

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 218/2000

Date of Decision: 31.07.2003

Prabhakar Shankar

Applicant

Shri R.G. Malia.....Advocate for Applicant(s)

Versus

Union of India & ors.

Respondents

Ms. Delailah Fernandez for Shri Suresh Kumar
Advocate for Respondents

CORAM: HON'BLE SHRI A.S. SANGHVI.
HON'BLE SHRI SHANKER PRASAD

MEMBER (J)
MEMBER (A)

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

Ans -

(A.S. SANGHVI)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO.218/2000

THIS THE 31ST DAY OF JULY, 2003

CORAM: HON'BLE SHRI A.S. SANGHVI. MEMBER (J)
HON'BLE SHRI SHANKAR PRASAD MEMBER (A)

Prabhakar Shankar,
Ex-Gangman,
formerly working under CPWI,
Western Railway,
Borivali, Mumbai. Applicant

By Advocate Shri R.G. Malia.

Versus

1. Union of India, through
General manager,
Western Railway,
Headquarters Office,
Churchgate, Mumbai 400 020.
2. Divisional Railway Manager,
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai-400 008. Respondents.

By Advocate Ms. Delailah Fernandez for Shri Suresh Kumar.

O R D E R
Hon'ble Shri A.S. Sanghvi, Member (J)

The applicant was working as Gangman under PWI, Borivali. He had applied for 10 days leave with effect from 10.9.1993 and proceeded to his native place. According to him, while he was repairing his house he had fallen down from roof and sustained multiple fracture including injury to the spinal chord. He was admitted in the hospital in Ratnagiri and was shifted to Sion Hospital, where he was operated upon. He was bed-ridden for more than six months. He had however not reported

for duty and as such a charge sheet levelling impugnations for unauthorised absence was issued against him. According to the applicant he had not received copy of the charge sheet but he had received the letter asking him to attend the departmental inquiry on 01.3.1995. He had in response to this letter gone to the office of the respondents at Borivli but as even after waiting for about 30 minutes the Inquiry Officer had not come and he was told that the Inquiry Officer would not be attending the office on that day, he had left the office and went home. However, an exparte inquiry was thereafter conducted by the Inquiry Officer on a later date and he was sent the report of the Inquiry Officer on 15.8.1995. He was thereafter served with the order of the Disciplinary Authority dated 20th September, 1995 removing him from the service. He had preferred an appeal against the order on 13.02.1996 but the appeal has come to be rejected by the Appellate Authority on 18.6.1996. The Appellate Authority had not given him an personal hearing even though he had asked for the same. He preferred a Revision Petition, but the same had also come to be rejected on 17.7.1997 and hence this OA is filed. According to the applicant the whole proceedings were vitiated as they were initiated without serving the copy of the charge sheet on him. According to him even when he tried to attend the inquiry the Inquiry Officer had not remained present, he had not given any other date. The Inquiry

Officer had proceeded in breach of principles of natural justice as he was not informed about the date of the inquiry. He has also contended that he had ample reasons for not reporting for duty as he was not well and completely bedridden. He has prayed that the penalty imposed on him by the Disciplinary Authority and confirmed by the Appellate and Revisional Authorities be quashed and set aside and the respondents may be directed to reinstate him in the service.

2. The respondents in the reply have denied that the charge sheet was not served on the applicant and have contended that charge sheet was served on the applicant and the applicant has acknowledged the same also. They have also contended that the applicant was asked to attend the inquiry at 2 PM, but he had not remained present at the relevant time. They have denied that the inquiry proceeded ex parte in breach of the principles of natural justice and have contended that the applicant had deliberately remained absent. They have also contended that the applicant was ~~not~~ aware of the inquiry proceedings against him. They have also contended that the applicant has not adduced any evidence to substantiate his claim that he was all through out bed-ridden or that he had received multiple fracture etc. They have also pointed out that the applicant had never cared to resume duty even after the inquiry was initiated and even though he was very well

aware that the inquiry was proceeding on the charges of unauthorised absence from duty. They have prayed that the OA be dismissed.

