

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 547/94

Hon'ble Vice Chairman / ~~Member (J)~~ / ~~Member (A)~~

may kindly see the above Judgment for
approval / signature.

Hon'ble Vice Chairman

~~Hon'ble Member (J)~~

~~Hon'ble Member (A) (K/S)~~

Sham
~~V.G. / Member (J) / Member (A) (K/S)~~

26/7/94

I agree
Rm
21/7

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 547/94

Date of Decision: 24/6/97

D.W.Solsha

Petitioner/s

Shri D.V.Gangal

Advocate for the
Petitioner/s.

v/s.

General Manager, C.Rly, Bombay V.T. & Anr.

Respondent/s

Shri S.C.Dhawan

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? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? x

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

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 547/94

Dated this the 22nd day of July, 1999

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

Devidas Waman Solshe,
Railway Wuarter No. NS-63,
Miraj and working as Khalasi
at Diesel Shed, C.Rly.Pune.

... Applicant

By advocate Shri D.V.Gangal

V/S.

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional General
Manager, Central Railway,
Solapur

... Respondents

By Advocate Shri S.C.Dhawan

O R D E R

(Per: Shri D.S.Baweja, Member (A))

The applicant while working as Khalasi under Loco Foreman, Daund, Central Railway was issued a chargesheet dated 4.9.1987 with the charge of remaining unauthorised absent for 572 days from 1.7.1985 to 30.7.1987. An enquiry officer was nominated and enquiry was conducted. The enquiry officer held the applicant guilty of the charge. A copy of the enquiry report was supplied

to the applicant. Thereafter, the disciplinary authority passed an order dated 20.1.1988 imposing punishment of removal from service. The applicant states that against this punishment he made a representation dated 3.5.1988 which was replied by the respondents as per letter dated 15.6.1988. Thereafter, he made another representation dated 18.7.1988 for which he got a reply dated 11.8.1988. The applicant again made another representation dated 3.9.1988 which was replied by letter dated 17.2.1989. In the letter dated 17.2.1989, the respondents had indicated that case of the applicant could be considered for reappointment for which he should make an application. The applicant made a request for compassionate appointment but the same was rejected. Finally, the applicant represented the matter to the Railway Minister and the matter was referred by him to the General Manager, Central Railway. It is understood that General Manager, Central Railway had replied to the Railway Minister but the applicant is not aware of the reply sent. Thereafter, the applicant reminded the respondents on 25.6.1993 but did not get any response for the same. Feeling aggrieved by the punishment order, the present OA has been filed on 26.4.1994. The applicant has prayed for quashing of punishment order dated 20.1.1988 and other orders thereafter dated 15.6.1988, 11.8.1988, 17.2.1989, 12.6.1989 and 14.11.1990 brought on record at Annexures. 'A-1' to 'A-6'.

2. The main defence put forward by the applicant is that the applicant had sufficient material to show that both he and his wife were sick and therefore he was prevented from attending the office and the cause was beyond his control. In such a situation, the charge of unauthorised absence is not tenable and the order of removal from service is bad in law. He has also stated that the findings of the enquiry officer were perverse as the evidence with regard to applicant's own sickness as well as wife's sickness had not been taken into consideration while recording the findings that the charge is proved.

3. The respondents have filed the written statement. At the outset, the respondents have taken a plea that the present OA is not maintainable on the ground that the same is belated and beyond the period of limitation provided under Section 21 of the Administrative Tribunals Act, 1985. The respondents have submitted that the punishment was imposed as per order dated 20.1.1988 and appeal and review applications had also been rejected subsequently as per orders dated 15.6.1988 and 14.11.1990. As regards the merits, the respondents contest the contention of the applicant that the order of removal is bad in law. The respondents submit that the applicant was unauthorisedly absent for 572 days

and at no time he had given any intimation with regard to his undergoing medical treatment. The applicant did not follow the rules for reporting sick and taking treatment under private doctor. The respondents further add that the applicant during the enquiry admitted that he was unauthorisedly absent and did not follow the medical rules for treatment from a private doctor. In view of the categorical acceptance of the charge levelled against the applicant, the enquiry officer had concluded that the charge was proved against the applicant. As regards the reference from the Railway Minister with regard to the case of the applicant, the respondents submit that the letter received from the Railway Board had been replied by letter dated 15.1.1992 in reference to applicant's letter dated 16.12.1991. In the facts and circumstances of the case as brought out by the respondents in the written statement, the respondents plead that the application is misconceived and the same deserves to be dismissed on merits also apart from being barred by limitation.

4. The applicant has not filed any rejoinder reply to the written statement of the respondents.

5. Heard the arguments of Shri D.V.Gangal, learned counsel for the applicant and Shri S.C. Dhawan, learned counsel for the respondents. The respondents have made available the original file containing the papers dealing with the disciplinary proceedings and the same has been gone through carefully.

