

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA.  
O.A. No. 295/2006**

**Date of order : 25.06.2008**

**C O R A M**

**HON'BLE MS. SADHNA SRIVASTAVA, MEMBER[J]  
HON'BLE SMT. MANJULIKA GAUTAM, MEMBER[A]**

Badre Alam, son of Late Sultan Alam, resident of Village – Tenda, P.O.- Dargah Bela, District-Vaishali.

..... Applicant.

-By Advocate : Shri Gautam Bose with Vikash Jha

-Versus-

1. The Union of India through the General manager, East Central Railway, Hajipur.
2. The Divisional Railway Manager, E.C. Railway, Sonepur.
3. The Divisional Railway Manager(Mechanical), EC Railway, Sonepur.
4. The Assistant Divisional Mechanical Engineer (Power), EC Railway, Sonepur.

..... Respondents.

- By Advocate : Shri N.K. Sinha.

**O R D E R**

**Smt. M. Gautam, M[J]:-** Heard both the learned counsel for the parties.

2. The facts of the case are that the applicant was appointed under Sports Quota in North Eastern Railway on 10.03.1978 and has been working since then as substantive Box Porter. Being a Muslim,

the applicant took leave for 23rd February,2002 ( Id-Ul-Zoha ) and 24<sup>th</sup> February,2002 (Sunday) after which he availed his official rest on 25<sup>th</sup> & 26<sup>th</sup> February,2002. His case is that on reaching home he found his wife, who was in an advanced stage of pregnancy, critically ill and got her admitted to a Hospital in Tajpur on 28.02.2002. Thereafter, a premature male child was born but subsequently died after 5 or 6 days. Due to this traumatic experience he could not go back to join duty till 18.04.2002. Thereafter on 19.04.2002, 17.05.2002, 26.07.2002 and 29.10.2002 he sent letters to his department under certificate of posting informing them of the reasons of his absence from his duties. Thereafter, in November,2002 he went to join office but he was not allowed to join by the concerned official and on 13.01.2003 he was served with a charge sheet dated 08.10.2002. He cooperated in the enquiry proceedings and the enquiry officer recommended his case to the disciplinary authority for sympathetic consideration. But the disciplinary authority, i.e. AME (Power), Sonepur without considering the facts of his case passed an order of compulsory retirement on 22.09.2003. The applicant then moved to the Tribunal against this order in OA No. 857/2003 which was disposed of with permission to prefer an appeal before the appellate authority within a period of one month from the date of passing of the order.



The applicant filed an appeal on 1.12.2004 against the order of compulsory retirement and also requested for personal hearing. But the appellate authority, i.e. DRM(M), EC Railway, Sonepur rejected his appeal on 11.08.2005. Therefore, in this OA the applicant has prayed for the following reliefs:-

(i) Order dated 11.08.05 and order dated 22.09.2003  
be quashed and set aside.

(ii) The applicant may be re-instated in service with  
all consequential benefits.

3. It is admitted by the applicant himself as well as the Enquiry Officer has mentioned that the applicant was absent from duty after availing leave from 23<sup>rd</sup> to 24<sup>th</sup> February, 2002. It has also been held that the reasons for the absence was the illness of his wife and subsequent death of a male child. The Enquiry Officer has held him guilty of absence from duty, but has also stated that the applicant kept on informing his department through letters sent under certificate of posting. He has also stated that work and performance of the applicant was satisfactory and after this period of absence he has been working regularly. Hence, in the absence of any evidence the matter is referred for sympathetic consideration. In response to this vide order dated 22.09.2003 he was compulsorily retired. On the direction of this

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Tribunal when he preferred an appeal to the appellate authority stating again reasons for his absence from duty also requested for a personal hearing, but vide order dated 11.08.2005 his appeal was rejected. The learned counsel for the respondents has stated that the reasons given by the applicant for his long absence from duty are not convincing and that the medical certificate wherein his wife is shown to be under treatment in Tajpur is not to be relied upon as being a Railway employee he should have taken his wife for treatment at Samastipur Railway Hospital.

4. In his rejoinder, the applicant contradicted this and says that his wife was in critical condition and samastipur was not well connected and therefore it was not possible for him to take her to the Railway Hospital for treatment in emergency condition.

5. The respondents have also stated in their written statement that the applicant was habitual defaulter, but had not provided any evidence for this. In his rejoinder, the applicant has clarified that only on one earlier occasion he has been absent from duty and that was when his first wife had died after six months of their marriage.

6. It is important to note here that the period of absence is not disputed by the applicant, but he has tried to give cogent reasons

for his not being in a position to rejoin duty. The enquiry officer has also found his work and conduct to be satisfactory and has recommended his case for sympathetic consideration.

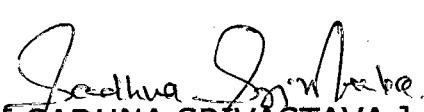
7. On the basis of facts on record, order of compulsory retirement seems to be too harsh a punishment for the admitted unauthorised absence of the applicant. The rejection order is also cryptic. It refers to his service record but does not mention the past punishment imposed on the applicant. The applicant himself has admitted an earlier instance of being absent from duty. Beyond this, there is nothing on record to show that he was a habitual defaulter or an unsatisfactory employee.

8. Hence, the matter is remitted to the disciplinary authority to pass fresh order pursuant to the report of the enquiry officer and the facts submitted by the applicant within two months from the date of receipt of copy of this order. The orders dated 22.09.2003 and 11.08.2005 are quashed and set aside. The OA is disposed of accordingly. No costs.

  
[ MANJULIKA GAUTAM]

MEMBER[A]

srk.

  
[ SADHNA SRIVASTAVA ]

MEMBER[J]