3. We have heard learned counsel for both the parties and carefully considered the rival contentions.

4. Mr. R.G. Walia, learned counsel for the applicant has at the outset submitted that he is not pressing the relief of quashing the punishment on the ground of inquiry having been vitiated or on the ground of charge sheet not being received as well as the inquiry having been conducted in violation of principles of natural justice. According to him, he is pressing this OA only on the ground of quantum of punishment as the punishment of removal from service imposed on the applicant is quite excessive and unreasonably harsh and shocking. According to him, the applicant is a class IV employee and on account of the circumstances beyond his control he could not attend the duty since he was bed-ridden all through out. He could not inform his superiors about his condition and could not intimate them the reason for his absence. The applicant had no other reason to remain absent from duty except that the injury sustained by him did not permit him to report for duty. The Disciplinary Authority as well as the Appellate Authority had not considered the ground of absence of the applicant though the applicant had brought out that he was all through out bed-ridden. He

has submitted that the applicant has a large family comprising of old parent and children etc., and they are all depending on him. According to him, the case of the applicant deserves sympathetic consideration and the applicant will not be claiming any backwages except reinstatement in service.

5. On the other hand Miss. Delailah Fernandez appearing on behalf of Mr. Suresh Kumar for the respondents has strongly opposed any reduction in the penalty of the applicant contending that there are no special features in this case which require any sympathetic consideration. According to her, even though the charge sheet was served on the applicant, which can be seen from the acknowledgment given by the applicant, the applicant has come out with the case that the charge sheet was not served on him. She has also pointed out that during his absence from duty the applicant had never intimated his condition of health. Even when the Inquiry Officer had informed him about the date of inquiry, he had not submitted the medical certificate or fitness certificate nor had he joined duty at the relevant time. She has further pointed out that prior to the date of the imposition of the penalty by the Disciplinary Authority on the applicant, the applicant had not reported for duty and this conduct of the applicant itself clearly suggests that he was not interested in carrying on his duty. She has also

submitted that the applicant was holding the safety category post of Gangman and his unauthorised absence from duty cannot be tolerated. He was therefore, rightly removed from service when it was found that the charges levelled against him were proved and he was held guilty of the charges levelled against him by the Inquiry Officer.

6. We have carefully considered the rival contentions and we agree with the submission of Miss. Delailah Fernandez that the case of the applicant does not require any sympathetic consideration. The applicant has never submitted the proof of his sickness either before the Inquiry Officer or before the Disciplinary Authority or Appellate Authority. He has not adduced any evidence in this OA also showing that he was sick and bed-ridden and was not able to attend the duty during the relevant period. Another significant aspect is that he contended in his OA that he had visited the respondents' office to attend the inquiry pursuant to receipt of Inquiry Officer's notice and had waited there for about 30 minutes for Inquiry Officer to come and attend the inquiry. He was told that the Inquiry Officer would not be coming on that day and therefore he went away. This submission on the part of the applicant suggests that he was able to come to the office of the respondents on the date on which inquiry was to be held, but he did not report for duty or did

not ask permission from his superiors to permit him to join duty. He just went back to his house on learning that Inquiry Officer would not be attending the office on that day. Thereafter also he never reported for duty. This conduct of the applicant therefore suggests that he was not interested at all in his duty or in the service. His claim that he had met with an accident on account of falling from the roof of his house and had sustained multiple fracture including damage to his spinal chord is not substantiated. No medical certificate from any authority was produced by the applicant to substantiate his say that he was bed-ridden. It is therefore difficult to believe his contention. Even after filing of this OA he has not tried to adduce evidence in the nature of medical certificate to substantiate his say that he was bed-ridden. It is true that the applicant belonged to safety category of Gangman and his unauthorised absence from duty cannot be lightly taken. This dis-entitles him of any sympathetic consideration for the penalty imposed on him. It cannot be considered that the punishment "removal from service" imposed on him is unreasonably high or excessive or such as to shock the conscious of this Tribunal. Merely because he belongs to Group-D category cannot be a consideration for a lighter punishment, when it is found that he had remained absent unauthorisedly without any justifiable reason and that he does not appear to be interested in

performing his duty, all the more when he belongs to safety category post. The Supreme court in the case of State of U.P. Vs. Ashok Kumar Singh reported in AIR 1996 SC 736 have held that the absence of a public personnel from duty amounted to misconduct of grave nature and if he remains unauthorisedly absent from duty penalty of removal from service cannot be said to be excessive or unreasonably high or not commensurate with the gravity of offence. This decision squarely applies to this case also. We have therefore no hesitation in concluding that no ground is made out by the applicant for interfering with the punishment imposed on him and we cannot interfere with the punishment. We find that there is no merit in the OA and the same deserves to be rejected. We therefore reject this OA with no order as to costs.

Shankar Prasad
(SHANKAR PRASAD)
MEMBER (A)

A. S. Sanghvi
(A.S. SANGHVI)
MEMBER (J)

A
Gajan

8-9-96