6. Before going into merits of the relief prayed for by the applicant, we will consider whether the plea of application being barred by limitation raised by the respondents is sustainable. The respondents have submitted that the application is barred by limitation as per the provisions of Section 21 of the Administrative Tribunals Act highlighting that the applicant was punished by the disciplinary authority as per order dated 21.10.1988 and thereafter his appeal and revision application also had been considered and rejected as per the orders dated 15/16.3.1988 and 14.6.1988 respectively. Based on these facts, the respondents have taken the ground of the application filed on 26.4.1994 as being barred by limitation. The applicant has filed an application for condoning the delay in filing the OA. wherein the reasons for delay have been explained. After considering the facts and circumstances of the case, the averments made by the respondents and the grounds advanced by the applicant in the application




for condonation of delay, we are inclined to subscribe to the stand of the respondents that the present OA. is barred by limitation. It is admitted fact that the appeal of the applicant against the punishment order dated 20.1.1988 had been disposed of as per order dated 15/16.3.1988. Thereafter, the revision application had also been rejected as per order dated 14.6.1988. Even taking that the cause of action arose with the disposal of the revision application, the present OA. filed on 26.4.1994 is late by almost 5 years allowing one year for filing of the OA. as per the provisions in Section 21 of the A.T. Act. The applicant in the application for condonation of delay has tried to explain the delay stating that subsequent to disposal of appeal and revision, the applicant had made a representation to the Railway Minister and a reference ^{also} was made to the General Manager of the Railway. Since no reply was received by the applicant, he therefore made further representation to the General Manager on 25.6.1993. The applicant taking this date has justified that there is no delay in filing of the present OA. The applicant has also submitted that he was expecting favourable consideration of his case by the concerned authorities and on this hope he went on waiting. He has further stated that in ^{due to unemployment} view of the poor condition, he could not seek legal remedy. Considering the material brought on record,

we are unable to appreciate the grounds advanced by the applicant for delay in filing the OA. It is noted that after his revision application was dismissed, the applicant waited almost two years to make a representation to the Railway Minister. Thereafter ^{he} waited another 3 years to send a reminder to the General Manager. Even after sending the last reminder to the General Manager, the applicant waited for ^{almost a} year to file the present OA. These facts do not justify the delay in filing the present OA. If the applicant was aggrieved by the punishment order and was feeling the pinch of being without job, it was all the more necessary for him to seek legal remedy at the earliest possible time. In the matter of disciplinary proceedings, the cause of action arises with the disposal of the appeal which is provided as per rules and delay if any has to be explained with reference to that. In this connection, we refer to the judgement of the Constitution Bench of the Hon'ble Supreme Court in the case of S.S.Rathore vs. State of Madhya Pradesh, 1989 (11) ATC 913, where the issue with regard to limitation in respect of disciplinary proceedings with reference to Sections 20 and 21 of the Administrative Tribunals Act, 1985 has been gone into. The Hon'ble Supreme Court in this judgement has held as under in Para 22 :-

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue. Submission of just a memorial or representation to the head of the establishment shall not be taken into consideration in the matter of fixing limitation."

In the present case, the applicant has sought to explain the delay after disposal of the appeal and revision application by stating that he has been representing the matter at the various levels of Railway Minister and General Manager. As held by the Hon'ble Supreme Court, such representations which are not provided as per the statutory rules cannot be taken into consideration for fixing the period of limitation. Taking an over all view of the facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court in the case of S.S.Rathore, we have no hesitation to subscribe to the contention of the respondents and hold that the application is barred by limitation.



7. Now coming to the merits, we note that applicant has not brought out any infirmity in the disciplinary proceedings or any denial of reasonable opportunity in defending his case. The only ground on which the impugned orders have been challenged is that the findings of the enquiry officer are perverse. In support of this contention, the applicant has stated that the applicant was prevented for bonafide reasons for attending office on account of his own sickness and his wife's sickness covered by the medical certificates. The applicant accordingly pleads that his absence was therefore not wilful but on account of reasons beyond his control. Under such a situation the period of absence cannot be treated as unauthorised and this fact had not been taken into account by the enquiry officer while arriving at the findings that the charge is proved. The applicant to support this contention has relied upon the judgement of the Allahabad High Court in the case of Balwant Raj vs. Union of India & Ors. AIR 1968 Allahabad 14. The counsel of the applicant drawing our attention to para 6 of this judgement brought out that in this judgement it has been held that failure to attend office on account of sickness cannot be interpreted as voluntary and deliberate act of remaining absent. We have carefully gone through this judgement and are of the view that what is held in this judgement on facts and circumstances of the case ^{does} not apply to the present case. In this

