

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 383/2008

Reserved on 10.12.2014

Pronounced on 24-12-2014

Hon'ble Sri Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Kamni Prasad aged about 48 years son of late Ram Naresh r/o village post Bhalwaria District-Gonda

Applicant

By Advocate:- Sri M.A. Siddiqui

Versus

1. Union of India through General Manager, North Eastern Railway, Head Qr. Office, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow
3. The Senior Divisional Mechanical Engineer (C&W), North Eastern Railway, Divisional Office, Ashok Marg, Lucknow.s

Respondents

By Advocate: Sri Rajendra Singh

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present O.A. is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

8.1 That the Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 5.8.2008 and dated 26.7.2007 contained in Annexure No. 1 and 1/A to this O.A. The punishment contained in Annexure No. 1/A without mention of the period during which it would be operative is against rules and unenforceable and deserves to be quashed.

8.2 That the Hon'ble Tribunal may further be pleased to direct the respondent No. 2 and 3 to call the applicant to attend fresh inquiry with his defence helper, if any is to be conducted in the matter.

8.3 Any other relief as deemed fit in the above mentioned circumstances may also kindly be allowed with cost to meet the ends of justice.

2. The brief facts of the case are that the applicant joined the respondents organization. The applicant served for a subsequent period of time and the applicant's mother met with a road accident as such he could

not attend his duties and applied for leave. The learned counsel for applicant has categorically indicated that on account of some enmity between him and some other employees, he was charge sheeted on account of unauthorized absence inquiry was conducted and thereafter the punishment was awarded to the applicant. The applicant preferred the appeal and the appellate authority modified the punishment order. The applicant further preferred the revision and revision so preferred by the applicant was considered by the revisional authority and rejected the same. The learned counsel for the applicant has categorically indicated that the respondents have not indicated the period of punishment in the appellate order. As such, the same is illegal and is liable to be quashed.

3. On behalf of the respondents, reply is filed and through reply, it is indicated by the respondents that while the applicant was posted as Technician II under the Senior Divisional Mechanical Engineering, a charge sheet was served upon the applicant for his unauthorized absence from duty and after due enquiry, the disciplinary authority passed order of removal. The applicant preferred the appeal and the appellate authority modified the punishment to that of reversion to Technician Grade III at lowest pay scale with cumulative effect. The applicant thereafter, filed a revision petition and the revisional authority rejected the same by means of order dated 5.8.2008. The learned counsel for the respondents has categorically indicated that there is no illegality or infirmity in the impugned orders as such it does not require any interference by this Tribunal.

4. On behalf of the applicant, Rejoinder reply is filed and through rejoinder reply, mostly the averments made in the O.A. are reiterated and the denied the contents of the counter reply.

5. Heard the learned counsel for the parties and perused the records.

6. The applicant joined the respondents organisation and on account of unauthorized absence, he was served with a charge sheet and after service of the charge sheet, inquiry officer was appointed and inquiry officer

submitted his report through which the charges leveled against the applicant stands proved. Apart from this, it is also indicated that the applicant remained unauthorizedly absent w.e.f. 8.8.2006 and the applicant was also asked to participate in the inquiry. The respondents tried to send the copy of the charge sheet at this residential address and when it could not be served, the same was published in the local newspaper "Dainik Jagran" and when he failed to participate in the inquiry and the inquiry officer submitted the report and on the basis of report, the disciplinary authority has taken a decision and passed the order of removal from service. The applicant feeling aggrieved by the said order, preferred the appeal to the appellate authority and the appellate authority vide its order dated 13.7.2007 considered the request of the applicant and after having a sympathetic consideration, modified the punishment and reduced it to that of reversion to Technician Grade III at the lowest of the pay scale with cumulative effect and also pointed out that the intervening period i.e. 9.3.2007 to 26.7.2007 would be treated as dies-non. The applicant not being satisfied with said order, preferred the revision petition and the revisional authority has also passed an order on 5.8.2004, whereby upholds the punishment so awarded by the appellate authority. The revisional authority also replied to the objection raised by the applicant in regard to the time limit to be mentioned in the punishment order and the revisional authority has taken a plea of Railway Servants (Disciplinary and Appeal) Rules 1968 and para 6 (vi) of the said rules reads as under:-

"Reduction to a lower time scale pay, grade, post or service with or without further direction regarding condition of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service."

7. The learned counsel for applicant has also relied upon a decision of this Tribunal passed by the Cuttack Bench, though the said judgment is in regard to the modification of order and finally orders passed imposing

multifarious punishment. In the instant case, no such order is there. The applicant was granted full opportunity to participate in the inquiry but despite that he failed to participate, as such there appears to be no illegality in the punishment order.


8. The Hon'ble Apex Court in the case of **B.C. Chaturvedi v. U.O.I. & ors. reported in 1995(6) SCC 749** again has been pleased to observe that **“the scope of judicial review in disciplinary proceedings the Court are not competent and cannot appreciate the evidence.”**

9. In another case the Hon'ble Apex Court in the case of **Union of India v. Upendra Singh reported in 1994(3)SCC 357** has been pleased to observe that the scope of judicial review in disciplinary enquiry is very limited. The Hon'ble Apex Court has been pleased to observe as under:-

“In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.”

10. Not only this the Hon'ble Apex Court has even observed in regard to scope of judicial review as well as in regard to the quantum of punishment and in the case of **State of Rajasthan v. Md. Ayub Naaz reported in 2006 (1) SCC 589**. The Hon'ble Apex Court has been pleased to observe as under:-

“10. This Court in Om Kumar v. Union of India while considering the quantum of punishment / proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been



taken into account nor any illegality committed by the authority nor was the punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment of removal was not called for.”


11. The Hon'ble Supreme Court in the case of **U.O.I. & ors. v. G. Annadurai reported in (2009) 13 SCC 469** has held that Courts are not for interfering with dismissal order passed against respondent employee and it has further been observed by the Hon'ble Apex Court observed as follows:-

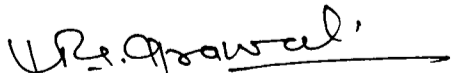
“4. A memo of charges dated 23.12.1997 was drawn up, the charge memo was sent to the respondent by registered post at his home address. The respondent did not respond to the charges leveled and the charge memo was sent back undelivered. An enquiry officer was appointed and after issuance of notice to the respondent to appear before him on 26.1.1998 along with his written statement, reminder was sent to him on 10.2.1998. As the respondent did not respond to the notices issued, an order was passed ex parte.

12. The factual scenario shows that ample opportunities have been given to the respondent in order to enable him to effectively participate in the proceeding. He has failed to avail those opportunities. That being so the Division Bench of the High Court ought not to have interfered with the order of the learned Single Judge which according to us is irreversible. The appeal is therefore allowed and the impugned judgment is set aside.”

12. The applicant was initially removed from service by the Disciplinary Authority which was considered by the Appellate Authority and punishment so imposed by the Disciplinary Authority was modified and in terms of para 6 (vi) of Railway Servants (D&A) Rules, 1968, it is clear and it does not bar the respondents to pass an order. Accordingly, there is no illegality and infirmity found in the order passed by the competent authority.

13. Accordingly, the O.A. is fit to be dismissed. No order as to costs.


(Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-