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In the Central Administrative Tribunal
Jodhpur Bench : Jodhpur

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Date of order : 9.8.2002

O.A. No. 294/2001

Jabar Chand S/o Shri Choga Ram aged 37 years, Ex. Helper
Khalasi, Carriage and Wagon, Northern Railway, Merta Road
R/o 13, Lala Lajpat Rai Colony, Jodhpur.

..... Applicant.

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. Assistant Mechanical Engineer, Carriage and Wagon,
Northern Railway, Jodhpur.
3. Divisional Mechanical Engineer, Carriage and Wagon,
Northern Railway, Jodhpur.
4. Divisional Railway Manager, Northern Railway, Jodhpur.

..... Respondents.

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CORAM :

Hon'ble Mr. Gopal Singh, Administrative Member
Hon'ble Mr. J.K. Kaushik, Judicial Member

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Mr. Vijay Mehta, counsel for the applicant.
Mr. Kamal Dave, counsel for the respondents.

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ORDER

Per Mr. Gopal Singh :

In this application under section 19 of the
Administrative Tribunals Act, 1985, applicant, Jabar Chand
has prayed for quashing the impugned orders dated 28/29.8.20

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(Annex.A/1), dated 25.10.2000 (Annex.A/2) and dated 13/21.12.2000 (Annex.A/3) and further for a direction to the respondents to reinstate the applicant with all consequential benefits with continuity of service.

2. Applicant's case is that that while he was working as Helper-Khalasi in Carriage and Wagon Workshop, Merta Road, he was served with a Chargesheet on 30.08.1999 for absenting himself un-authorisedly from duty from 17.7.1999 to 20.8.1999. The applicant submitted his reply to the chargesheet on 15.9.1999. The Inquiry Officer appointed to inquire into the matter held the applicant guilty. The disciplinary authority imposed a penalty of compulsory retirement vide order dated 28.8.2000 (Annex.A/1). The appeal filed by the applicant was rejected by the appellate authority vide order dated 25.10.2000 (Annex.A/2) and the mercy appeal was also rejected by the Divisional Mechanical Engineer vide his order dated 21/13.12.2000 (Annex.A/3). The contention of the applicant is that penalty has been imposed upon him after considering his past record for which no notice was served upon the applicant. The appellate authority also considered the past conduct of the applicant while up-holding the penalty imposed by the disciplinary authority. Similarly, the Divisional Mechanical Engineer considered the past record of the applicant and upheld the penalty imposed by the disciplinary authority. It has, therefore, been argued by the applicant that while imposing penalty his past record cannot be taken into account without giving a notice to the applicant and without hearing him on those charges. It has, therefore, been prayed by the applicant that the orders of the disciplinary authority and the appellate authority be quashed and set aside.

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3. In the counter while contesting the arguments put-forth by the applicant, it has been pointed-out by the respondents that the inquiry was conducted as per the rules and regulations and the applicant has failed to establish any prejudice caused to him. It is also pointed-out that applicant was on leave for a day and has remained absent un-authorisedly thereafter. As per the rules, the applicant is required to obtain a sick memo from his office and report to the Railway Doctor and the Railway Doctor in turn, may issue a sick certificate after examining the employee. In case, the employee under-goes treatment from a private Doctor, he is under obligation to report his sickness firstly to the Railway Doctor of the area and if no Railway Doctor is available within 2.5 Kms., produce a PMC to his office. The applicant has not followed any of these rules. It is also pointed out that the charges against the applicant stood proved in the departmental inquiry. It is also submitted by the respondents that the disciplinary authority, appellate authority and the revisionary authority, had rightly considered the past record to meet the ends of justice and, therefore, there has been no infirmity in the orders of the disciplinary authority, appellate authority and the revisionary authority. In the circumstances, it has been urged by the respondents that the applicant has no case and the O.A. is liable to be dismissed.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. The learned counsel for the applicant has cited a few judgements in support of his contention, the judgements/orders are being discussed in subsequent paragraphs.



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6. In O.A. No. 212/96 (Vishnu Lal Nai Vs. U.O.I. & Ors.) decided on 22.8.2000 by this Bench, a penalty of compulsory retirement was imposed upon the applicant after having taken into consideration the past conduct of the applicant. It was held in that case that "since the order of compulsory retirement was passed without informing the applicant of his past conduct, the punishment of compulsory retirement would be unconscionable and it is severe and harsh. In these circumstances, we think it appropriate, in the interest of justice and equity, to modify the quantum of punishment by imposing a punishment of reduction to the next lower stage in the time scale of pay for a period of three years with cumulative effect." In this order, reliance was also placed on Hon'ble Supreme Court's judgement in 1969 (18) F.L. 159 (M/s. G.E.C. (P) Ltd., Naini, Allahabad Vs. Labour Court, Allahabad and Ors.). In that case also after considering the past conduct of the applicant, he was dismissed from service. In Ram Naresh Sharma Vs. Rajasthan State Road Transport Corporation & Ors. (1986) 2 Judicial Surveyor 238, where the petitioner's services were terminated after considering that he was punished 16 times in his service career without informing the fact to the applicant while deciding the quantum of punishment. It was held by Hon'ble the Rajasthan High Court that since the person's livelihood is involved, he must get reasonable opportunity to know that and say what he has to say. Accordingly, the termination of service of the petitioner was quashed.

