

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 618
T. A. No.

199 9

DATE OF DECISION 9.8.1990

K. Rajaram Applicant (s)

Shri Majnu Komath Advocate for the Applicant (s)

Versus

UOI rep. by Secretary, Rly Board Respondent (s)
New Delhi and others

Mr. M.C. Cherian Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. Krishnan, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant in this case while working as Electrical Khalasi, Diesel Loco Shed Erode, was proceeded against by the respondents for unauthorised absence for a period of 39 days from 3.6.87 to 12.7.1987 and after enquiry he was removed from service by Annexure-I proceedings of the Dy. CME, Diesel, Erode dated 13.5.88. The applicant filed Annexure-II appeal memorandum before the Appellate Authority, which was dismissed by *practically* ^{by} one line order, which reads as follows:

"I have perused his appeal and the case carefully. I am satisfied with reasons for his removal from service and do not see any need to amend it."

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2. The applicant is challenging Annexures I and III orders in this application.

3. The respondents have filed detailed counter affidavit stating that the applicant was never regular in attending his works. He had been proceeded against previously; but he was not improving. After his unauthorised absence from 3.6.1987 to 12.7.1987, he came with a private medical certificate alleging that he was suffering from jaundice and was under treatment. He was admitted to duty, but a charge memo for unauthorised absence was issued to him. In the enquiry he was found guilty. Accordingly the Disciplinary authority imposed Annexure-I penalty of removal from service. The Appellate authority confirmed it by Annexure-III order. The applicant cannot be allowed to continue in service and the orders passed in this case removing him from service are legal and valid.

4. The applicant has also filed rejoinder denying the statements in the counter affidavit filed by the respondents.

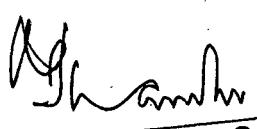
5. Having heard the matter, we are satisfied that the impugned orders at Annexure-III is unsustainable of the appellate authority to examine whether in view of the failure of the Disciplinary authority's decision, for imposing the severe punishment of removal from service of the applicant for absence from duty the for 39 days, is warranted by evidence in this case. The Disciplinary authority, even though accepted the finding

of the Enquiry Officer, has not independently dealt with all the contentions and came to a fair and reasonable conclusion about the guilt and punishment to be imposed ~~on~~ on the applicant in the impugned Annexure-I order communicated to the applicant, though the records show that he has done this in the office file. However, the applicant after getting the impugned order of the Disciplinary authority which is silent about the grounds for the order, filed Annexure-II appeal before the Appellate authority. He has urged in the appeal memorandum that the punishment imposed in this case is disproportionate to the gravity of the offence committed by him. In the appeal memorandum he has also stated that after joining duty on 13.7.87 with the medical certificate he has been allowed to continue in duty till 19.5.1988 without raising any sort of objection by the respondents. He has also raised some grounds for invoking sympathetic consideration of his appeal such as that he had a clean record of service. He has also a further case that due to severe illness he was compelled to absent from duty from 3.6.1987 to 12.7.1987 and he would not repeat the same. But the Appellate authority did not consider any of these grounds. The authority had not applied its mind in as much as he has not given proper finding in accordance with rules as to whether the evidence is sufficient to sustain the severe punishment of removal of the applicant from service and whether the gravity of the offence alleged to have been committed by him is so grave enough to sustain the punishment of removal from service. He has not independently assessed the evidence in the light of the grounds raised in the appeal before reaching his conclusion *(with regard*

to the guilt of the applicant.

6. Having regard to the facts and circumstances of this case we are of the opinion that the Appellate authority did not consider any of the aspects raised by the applicant in the appeal xxx or any of the matters found in the report of the Enquiry Officer. Annexure-III order is unsatisfactory and cannot be sustained.

7. Accordingly we are quashing the order at Annexure-III passed by the Appellate authority and sending the case back to the Appellate authority for a fresh consideration and disposal of the case in accordance with law. There will be no order as to costs.


(N. Dharmadan) 9.8.90
Judicial Member


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(N. V. Krishnan)
Administrative Member

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