

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 679/94.

Date of Decision: 19.8.1998

Jagan Bandoo

.. Applicant

Shri P.G.Zare.

.. Advocate for
Applicant

-versus-

Union of India & Another.

.. Respondent(s)

Shri R.R.Shetty.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not? *NO*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *NO*

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE-CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 679/94.

Wednesday, this the 19 th day of August, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

Jagan Bandoo,
Kashiram Nagar,
Behind Mamaji Talkies,
Bhusaval - 425 201.

... Applicant.

(By Advocate Shri P.G.Zare)

V/s.

1. Union of India through
The General Manager,
Central Railway,
Bombay V.T.

2. The Chief Rolling Stock
Engineer (CRSE)
Mechanical Department, Central
Railway,
Bombay V.T.

... Respondents.

(By Advocate Shri R.R.Shetty)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application challenging the order
of removal from service passed in the Disciplinary Enquiry.
The respondents have filed their reply opposing the
application. We have heard the learned counsel appearing
on both sides.

2. The applicant at the relevant time was working
as a Fitter at Bhusaval. Due to his unauthorised absence
for 20 days from 4.9.1991 to 23.9.1991 a disciplinary enquiry
was initiated against the applicant and after due enquiry,
the Enquiry Officer submitted a report that the charge of
unauthorised absence was proved. Though it is not clearly
stated in the application, we find from the reply filed
by the respondents and also as could be seen from the

...2.



impugned order that there was one more enquiry held against the applicant for unauthorised absence for a period of 68 days from 19.3.1992 to 27.5.1992. Even in the second charge sheet also, the official's absence was held proved.

On the basis of the two Enquiry Reports, the Disciplinary Authority passed an order dt. 26.11.1992 holding that in view of the mis-conduct of unauthorised absence as proved in the two enquiries and taking into consideration the conduct of the applicant remaining absent unauthorisedly on previous occasions, the Disciplinary Authority has imposed a penalty of removal from service. The applicant challenged that order before the Appellate Authority who by a cryptic one sentence order dismissed the appeal by his order dt. 28.1.1993. Then the applicant challenged the same before the Reviewing Authority, who also dismissed the Review Petition by an order dt. 17.9.1993. Being aggrieved by these orders the applicant has approached this Tribunal.

3. In the present case the unauthorised absence in both the enquiries is admitted. But the applicant's explanation appears to be that he was suffering from sickness during that period and therefore he could not attend to his duties.

4. The learned counsel for the applicant contended that the penalty of removal from service is very harsh and disproportionate to the alleged mis-conduct. He also submitted that on the date of order of penalty the applicant was aged about 57 years and was due to retire on 31.12.1993 and the penalty of removal from service at the fag end of the service was not called for. He has also attacked the legality of the orders of the Disciplinary

Authority, the Appellate Authority and the Reviewing Authority. The learned counsel for the respondents has supported the action taken by the Disciplinary Authority including the quantum of punishment imposed on the applicant.

5. After hearing both the sides, we find that the application should succeed on a short ground viz. both the Appellate Authority and the Reviewing Authority have not applied their mind to the facts of the case and they have not given ~~■~~ speaking orders. According to rules, the Appellate Authority has to pass a speaking order after applying his mind to the facts of the case and the procedure followed in the enquiry. Therefore, this is a fit case where the orders of the Appellate Authority and the Reviewing Authority should be set aside and the matter should be remanded to the Appellate Authority to apply his mind to the facts of the case and then pass a speaking order.

6. Before parting with the case we notice that there is no other mis-conduct alleged against the applicant except unauthorised absence during two spells of period. The question is whether ~~the~~ such unauthorised absence would call for a penalty of removal from service. The Appellate Authority should apply his mind to the nature of the mis-conduct and also take into consideration that the applicant was at the verge of superannuation within one year and to such a person whether such a serious ~~del~~ punishment is called for which will deprive him of his other retirement benefits including, gratuity, pension, family pension etc. It is also the case of the applicant that in many similar cases of unauthorised absence, the



Railway Administration has not taken such a drastic step of removal from service, but have imposed minor penalties. We, therefore, remand the matter to the Appellate Authority to apply his mind and take whatever view he deems fit regarding the penalty to be imposed having regard to the nature of mis-conduct, the age of the applicant and other circumstances appearing on record. We also give liberty to the applicant to make a detailed representation about the facts to the Appellate Authority within three ~~weeks~~ from to day. The Appellate Authority shall consider the appeal grounds and also the representation that may be given by the applicant and then pass a speaking order according to law. Needless to say if any adverse order is passed, it is always open to the applicant to challenge the same according to law.

7. In the result, the application is allowed. The orders of the ³Reviewing Authority dt. 17.9.93 and the order of the Appellate Authority dt. 28.1.1993 are hereby set aside. The matter is remanded back to the Appellate Authority to dispose of the appeal by a speaking order in the light of the observations made above. The Appellate Authority before passing the order shall give a personal hearing to the applicant. In view of the disposal of the O.A. itself M.P. 218/98 does not survive and accordingly it is disposed of. In the circumstances of the case there will be no order as to costs.


(D.S. BAWEJA)
MEMBER(A).


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.