, which is as under :-



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"535(4).When a Railway employee residing outside the jurisdiction of a Railway doctor requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. Such a certificate should be, as nearly as possible, in the prescribed form as given in Annexure X, and should state the nature of the illness and the period for which the Railway employee is likely to be unable to perform his duties. The competent authority may, at its discretion, accept the certificate or, in cases where it has reasons to suspect the bona fides, refer the case to the Divisional Medical Officer for advice or investigation. The medical certificates from registered private practitioners produced by Railway employees in support of their applications for leave may be rejected by the competent authority only after a Railway Medical Officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications."



7. The object of the rule is that if the person intimates his sickness with the certificate of a registered medical practitioner, the department would be in a position to make arrangement for the discharge of duties he was required to discharge in the department. In the instant case, the case of the applicant is that he sent a postcard under certificate of posting, but what he was required under Para 535 (4), was that he should send the intimation with a certificate from a registered medical practitioner, which he has not done. Therefore, we are of the opinion that the disciplinary proceedings would still lie under Para 535 (4) of the Indian Railway Medical Manual, even though, the unauthorised absence has been regularised by granting leave without pay. At the same time, in our

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opinion, the authorities below should have taken into account of the fact that the applicant's unauthorised absence was already treated as leave without pay, while awarding punishment. Keeping in view of these circumstances, we find that the punishment of removal would be disproportionate to the charge levelled against the applicant. It is also an established principle of law that this Tribunal has got jurisdiction to interfere with the quantum of punishment in case this Tribunal finds that such a punishment was disproportionate to the charge levelled against the delinquent official.



8. In the above circumstances, we think it appropriate to modify the punishment and to direct the respondents to reinstate the applicant in service with all consequential benefits, and the back wages may be denied by way of punishment. Accordingly, we pass the order as under:-

9. The application is partly allowed. The impugned order of the disciplinary authority and the appellate authority, are partly modified regarding the quantum of punishment. The order of removal dated 23.11.92 vide Annexure A/10 is set aside and the applicant is ordered to be reinstated in service with all consequential benefits. However, he would not be entitled to any back wages from the date, he was removed from service till the date of his reinstatement in terms of this order.

10. No order as to costs.

Gopal Singh
(Gopal Singh)
Adm. Member

B.S. Raikote
(B.S. Raikote)
Vice Chairman

Jrm/Cv

Recd LPA
S. A. Guyer
17.5.2-570.

Part II and III destroyed
in my presence on 27.12.06
under the supervision of
section officer (I) as per
order dated 23.1.8/06


Section officer (Record)