

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

.....
Date of order : 12.4.2000.

O.A. No. 224 / 1996

Chhitār Singh S/o Shri Shivanath, aged about 46 yrs,
R/o Vergi Colony Masooriya, Jodhpur, last employed
on the post of Helper Khallasi Shop No. 18,
Jodhpur Workshop, Northern Railway, Since deceased
now represented by -

Smt. Rameshwari Devi W/o Late Chhitār Singh, aged
about 40 years, resident of Vergi Colony, Masooriya,
Jodhpur.

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

VERSUS

1. Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Chief Works Engineer, Headquarter Office
Northern Railway, Baroda House, New Delhi.
3. The Deputy Chief Engineer (Works)
Northern Railway, Jodhpur.
4. The Asst. Works Manager, Northern Railway,
Jodhpur Division, Jodhpur.

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

CORAM :

Hon'ble Mr. A. K. Misra, Judl. Member.

Hon'ble Mr. Gopal Singh, Adm. Member.

Per Mr. A. K. Misra :

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Applicant Sh. Chhitār Singh has filed this

Original Application with the prayer that the impugned charge sheet dated 12.11.1994 (Annex. A/1) for major penalty issued by 4th respondent, impugned punishment order dated 10.11.95 (Annex. A/2) passed by 3rd respondent inflicting the penalty of removal from service and impugned order dated 28.12.95 (Annex. A/3) passed by 2nd respondent rejecting the appeal may be declared illegal, without jurisdiction and the same may be quashed and the applicant be allowed all the consequential benefits as if no such orders ever existed against him.

2. After hearing the applicant, notices were issued to the respondents who have filed their reply to which no rejoinder was filed by the applicant.

3. During the pendency of OA, Sh. Chhitar Singh, applicant died and his wife Smt. Rameshwari Devi was ordered to be brought on record as the legal heirs of late Sh. Chhitar Singh as prayed.

4. We have heard the learned counsel for parties and have gone through the case file.

5. The applicant while he was working as Helper Khalasi, in shop No. 18 of the Northern Railway Workshop at Jodhpur was served with a major penalty charge sheet for having remained absent from duty i.e; from 10.7.94 to 16.7.94 & from 9.8.94 to 16.8.94 unauthorisedly and did not

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inform about his absence within 48 hours as per rules. On both the occasion the applicant reported on duty on the succeeding day of the period of unauthorised absence with sick & fitness certificate and was taken on duty. The applicant denied the charges, thereafter witness were recorded by Enquiry Officer. The Enquiry Officer found the charges proved against the applicant & submitted his report to the disciplinary authority. The disciplinary authority supplied the copy of enquiry report to the applicant, thereafter a penalty of removal from duty was awarded by the disciplinary authority and the applicant was removed from service vide order dated 10.11.95 Annex. A/ 2. The applicant preferred ^{an} appeal against the removal order which was also rejected by the appellate authority vide its order passed in the month of Feb 1996 (Annex. A/3). The foregoing facts are undisputed.

6. The applicant has challenged the orders of removal on the ground that respondent No. 4 was not the disciplinary authority and the charge sheet issued to the applicant by him was without jurisdiction & void ab initio, the applicant was allowed to resume duties on termination of period of absence therefore misconduct cannot be attributed to the applicant, the applicant was absent due to illness during the aforesaid period. Thus such an absence does not constitute misconduct. The applicant was punished on other ground also including those mentioned in the charges, the appellate authority had rejected

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the appeal without application of mind and had taken past record including past penalties imposed on the applicant into consideration and passed non speaking orders, the applicant had remained absent from duty for a total period of 15 days in two spells and therefore the order of termination passed against him is disproportionate to the alleged misconduct and has affected ^{the} right of livelihood of the applicant. The applicant has therefore prayed for quashing the impugned orders.

7. The respondents in their reply had denied the grounds of attack taken by the applicant mentioned above and have supported the impugned orders passed by the authorities as legal and as per rules. It is also stated by the respondents that as per rules applicant was duty bound to inform the controlling authority about his absence and reasons thereof. Since the applicant had not cared to follow the rules therefore he was rightly charge sheeted and removed from service. The respondents had prayed for the dismissal of Original Application.

8. We have considered the rival arguments advanced by the counsel for the parties and have gone through the record.

9. Learned counsel for the respondents had argued that the application has abated because all the Legal heirs of the deceased Shri Chhitar Singh were not brought on record as applicants

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within the prescribed time as per law. The cause of action if at all survived, had survived in favour of all legal heirs of deceased Sh. Chhitar Singh and not to the applicant alone. Therefore, the present application deserved to be treated as abated and applicant is not entitled to any relief at all.

10. On the other hand learned counsel for the applicant had argued that the sons and daughters of deceased are all minors and their welfare is being looked after by ^{the} applicant alone. In view of this cause of action had survived to all of the legal heirs of the deceased but the minors could be represented through their mother. She can effectively represent the interest of the minors and therefore she has been brought on record. He has further argued that such application which is in the nature of Writ Petition cannot be treated as having being abated on such technical grounds. In this application legality of action of the respondents ^{is} under challenge. Therefore right and remedies of the applicant cannot be denied on such technical grounds.

