

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the ^{6th} day of August, 2003

Coram: Hon'ble Shri A.S.Sanghavi - Member (J)
Hon'ble Shri Shankar Prasad - Member (A)

O.A.271 of 2000

S.H.A. Zahidi,
Ex-SS (EST) PLG - PL,
Western Railway, Lower Parel
Workshop, N.M.Joshi Marg, Mumbai.
R/o Quais Manzil,
1st Floor, Flat No.273, Nalla Sopara,
(West), District Thane.
(By Advocate Shri H.A.Sawant) - Applicant

Versus

1. The Chief Workshop Manager,
Western Railway Lower Parel Workshop,
N.M.Joshi Marg, Mumbai.
2. The General Manager,
Western Railway, H.Q. Office,
Churchgate, Mumbai.
3. Union of India
through Secretary,
Rail Board, Rail Bhavan,
Ministry of Railways,
New Delhi.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

{By Hon'ble Shri Shankar Prasad - Member (A)}

Aggrieved by the order of disciplinary authority dated 7.10.1996 dismissing him from service, the order of appellate authority dated 27.12.1996 modifying the penalty to removal from service, and the order of Chief Workshop Manager dated 5.8.1998 stating therein that apart from DCRG no other compassionate allowance is payable, the applicant has preferred this O.A. seeking the following reliefs - *A.*

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"B. This Hon'ble Tribunal may also be pleased to issue direction/orders to the respondents to:-

- (i) Take the applicant on duty;
- (ii) To pay him back wages and consequential benefits;
or alternatively
- (iii) To pay the applicant compassionate allowance as prayed for from the date of the removal from service.
- (iv) To provide for cost."

2. The case of the applicant in brief is that he was appointed as Apprentice Mechanic (DH) on 8.11.1982 and was subsequently absorbed as Chargeman 'B'. He earned his promotion and at the relevant point of time was working as Station Superintendent (Estimates). His mother was upset by the Mumbai riots and had to be sent back to his native place in Calcutta. He had to go to Calcutta to see his ailing mother. He sent letters for extending leave by registered post. The said leave was not sanctioned and he was marked as absent. As he was a Senior Subordinate, officiating appointment could have been made in his place. The extenuating circumstances should have been taken into account. The appellate authority while reducing the penalty has taken notice of these. The penalty is excessive.

The applicant also filed an MP for condonation of delay.

3. The case of the respondents in brief is that the applicant was absenting himself from 2.12.1994. He was advised vide letter dated 19.5.1995 to resume duty forthwith failing

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which disciplinary action will be taken against him. When he did not resume duty a charge sheet was issued to him on 4.7.1995. The applicant did not attend the enquiry inspite of notices. The applicant also did not reply to the Enquiry Officer's report. Hence under the facts of the case the penalty of dismissal from service was imposed. All the action has been taken strictly in accordance with law.

The application is hopelessly time barred and no cogent ground has been given for condonation of delay. The OA is liable to be dismissed on this ground only.

5. It was argued on behalf of the applicant that the entire enquiry had been conducted ex-parte and that he was not given the notice. In any case the penalty is disproportionate.

6. A perusal of the Enquiry Officer's report shows the present position.

| | | |
|--|--|--------------------------------------|
| (a) Letter asking him to report for duty | Sent to local address & native place by Redg. A.D. | No A.D.recd. one un-delivered letter |
| (b) Chargesheet | -do- | Both returned undelivered |
| (c) Notice to attend Enquiry on 6.2.96 | -do- | -do- |
| (d) Notice to attend enquiry on 28.2.96 | -do- | No comments recorded. |

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It is further indicated that the charge sheet was also pasted on notice board in presence of two witnesses. The notice to attend enquiry on 28.2.1996 was also pasted on notice board in presence of two witnesses and one copy was handed over for local service. Ex-parte enquiry was conducted on 28.2.1996.

On that date the sole prosecution witness was examined and the prosecution documents perused and the report submitted.