7. In Balwant Singh Vs. The State of Haryana and others, 1998 (8) SLR 537, where the petitioner was absent from 7.7.1992 to 26.7.1992 because he was admitted in a civil hospital and the petitioner was dismissed from service.

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It was held by Hon'ble the Punjab & Haryana High Court that since the petitioner remained admitted as an In Door patient in a Civil Hospital at Jagadhri during the period of absence and, therefore, it cannot be held that he absented himself without any reason and further, that this does not amount to gravest misconduct on his part which invites extreme penalty of dismissal from service. The order of dismissal was accordingly quashed and the respondents were directed to reinstate the petitioner in service with all consequential benefits

8. In the instant case also the applicant has remained absent because of his treatment in a private hospital and he had joined his duties on the recommendation from a Railway Doctor. In this case also it cannot be held that applicant absented without any reason. It is also a fact that the authorities had taken the past conduct of the applicant into consideration before imposing the punishment. In this connection, we consider it appropriate to reproduce below the relevant portion of the orders :-

"(i) The disciplinary authority in his order dated 28.8.2000 (Annex.A/1), has mentioned 'on verifying the past service record of the applicant it was found that Shri Jabar Chand remains absent un-authorisedly for about 100 days every year and he is also absent today unauthorisedly. Therefore, Shri Jabar Chand, S/o Shri Choga Ram, Khalasi-Helper Merta Road, is not a fit person to continue in Railway service because his conduct will also affect other employees and that will not be in the interest of Railway Administration. Therefore, Shri Jabar Chand, Khalasi-Helper, Merta Road, is compulsorily retired from Railway service with immediate effect.

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(ii) The appellate authority has observed as under, vide his order dated 25.10.2000 (Annex.A/2) :-

Seen the entire case thoroughly and found that the employee remains absent and his conduct with his supervisor is also not good. Moreover, the applicant has not mentioned any such point in his appeal which needs consideration, therefore, I uphold the penalty imposed by the Assistant Mechanical Engineer.

(iii) The Divisional Mechanical Engineer, has observed in his order dated 13/21.12.2000 (Annex.A/3) as under :-

- (a) The applicant has been given adequate opportunity to produce his defence.
- (b) The disciplinary authority has penalised the applicant after applying his mind.
- (c) The appellate authority after considering the service record of the applicant for the last five years, wherein, he was found to be absent for 364 days, has rejected the appeal.
- (d) Therefore, the applicant remaining indifferent towards his duty and the Railway ~~Service~~ ~~Station~~ ~~remains~~ ~~absent~~ ~~un-~~ authorisedly as a habit and, therefore, there is no justification to consider the mercy appeal of the applicant. I, therefore, uphold the punishment imposed upon the applicant."

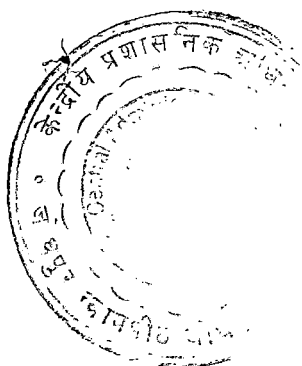
(Orders of the disciplinary authority, appellate authority and the DME are in Hindi. Above translation is ours).

9. It is very clear from the above that all the ^{past} authorities have taken into account the conduct of the applicant for imposing the penalty for the charge of remaining absent from 17.7.1999 to 20.8.1999. We are firmly of the view that the departmental authorities have erred in considering the past record of the applicant in deciding

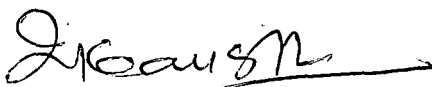
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the penalty in the instant case. As per the legal position discussed above, such an order cannot be sustained in the eye of law. In these circumstances, we have no other alternative but to quash and set aside the impugned orders at Annexs. A/1, A/2 and A/3 dated 28/29.8.2000, 25.10.2000 and 13/21.12.2000 respectively and direct the respondents to reinstate the applicant in service with all consequential benefits. Accordingly, we pass the order as under :-



"The Original Application is allowed. The Impugned Orders dated 28/29.8.2000 (Annex.A/1), dated 25.10.2000 (Annex.A/2) and 13/21.12.2000 (Annex.A/3), are quashed and set aside and the respondents are directed to reinstate the applicant in service with full back wages within a period of three months from the date of receipt of a certified copy of this order. The parties are left to bear their own costs."


(J.K. Kaushik)
Judl. Member


(Gopal Singh)
Adm. Member

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