

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 22.10.2001

O.A. No. 172/99

Hanwant Singh son of Shri Ajai Singh aged about 35 years resident of village and post Bisalpur District Pali, last employed on the post of Artisan Khallasi in the office of Diesel Foreman (Senior Section Engineer -DL), Abu Road, Western Railway.

... Applicant.

v e r s u s

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Mechanical Engineer (Diesel), Western Railway, Abu Road.
3. Assistant Engineer (Diesel), Western Railway, Abu Road.

... Respondents.



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

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

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

The applicant has challenged the order of disciplinary authority dated 21.11.96 vide Annexure A/1 and also the appellate order dated 28.01.99 vide Annexure A/2. The learned counsel for the applicant contended that the impugned orders have gone beyond the charges levelled against the applicant. He contended that the applicant was given charge-sheet for his alleged unauthorised absence from 09.10.95 to 17.01.96. But the disciplinary authority as well as the appellate authority have considered the alleged absence prior to and subsequent to the period mentioned in the

charge-sheet. They have stated that the applicant was unauthorisedly absent from 01.09.95 to 02.10.95 (32 days) [prior to the period mentioned in the charge-sheet] and from 19.01.96 to 19.04.96 (110 days) [subsequent to the period mentioned in the charge-sheet]. The learned counsel for the applicant submitted that both the disciplinary authority as well as the appellate authority exceeded their jurisdiction in considering certain alleged absences which were not part of the charge. Therefore, the impugned order is liable to be set aside. He also submitted that the explanation offered by the applicant that he was absent only because he was a victim of evil spirit (Parmatma Ka Shikar) and underwent the treatment under a Sadhu, should have been accepted. Even otherwise, he submitted that the punishment imposed is unconscionable and dis-proportionate. Therefore, this application deserves to be allowed.

2. The respondents have filed a detailed reply denying the allegations made by the applicant.

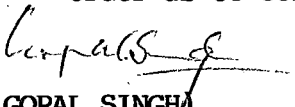
3. Heard. After hearing the case, we also perused the records once again.

4. The applicant has filed charge-sheet dated 11.01.1996 vide Annexure A/4. But it is also admitted that the said charge-sheet was withdrawn by issuing fresh charge-sheet dated 25.11.96. The applicant stated that the later charge-sheet was misplaced. However, the respondents have produced the records in the case, and we have perused the same. We find from the charge-sheet dated 25.11.96 that the applicant was charged for being unauthorisedly absent from 09.10.95 to 17.01.96. The applicant's explanation that he was under influence of evil spirit and he ~~was~~ underwent the treatment under a Sadhu, has not been accepted by the department, and we do not find any reason to differ from those findings. The applicant also stated that he was also suffering from Hepatitis, but he has not produced any medical certificate issued by a Railway doctor, showing that he was atleast treated for that disease. Therefore, the applicant's explanation, in our considered opinion, was rightly rejected. But the matter does not stop at that stage. Both the disciplinary authority as well as the appellate authority considered applicant's alleged unauthorised absence from 1.1.95 to 9.10.95 (the period prior to the period mentioned in the charge-



sheet) and from 18.1.96 to 19.11.96 (subsequent to the period of alleged unauthorised absence mentioned in the charge-sheet). But both the authorities could not have travelled beyond the articles of charges framed against the applicant. If there was any unauthorised absence other than the period mentioned in the charge-sheet, the applicant should have been given a notice by issuing charge-sheet even regarding that period also. But that they have not done, nor the applicant had an opportunity to explain about the said alleged absence, which was not mentioned in the articles of charges. From this, it follows that both the authorities below were influenced by the extraneous materials other than the one issued in the form of charge-sheet and the applicant did not have an opportunity to meet the same. Under the influence of such extraneous materials only, the disciplinary authority imposed the punishment of dismissal and if such extraneous materials were not to be considered, they would not have imposed the punishment of dismissal. In our considered opinion, we find that the punishment of dismissal awarded to the applicant is disproportionate to the charges levelled against the applicant, and it is unconscionable. Therefore, we propose to reduce the quantum of punishment having regard to the facts and circumstances of this case. Accordingly, we think it appropriate to set aside the punishment of dismissal vide Annexure A/1 with a direction to the respondents to reinstate the applicant by denying back wages from the date of his removal till the date of such reinstatement by way of punishment. Hence, we pass the order as under:-

"The application is partly allowed. The impugned orders of the disciplinary authority dated 21.11.96 and the appellate authority dated 28.01.99 are modified regarding the quantum of punishment. The order of removal dated 21.11.96 vide Annexure A/1 is set aside with a direction to the respondents to reinstate the applicant in service with all consequential benefits. However, he would not be entitled to any back wages from the date he was removed from the service till the date of his reinstatement, in terms of this order. Respondents are allowed three months time to comply with these orders. No order as to costs."


(GOPAL SINGH)
Adm. Member


(JUSTICE V.S. RAIKOTE)
Vice Chairman

cvr.

Part II and III destroyed
in my presence on 22-5-69
under the supervision of
section officer (I) as per
order dated 19/3/69

NGZ
Section officer (Record)

*R/Copy
on 29/10
2/20*

*plc
25/10/69*

25/10/69