11. We have considered the rival contentions. In our opinion, right to sue survives to the present applicant, since the sons and daughters of Shri Chhitar Singh are all minors and their welfare is being looked after by the applicant. Therefore, the application cannot be treated as having abated. If the minor sons and daughters

would have been made parties, they would have been brought on record through their mother as their guardian, who is no other than the present applicant. Widow of Shri Chhitar Singh and mother of the minor children of Shri Chhitar Singh is the present applicant only, who has been brought on record in time. The present application is in the nature of writ and therefore on such technical matters as raised by the respondents, the present applicant cannot be treated as abated. Arguments of the learned counsel for the respondents in this regard are therefore, rejected.

12. Learned counsel for the applicant has confined his challenge to the punishment order on one ground only i.e., punishment being disproportionate to the alleged misconduct. We have considered this aspect. The applicant Shri Chhitar Singh, was removed from service by the disciplinary authority on the ground of unauthorised absence from duty without any information. The period of absence on the first occasion was from 10.7.94 to 16.7.94 i.e., for 7 days and on second occasion from 9.8.94 to 16.8.94 i.e., for 8 days. Thus for an unauthorised absence for a period of 15 days, Shri Chhitar Singh was ordered to be removed from service. This in our opinion is quiet disproportionate to the alleged misconduct of Shri Chhitar Singh. In number of cases, Hon'ble Supreme Court has held that removal of delinquent from service on account of unauthorised absence was not justified. In this case too, we feel that removal of Shri Chhitar Singh for a small period of unauthorised absence

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was quite disproportionate to a punishment which shocks the conscious. There was no charge against the delinquent regarding ~~the~~ habitual absentism therefore Shri Chhitar Singh's past periods of absence and consequently departmental action taken in respect of such unauthorised absence cannot form basis for imparting disproportionate punishment. Therefore the order of disciplinary authority is difficult to sustain.

13. Considering the appellate order, we come to the conclusion that the appellate order is also difficult to sustain. The appellate authority has upheld the order of punishment passed by the disciplinary authority citing the past periods of applicants absentism starting from 1982 to 1995. In our opinion, any other allegation of misconduct ~~other~~ than the one for which delinquent had been charged cannot be taken into consideration for giving the verdict of guilt or upholding such verdict. In short, extraneous matters cannot be taken into consideration for imposing penalty relating to the charges. We are also of the opinion that appellate authority has failed to examine, penalty imposed by the disciplinary authority on Shri Chhitar Singh, viz a viz, the charges relating to the alleged misconduct. If the appellate authority had examined the matter in this light it would not have upheld the order of punishment passed by the disciplinary authority. In view of this, the order of the appellate authority too deserves to be quashed.

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14. The applicant has not disputed the fact of his remaining absent from duty, may be on medical grounds, therefore, the finding of guilt of the delinquent in this case is not required to be disturbed. The same has also not been challenged. Therefore, the order relating to the penalty deserves to be considered because it has been argued that the same is quite disproportionate to the misconduct alleged against the delinquent.

15. Shri Chhitar Singh had remained absent for only 15 days and that too in two spells but he has been removed from service because of his misconduct. Thus, the punishment, in our opinion, is quite disproportionate to the misconduct of Shri Chhitar Singh and shocks the judicial conscience. In view of this, we had also considered as to what could be the appropriate punishment in the circumstances, keeping in our view the principles propounded by Hon'ble the Supreme Court in B.C. Chaturvedi's case reported in (1996) 32 ATC 44. In our opinion, stoppage of an increment or two with cumulative effect or without cumulative effect could have met the ends of justice. But even this punishment cannot now be ordered to be substituted in place of the original penalty imposed by the disciplinary authority because the delinquent Shri Chhitar Singh has since died on 4.1.98. Therefore, he can neither be put back on duty so that the stoppage of increment could be made effective nor the same could be notionally implemented because even at the time the appellate authority passed its order Shri Chhitar Singh was under-going some punishment as

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is evident from the order of the appellate authority.

It has been mentioned in the order that "..... and an increment was withheld and one was pending at the time of the removal." We do not know what was that punishment which was pending at the time of his removal from duty. But assuming that punishment was a minor penalty even then we do not know as to what was its duration and when it was to come to an end. Therefore, in our opinion imposition of penalty of stoppage of an increment would also not be possible in this case as per the facts narrated above. Hence, the only punishment that could be awarded to the delinquent after modification is that of compulsory retirement. The same could be substituted in place of penalty of removal passed by the disciplinary authority.

16. In view of the above discussions, we, while upholding the finding of the inquiry officer regarding the guilt of the delinquent Shri Chhitar Singh, would like to award the penalty of compulsory retirement to Shri Chhitar Singh. The order passed by the disciplinary authority and the order passed by the appellate authority shall stand modified accordingly. The O.A. deserves to be disposed of in terms of the above discussions.

17. In view of the foregoing discussions, the O.A. is partly accepted. The orders of the disciplinary authority, Annex.A-2 dated 10.11.95 and appellate authority passed in February 1996, Annex.A-3, are modified as narrated above. The penalty of removal of Shri Chhitar Singh from service shall be substituted

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by the penalty of compulsory retirement w.e.f. the same date as indicated in the order of punishment. Since Shri Chhitar Singh has died, therefore, the present applicant shall be paid all the retiral benefits which were payable to Shri Chhitar Singh, ~~including pension and~~ including the family pension within a period of four months from today failing which the applicant shall also be entitled to interest at the rate of 12% per annum from the date of the order. The parties are left to bear their own costs.

(Gopal Singh)

(GOPAL SINGH)
Adm.Member

(A.K.MISRA)
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(A.K.MISRA)
Judl.Member

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