CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.381/2000.

DATE OF DECISION : 22.10.2003

Mushtaq Ahmad Shaikh ... Applicant.

J.M.Tanpure ... Advocate for the Applicant.

Vs.

Union of India & Ors. ...Respondents.

Shri V.D.Vadhavkar ...Advocate for Respondents.

Coram: Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

1. To be referred to the reporter or not?

2. Whether it needs to be circulated to other Benches of the Tribunal?

3. Library?

S.B.

(S.BISWAS)
MEMBER (A)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.381/2000.

, this the 22nd day of Oct, 2003.

Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

Mustaq Ahmad Shaikh,
Gadre Chawl,
Vadgaon Maval,
Near Vadgaon Rly. Gate,
Tal -Maval,
Dist. Pune. ...Applicant.
(By Advocate Shri J.M.Tanpure)

v.

1. Union of India through
   The Secretary,
   Ministry of Railways,
   Rail Bhawan,
   New Delhi - 110 011.

2. The Sr. Personnel Officer,
   CWS's Officer,
   Central Railway,
   Parel,
   Mumbai - 400 012.

3. Chief Workhop Manager,
   Parel, Central Railway,
   Mumbai - 400 012. ...Respondents.
(By Advocate Shri V.D.Vadhavkar)

: **O R D E R** :

{S.Biswas, Member (A)}

In this OA, the applicant has sought quashment of his removal order dt. 06.08.1994 and Appellate Order dt. 09.10.1995.

2. The applicant was engaged as a Casual Labourer and finally regularised in the year 1980. He was also promoted as Canteen Vendor and posted at Parel Loco Workshop. Since the applicant was coming from far of place i.e. Wadgaon Maval, he was having some difficulties. It has been stated that property worth

...2.

Rs.40,000/- was looted from his house during the year 1991 and out of shock he was not able to attend the office from 24.10.1991 to 09.03.1992, for which he was charge-sheeted under the Railway Servants (Discipline & Appeal) Rules, 1968 for unauthorisedly absenting from duty and a major penalty was proposed. He participated in the enquiry, and in the final order dt. 06.08.1994 he was removed from service w.e.f. 06.08.1994. He made an appeal, but that was turned down. Further, he preferred a mercy appeal on -5-97/25.02.1997 to the General Manager, which was not forwarded by Respondent Nos. 2 and 3. He further submitted Review Application on 06.03.1998, to which he received a reply that no further review is possible under D & A Rules.

3. As there was some delay in filing the O.A. due to the alleged mis-understanding about the mercy application and the review application which are not statutory appeal, and statutory review, the delay was fortuitous. He has, therefore, sought for condonation of delay in filing the OA, which we have considered. The respondent authorities have given a detailed reply to the application confirming that the removal order was passed after observing necessary disciplinary formalities including enquiry, representation and in observance of the principles of natural justice these were disposed of. It is further alleged that the applicant was a habitual absentee and therefore an impediment in the smooth running of the canteen where he was posted.

4. We have gone through the records carefully and other submissions. We find that the disciplinary order is by and large issued after observing the principles of natural justice. The applicant has challenged this OA otherwise on a number of factual

...3.

S '02

and procedural defects which merits consideration. In the first place, it is pointed out that the facts adduced in the order of removal is not correct, inasmuch as, the charge sheet was issued for the period of absence from 24.10.1991 to 09.03.1992. Whereas, the Disciplinary Authority has mentioned in the same order that "It is therefore decided to remove you from service. You are removed from service w.e.f. 06.08.1994 (PM) after working hours." on the ground that "You have remained absent from duty unauthorisedly till date i.e. 06.08.1994". Therefore, the disciplinary authority has increased the period of unauthorised absence upto 06.08.1994 without any separate or supplementary charge sheet. We have perused the records and find that after his removal, another charge sheet was contemplated for minor penalty on 17.04.1993 against him for absence between 11.01.1993 to 20.03.1993, but it is stated therein that he resumed on 22.03.1993 as per certificate issued by ADMO Lonavala. Therefore, it is not clear to us whether this minor penalty charge sheet was at all issued or not, or was already revoked by that time. In the situation, the fact remains that the applicant was on duty after 09.03.1992. Further, the charge sheet would show that the certificate was issued by the ADMO on 22.03.1993 when he was on duty. Hence, the Disciplinary Authority has come to a wrong and improper conclusion abruptly in a slip shod manner without being briefed about the facts and therefore, has committed a factual error without providing the applicant a supplementary memo. This is a clear example of non-application of mind.

5. The Learned Counsel for the applicant also brought to our

...4.

notice that the proceeding was stated in the order dt. 06.08.1994 as ex-parte. Actually, the enquiry as per the enquiry report and day to day report shows that the applicant had attended the inquiry. Hence, ex-parte has been used without again applying his mind by the disciplinary authority.

6. As he has made no prayer for personal hearing, we find no lapse on the part of the Appellate Authority for not giving personal hearing. The question that has been raised before us is regarding the adequacy of the penalty in a case of unauthorised absence. Under Rule 22(c) the Appellate Authority is required to apply his mind himself on the quantum of punishment as per provision of Rule 22(2) of the RS(DA) Rules, 1968. The order is not speaking to this extent, as an innocent family behind him are financially affected by this removal. He tried to explain the reasons for his unauthorised absence. The penalty of removal is shockingly dis-proportionate. It is only subsequently that a charge sheet was perhaps issued for a small period of absence. That is not adequate to prove that he is an habitual absentee from official duty. No mala fides or wilful absence has been attributed in the case at all.

7. As regards his mercy petition, we also would like to observe that such mercy petitions and revision appeals are not statutory, but such representations also form part of the principles of natural justice and therefore, the same is required to be disposed of by the authorities to whom it is addressed and persons or officials intercepting the letters in transit and giving order of disposal is highly irregular and militate the principles of natural justice. In our view, therefore, these

...5.

S. C.

applications which were held back in transit and disposed of, not only went against the principles of natural justice as the concerned authorities did not pass any appropriate order, even if such petitions are statutorily inadmissible, the petition should be disposed only by whom it has been addressed. In the result, not only the applicant has been denied natural justice, but he has been subjected to avoidable delay in filing the OA, which we have considered for necessary condonation though. But, on perusing the reply to the MP under which condonation prayer was made, in para 3 of the reply to the MP, the respondent authorities have clearly admitted that "**the applicant again submitted review/revision application whereon he was advised vide letter dt. 25.07.1999 that no review is permissible but he may submit mercy appeal to the President of India under Rule 31 of the RSDA Rules, 1968**". On a perusal, we find that such a mercy appeal though it was addressed to the General Manager, was not appropriately forwarded to the President. Whereas, this is a case of major penalty of removal from service which affects the innocent family behind him. In the situation, we hold that the principles of natural justice were not observed in withholding the mercy petition and revision application addressed to the higher authorities and adequacy of the penalty of the penalty was not borne in mind by the Appellate Authority in disposing of the appeal under law. In the result, we set aside the impugned order dt. 06.08.1994 and the Appellate Order dt. 09.10.1994 with liberty to initiate fresh proceedings, but the same should be

...6.

S.Q.

completed within four months, of receipt of order failing which the process will abate. However, if the applicant is found responsible for any contributory delay, the period will stand extended by that number of days of delay caused by the applicant. In the meantime, the applicant will be reinstated within four weeks with consequential benefits without any interest. No costs.

(MUZAFFAR HUSAIN)
MEMBER(J)

(S.BISWAS)
MEMBER (A)

B.