The report indicates -

"He sent letter of extension of his leave as per CP-3 and 5 but as per note of Dy.CME (B)/PL at CP-6 Shri Zahidi was not given any type of leave and he was unauthorised absent."

7. On receipt of the penalty order the applicant submitted as follows in his appeal.

"Sir, I would like to mention that, during the entire absence period I was sending regular intimation regarding the serious condition of my mother. I could not attend the enquiries, above failure were also inform to your office with registered post for kind consideration please.

The punishment awarded is not only excessive but to the extreme limit and highest in Government service rules.

Sir, I agree that remaining unauthorised absence is a misconduct but the quantum of punishment is not rational unwanted and excessive as compared to similarly other cases".

8. It is clear from the above that the ground of ex-parte enquiry and finding him guilty was not taken before the Appellate Authority.

In his subsequent representation dated 11.5.1998 to the Chief Works Manager he has only agitated the question of grant of compassionate pension as a monthly grant and aggrieved by the order dated 5.8.1998 that only DCRG is payable he preferred a representation dated 2.7.1999 to General Manager for grant of pension on compassionate ground.

9. As the findings of Enquiry Officer on the ground of ex-parte enquiry had not been challenged before the Appellate Authority and the same was also admitted the argument of ex-parte enquiry cannot be raised at this stage. The Apex Court in Deokinandan Sharma Vs. Union of India, 2001 SCC (L&S) 1079 disallowed a contention not raised before the appellate authority.

10. We also note that the applicant was a Senior Subordinate. A Senior Subordinate is a disciplinary authority for some grades. This fact had to be kept in mind while considering the penalty imposed on him. He has also not stated as to why the penalty is considered to be excessive.

11. We, however, note that the penalty was imposed on him in 1996 and the appeal was disposed of in 1996. Thus as for this aspect is concerned there is a delay of more than two years in *h*

preferring this OA. The explanation given by the applicant are not cogent. There is a possibility that promotion to the post held by him and subsequent promotions could have taken place in the intervening period. There are numerous decisions of Apex Court that Section 21 of the Administrative Tribunals Act is a special law and has to be strictly construed. The Apex Court decision in Secretary to Government of India Vs. Shivram H. Gaekawad, 1995 Supp (3) SCC 231 refers. *We accordingly hold their challenge to finding and quantum of penalty is hit by delay & Sr*

12. We find that as per Rule 65 of Railway Servants (Pension) Rules, compassionate allowance not exceeding two thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension could be sanctioned in case of Government servant who are dismissed or removed from service. When a discretion is vested on authority it should be exercised or refused by a speaking order. The Chief Workshop Manager has rejected the same by a one line order - "No other benefits of compassionate grant/allowance is granted." The same Chief Workshop Manager had modified the penalty from dismissal of service to removal of service. The Chief Workshop Manager held -

" In this case the Supervisor had absented himself that too for reasons for personal security and did not follow the relevant rules. It is also observed that the Supervisor is not willing to serve in the Railways in Mumbai Area. I feel that the penalty of dismissal in such cases of unauthorised absence is rather too harsh. The penalty is therefore, reduced to removal from service." */ The applicant had preferred an appeal to General Manager (Annexure-A-4). There is no reply to the averments made in Para 4.21 regarding submission of this representation. Sr*

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13. We are of the view that the Chief Workshop Manager should have assigned reasons for rejecting the request of compassionate allowance. The part of communication dated 5.10.1998 refusing grant of this allowance is quashed.

14. In the result, the OA partly succeeds. The Chief Workshop Manager, Parel will take a decision on grant of compassionate allowance within two months of receipt of a representation from the applicant, which should be submitted in a month of a receipt of this order. No case for interfering with the findings or the penalty is made out. No costs.

Shankar Prasad

(Shankar Prasad)
Member (A)

A. S. Sanghavi

(A. S. Sanghavi)
Member (J)

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Recd. of JUD. & despatched
to concerned/Recd. by Agent (s)
8-8-2003