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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Original Application No. 313/2001

Nathu Ram
S/o Shri Mithu Ram
r/o Vill and Post
Bala Heri,
Tehsil Mahuwa
Dist Dausa : Applicant.

rep. by Mr. B.Khan : Counsel for the applicant.

-versus-

1. Union of India through the
General Manager,
Northern Railway
Baroda House,
New Delhi.
2. Chief Medical Superintendent,
Bikaner Division
Bikaner, Northern Railway.
3. Divisional Medical Officer DEE,
Northern Railway,
Health Unit,
Delhi Sarai Rohilla. : Respondents.

rep. by Mr. Salil Trivedi : Counsel for respondents
1 to 3.

CORAM: The Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
The Hon'ble Mr. A.P. Nagrath, Administrative Member.

Date of the
order : 4.9.2002

Per Mr. Justice G.L. Gupta

ORDER

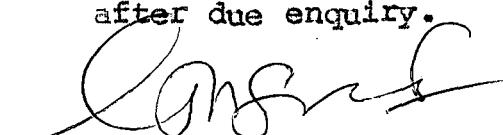
While the applicant was working as
Safaiwala in the office of the Respondent No.3, a
major penalty charge sheet was served on him vide
order dated 29.12.95, for unauthorised absence ()



from duty for 911 days during the period between 1993 and 1995. The applicant's plea was recorded in which he pleaded guilty. He did not contest the allegations made against him. The Enquiry Officer submitted his report holding that the charge of mis-conduct was proved against the applicant. The Disciplinary Authority holding that the charge was proved against the applicant, imposed the penalty of removal from service. The applicant preferred an appeal against the order passed by the DMO-DEE before the Senior Medical Superintendent, Northern Railway, Bikaner, who vide order dated 18.5.2001 rejected the same.

2. The applicant's case in this O.A is that the penalty imposed is disproportionate to the alleged mis-conduct and the Appellate Authority has not at all looked into this aspect of the matter. It is stated that the applicant could not attend to his duties because of the ailment of his wife and his father and ultimately both of them expired. It is prayed that the impugned charge sheet, the order of removal passed by the Disciplinary Authority and the order confirming the same by the Appellate Authority be quashed and the applicant be re-instated in service.

3. In the reply, the respondents have traversed the claim of the applicant on the ground that the applicant had not contested the matter and that there is absolutely no scope of interference by this Tribunal in the punishment imposed by the authorities after due enquiry.

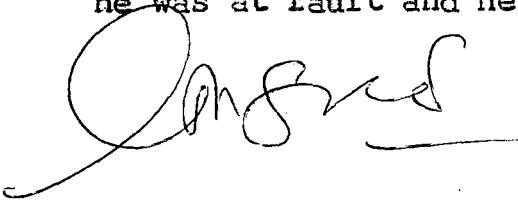


4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. Mr. Khan, learned counsel for the applicant confined his arguments to this fact that the Appellate Authority has not considered the appeal of the applicant in terms of the Rule 22 of the Railway Servants (Discipline and Appeal) Rules, 1968 (RSDA Rules for short), in as much as it did not record a finding that whether the penalty imposed was adequate, inadequate or severe. He submitted that the matter may be remitted back to the Appellate Authority for deciding the appeal in terms of Rule 22 of the RSDA Rules, 1968.

6. Mr. Trivedi, learned counsel for the respondents contending that the scope of judicial review is very limited in such matters, urged that on technical ground the O.A. should not be accepted.

7. We have given the matter our thoughtful consideration. It is evident that the applicant had not contested the charge. Rather he admitted in his statement recorded before the DMO-DEE that he was at fault and he had not attended the office.



That being so, the Disciplinary Authority was perfectly justified in holding that the charge framed against the applicant was proved.

8. It has, however, to be accepted that the Appellate Authority has not considered the appeal in the manner he was ~~expected~~ to consider. Rule 22(2) of the RSDA Rules, 1968, provides that where an appeal is preferred against the order imposing any of the penalties specified in Rule 6 of the Rules, apart from satisfying himself as to the procedure adopted in the inquiry was fair and the findings were based on the evidence adduced, it is the duty of the Appellate Authority to decide whether the penalty imposed is adequate or inadequate or severe. In other words, the Appellate Authority is required to record a finding that the penalty imposed is proportionate to the misconduct alleged against the employee.

9. It is noticed that the Appellate Authority has simply rejected the appeal stating that after personal hearing, he was of the opinion that NIP imposed by D.A held good. In our opinion it was not the compliance of Rule 22(2) (c) of the Rules

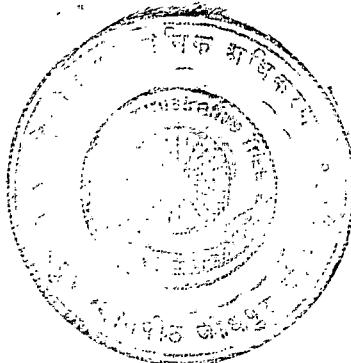
10. It is relevant to state that ~~the~~ the stand of ~~the~~ applicant in the memo of appeal was that due to family circumstances beyond his control he could



not attend the duties and that he had served for more than 30 years to the satisfaction of the authorities and as such the penalty imposed was disproportionate to the alleged misconduct. In view of the averments made in the memo of appeal it was the duty of the Appellate Authority to consider as to whether the penalty of removal was severe or not. Since this aspect of the matter has not been considered by the Appellate Authority, which was required to be done, we think it proper to remand the matter back to the Appellate Authority to pass appropriate orders keeping in view the provisions of Rule 22 (2) (c) of the RSDA Rules, 1968.

11. Consequently this application is allowed in part. The Appellate Authority's order dated 18.5.2001, confirming the Disciplinary Authority's order of removal is set aside. The Appellate Authority is directed to re-consider the matter and decide on the quantum of penalty keeping in view the provisions of Rule 22 (2) (c) of the RSDA Rules, 1968 and pass order within a period of 3 months from the date of the communication of this order.

12. No order as to costs.


A.P. Nagrath
Administrative Member


(G.L. Gupta)
Vice Chairman.

jsv.