

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 1139/94

Date of Decision: 28.10.98

Shri Vijay Ramanna Petitioner/s

Shri S.N. Pillai Advocate for the
Petitioner/s.

v/s.

Union of India and others. Respondent/s

Shri R.R. Shetty. Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman.

Hon'ble Shri D.S. Baweja, Member (A)

(1) To be referred to the Reporter or not? *W*

(2) Whether it needs to be circulated to
other benches of the Tribunal? *W*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PREScot ROAD, BOMBAY:1

Original Application No. 1139/94

Wednesday the 28th day of October 1998.

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

Vijay Ramanna
Ex.Points man Grade B
Under C.Y.M. Bhusaval,
Central Railway,
Bhusaval

... Applicant.

By Advocate Shri S.N. Pillai.

V/s.

Union of India through
The Divisional Railway Manager,
Central Railway Bhusaval Divn.
Bhusaval.

The Area Officer
Central Railway, Bhusaval
at Bhusaval.

The D.O.M. Central Railway
Bhusaval

The Additional Divisional
Railway Manager,
Bhusaval Division, Central
Railway at Bhusaval.

Mr. J.M. Kazi Inquiring Authority
through Divisional Railway
Manager, Bhusaval Division
Central Railway at Bhusaval.

... Respondents.

By Advocate Shri R.R. Shetty.

O R D E R (ORAL)

{ Per Shri Justice R.G.Vaidyanatha, Vice Chairman }

This is an application filed under Section 19
of the Administrative Tribunals Act 1985. The
respondents have filed reply. We have heard the
learned counsel for both the sides.

2. The applicant was working as Pointsman
Grade B, Central Railway, Bhusaval. A charge sheet
was issued against him for unauthorised absence from
28.10.1992 to 4.11.1992. The applicant gave an explanation

stating that the absentee was due to sickness. An enquiry was held and the Enquiry Officer has submitted his report stating that the charge is proved. On that basis the Disciplinary Authority by order dated 12.2.1993 imposed a penalty of removal from service. The applicant has filed an appeal before the Appellate Authority who by order dated 13.3.1993 dismissed the appeal and confirmed the order of the Disciplinary Authority. Against which the applicant ~~had~~ filed a revision ~~application~~ appeal. The Revision Authority has dismissed the same by order ~~dated~~ 13.10.1993. Being aggrieved by these orders, the applicant has come up with the present application.

3. The respondents in their reply have justified the action taken against the applicant. It is stated that the applicant has produced a medical certificate from a private Doctor and not from the Railway Doctor as required by rules.

4. The learned counsel for the applicant has questioned the correctness and legality of the impugned orders passed by the Disciplinary Authority and the Appellate Authority on merits and alternatively argued that the penalty imposed is grossly disproportionate to the mis-conduct and calls for interference ^{by} of this Tribunal. On the other hand the learned counsel for the respondents supported the order of Disciplinary Authority and the higher authority.

5. As far as the merits are concerned, admittedly the applicant had remained absent from 28.10.1992 to 4.11.1992. He did not apply for leave.

Admittedly after he joined the service on 5.11.1992, he was given a certificate from a private Doctor. This was not to the satisfaction of the authorities. No leave has been granted to that period. Therefore, the absence during that period was treated as unauthorised.

6. The question is whether for the period of unauthorised absence of one week, the penalty of removal from service is justified or not. It is seen that the Enquiry Officer has mentioned that by going through the service record the delinquent is in habit of absenting himself. The same view was expressed by the Revisional Authority against the past record of the applicant. In the charge-sheet there is no reference to the previous record of the applicant on the ground that he used to remain absent frequently. That was not subject matter of charge sheet. Therefore, the authority should not have taken into consideration the previous absence, if any, of the applicant. If the period is only for such an unauthorised absence of one week, on the face of it, the penalty of removal from service is grossly disproportionate which shocks the Conscience of the Court. We are aware of the limitations of judicial review. Normally the Court or Tribunal should not interfere with the quantum of penalty awarded by the Disciplinary Authority. It is well settled that if the penalty is grossly disproportionate to the mis-conduct so as to shock Conscience of the Court or Tribunal, the Tribunal may quash the penalty of imposition of removal from service. In such case normally the matter should be remitted to the Disciplinary Authority to

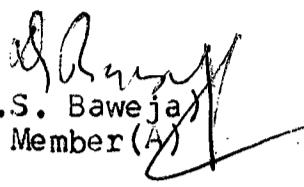
decide the quantum of penalty. It is also well settled that in certain cases to shorten the litigation the Tribunal or Court can itself impose proper penalty. Therefore, in the present case we hold that the imposition of penalty of removal from service was not called for and it is grossly disproportionate to the mis-conduct.

7. As far as proper penalty is concerned, we feel that the applicant is now without service for the last 5 years. One of the normal rules in service is that " no work no pay". We therefore, feel that the applicant should be reinstated forthwith and he should not get any salary for the period from 12.2.1992 till the date of reinstatement. This serves as sufficient punishment to the applicant so that he will be careful in future service under the respondents.

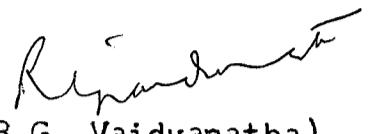
8. In the result the application is allowed. The order of Disciplinary Authority imposing the penalty of removal from service, confirmed by the Appellate Authority and Revisional Authority, is hereby set aside. The applicant is ordered to be reinstated in service forthwith and he shall be taken on duty on or before 30.11.1998. Though the applicant is not entitled to any backwages from the removal from service till the date of reinstatement, the applicant will be entitled to notional fixation of salary during this period and he is also entitled to count this period for the purpose of service for pension, seniority and all other service benefits.



except actual pay and allowances. In the circumstances of the case there will be no order as to costs.


(D.S. Baweja)

Member (A)


(R.G. Vaidyanatha)

Vice Chairman

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