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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
J_O_D_H_P_U_R.

Date of Order : 27.9.2000

G.A. No. 59/1997

Kripa Kishan S/O Shri Pusha Ram, aged about 50 years,
R/O Maliyon-ka-Bas, Balotra, last employed on the post
of R.R. Cook at Merta Road, Northern Railway.

... Applicant

Vs

1. The Union of India through General Manager,
Northern Railway, Baroda House, New Delhi.
2. Chief Operating Manager, Northern Railway,
Baroda House, New Delhi.
3. The Divisional Railway Manager, Northern Railway,
Jodhpur Division, Jodhpur.
4. The Divisional Mechanical Engineer (P) Northern
Railway, Jodhpur Division, Jodhpur.

... Respondents

Mr. J.K. Mishra, Counsel for the Applicant.

Mr. V.D. Vyas, Counsel for the Respondents.

CCRAM :

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


Hon'ble Mr. Gopal Singh, Administrative Member

O_R_D_E_R

(PER HON'BLE MR. GOPAL SINGH)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, applicant Kripa Kishan,
has prayed for quashing the impugned orders dated 14.3.1991,
28.8.1992, 25.4.1994/16.8.94 and 23.7.'96, and for a direction
to the respondents to reinstate the applicant in service and
treat him as having retired on normal superannuation, with a
consequential benefits.

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Gopal Singh

2. Applicant's case is that he was initially appointed on the post of Cleaner with the respondent Railway on 10.2.64. He was promoted as Fireman II with effect from 15.3.1967. He was declared medically unfit to hold that post on 03.11.'67. Though the applicant qualified for the alternative job of Shedman yet he was put to work as Running Room Cook at Merta Road on 31.7.'89. Subsequently, he was declared unfit to work as R.R. Cook by Divisional Medical Officer, Jodhpur on 16.8.'90. The applicant was issued a charge sheet on 14.3.91 for unauthorised absence from duty from 02.4.'90 to 18.9.'90 and from 3.11.'90 to the date of issue of chargesheet. On conclusion of the enquiry, the Disciplinary Authority imposed the penalty of removal from service upon the applicant vide order dated 28.8.'92 (Annexure A/2). Appeal against the orders of the Disciplinary Authority was rejected by the Appellate Authority vide order dated 16.8.'94 (Annexure A/3). Revision Petition filed by the applicant was rejected on 27.3.'96 (Annexure A/4). Hence, this application. Contentions of the applicant is (i) that since the period of his absence has been regularized vide Annexure A/7, he cannot be proceeded against in a departmental enquiry on the charge of unauthorized absence, (ii) the enquiry has been held ex parte, (iii) the enquiry report of the enquiry got conducted by the Appellate Authority was not made available to him, (iv) he has been punished for unauthorized absence for the period for which no chargesheet was issued to him and (v) the penal imposed is disproportionate to the alleged misconduct.



3. In the counter, the respondents have denied the application.

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4. We have heard the learned Counsel for the parties and perused the records of the case carefully. We have also gone through the enquiry file produced before us by the respondents as per our direction dated 05.9.2000.

5. It is seen from the chargesheet dated 14.3.1991 (Annexure A/1) that the applicant was charged with the misconduct of absenting himself from duty unauthorizedly for the period from 02.4.'90 to 18.9.'90 and from 03.11.'90 till the date of issue of the chargesheet i.e., 14.3.'91. However, the Disciplinary Authority in his order dated 28.8.'92 has held him as absent from duty for the period from 27.7.'80 to 1.2.'81, 24.4.'81 to 15.10.'81, 1.1.'89 to 20.7.'89, 2.4.'90 to 18.9.'90 and 3.12.'90 till the date and imposed upon the applicant the punishment of removal from service. Thus, the Disciplinary Authority has taken into consideration the period of absence of the applicant from 27.7.'80 to 1.2.'81, 24.4.81 to 15.10.'81 and 1.1.'89 to 20.7.'89 for arriving at the conclusion for imposing penalty of removal. However, no chargesheet was served upon the applicant for remaining absent from duty for these spells. Thus, the Disciplinary Authority has taken into consideration extraneous matter into consideration for imposing the penalty. Further, the appellate authority had ordered a fresh enquiry into the case. The enquiry was conducted and a copy of the Enquiry report was also made available to the applicant, but this fresh enquiry report was not considered by the Disciplinary Authority and the Appellate Authority had directly passed his orders on this report. At this stage, we consider it appropriate to extract relevant portion from the file No. 434E/E-6/R.R. Cook/MTD/92/X :



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* Norther Railway
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Sub: Major penalty D&AR case against
Sh. Kirpa Kishan, RR Cook under
LF/MTD.

The charges framed against Shri Kirpa Kishan was issued vide S.No.3. I.O. was nominated vide S.No.7. Inquiry report was received at S.No.21. NIP for removal from service was issued vide S.No.30. Appeal under rule 18 was received at S.No. 37. Case was put up to DRM vide PP-6.

DRM set aside punishment vide pp-7 and ordered to conduct a fresh inquiry vide PP-7. Fresh inquiry was conducted and the report of inquiry placed at S.No.58.

May kindly pass suitable orders as deem fit on appeal of employee placed at S.No.37, against NIP placed at S.No. 30.

Submitted for orders please.

Sd/-
07.14.94
D.M.E./P.

D.R.M.



On appeal against NIP for removal from service, fresh enquiry was ordered giving due notice and opportunity to the employee to present and defend his case.

I have gone through the findings of the enquiry officer and find that the employee Sh. Kirpa Kishan has been in the habit of absenting himself very frequently without permission or authority and had been leaving headquarters without permission, which facts have been established during the enquiry.

Considering all the facts, I uphold the NIP and do not see any reason to revise the orders issued.

Sd/8.4.

D/E/P

Pl. communicate to the accused.

Sd/08.4.94 "

D/C

As a matter of fact the Disciplinary Authority should have first considered the enquiry report for imposing any penalty on the applicant since the earlier penalty imposed by the Disciplinary Authority was set aside by the Appellate Authority. Instead the enquiry report was directly considered by the

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Appellate Authority and the penalty imposed earlier by the Disciplinary Authority was upheld by the Appellate Authority. When the penalty imposed earlier had become non-est, upholding that penalty is meaningless.

6. In the light of above discussion, we are of the view that the respondents have failed to follow the prescribed procedure in conducting the departmental case against the applicant and this has resulted into violation of principles of natural justice. Thus, the action of the respondents cannot be sustained in the eyes of law. We have no option but to pass the order as under :



The Original Application is allowed. The orders of the Disciplinary Authority and Appellate Authority and other consequential orders are set aside. The respondents will, however, have the liberty to proceed against the applicant as per rules and following the principles of natural justice, if so advised.

7. Parties are left to bear their own costs.

Gopal Singh
(GOPAL SINGH)
Adm. Member

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

J

Rec'd copy
✓
2/19/00

R/Copy
on 2/19/21
MJB

Part II and III destroyed
in my presence on 2.10.07
under the supervision of
section officer (J) as per
order dated 10.11.06

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Section officer (Record) 2