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judgement, the respondents were aware of the sickness of the petitioner as he had been taking treatment in the Railway hospital and he was discharged^{and}/declared fit for duty by the hospital. The services of the petitioner were deemed to be automatically terminated as he was absent from duty for longer period than he was entitled under the rules. With these facts and circumstances, the Hon'ble High Court^{has} held that the relevant rules cannot be interpreted in this way in case of an employee who is suffering from long illness and which prevent^{ed}/him from resuming his duty within the maximum prescribed period as per the extant rules. The situation obtaining in the present case is entirely different. From the findings of the enquiry officer, we note that the applicant has admitted the charge of remaining absent without any intimation. The applicant has given the reason for his absence in his statement that he could not attend the office on account of sickness of his wife. Nowhere in his statement before the enquiry officer he has brought to the notice of^{the}/enquiry officer that he was prevented from attending his office on his own sickness in addition to the sickness of his wife. He has also not brought out any copies of the medical certificates before the enquiry officer. In fact, in his appeal dated 3.9.1988 at page 40 of the paper-book he mentions that on account of sickness of his wife he had to remain absent frequently and since he could not get leave often, there was no way out for him but

to report sick under the private doctor's certificate. From the findings of the enquiry officer and other documents brought on record, in fact, it appears that the applicant was not sick himself but he resorted to this expediency to cover his absence. If the applicant was sick and had been obtaining medical certificates for his sickness from time to time from private doctor, he should have produced the same at the relevant time instead of producing the same in one lot. Therefore, keeping in view the facts and circumstances in focus, we find that what is held by the Allahabad High Court in the above cited judgement is not applicable to the case of the applicant. Further, we are also not able to comprehend ourselves as to how the applicant makes a plea that the findings are perverse. If the applicant has not brought to the notice of the enquiry officer while admitting his charges that he was himself sick and his period of sickness was covered by medical certificates, he cannot contend ^{subsequently} that the enquiry officer had not taken this vital fact into consideration while arriving at the findings. Taking an over all view of the material before us, we are unable to subscribe to the view of the applicant that the findings of the enquiry officer are perverse.

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8. Lastly, the counsel for applicant made a strong plea that the punishment imposed is very harsh and a lesser punishment is called for in view of the poor condition of the applicant and the large family which he is required to support. It may be stated that the applicant has not taken this plea in the original application. This submission has been made only in the oral arguments. The learned counsel for the respondents, on the other hand, has strongly opposed any review of the punishment imposed submitting that the applicant had been absent for long periods adding to 572 days over a period of two years from 1985 to 1987 and the punishment imposed is consistent with the gravity of the charge. We have carefully considered the prayer of the applicant for review of the punishment. It is a settled position by the Hon'ble Supreme Court through catena of judgements that imposition of punishment consistent with magnitude ^{or gravity} of misconduct and evidence on record is the right of the disciplinary authority and the High Court/Tribunal in a judicial review has only limited jurisdiction and cannot normally interfere with the punishment imposed. Hon'ble Supreme Court in the case of B.C. Chaturvedi vs. Union of India & Ors., 1996 (32) ATC 44 has held that disciplinary authority and appellate authority being the fact finding authorities are vested with the discretion to impose punishment keeping in view the magnitude and gravity of misconduct. The High Court or Tribunal while exercising the power of judicial review may interfere with the punishment if the punishment imposed

by the disciplinary or appellate authority shocks the conscience of the High Court or Tribunal. In such an event, it would be appropriate to mould the punishment either by directing the disciplinary or appellate authority to reconsider the punishment to imposed or/shorten the litigation, it may in rare and exceptional case decide to impose appropriate punishment with cogent reasons recorded in support of the same. Keeping in view the law laid down by the Hon'ble Supreme Court, as stated above and the facts and circumstances of the case, we do not find that the penalty imposed on the applicant shocks the judicial conscience. The applicant has been charged with absence of long period of 572 days spread over a period of two years from 1985 to 1987. The charge is accepted by the applicant. The applicant had not followed the extant rules for remaining absent and had been absent without any sanction of leave. An employee is appointed in Government service for carrying out a particular job. If the employee remains frequently absent without any leave sanctioned, the job entrusted to such an employee in such a situation remains undone. This will affect the working of the system. Therefore the absence of an employee for long period without any sanction of leave or intimation to his office is a serious misconduct as this shows lack of devotion to duty and discipline. In this connection, we refer to the judgements of the Hon'ble Supreme Court cited by the counsel for the respondents during the hearing to press their point while opposing the review of the punishment for absence without leave constitute

misconduct. The judgements are State of U.P. & Ors. vs. Ashok Kumar Singh, 1996 SCC (L&S) 304 and Union of India & Ors. vs. Shri B.Dev, 1998 (2) S.C.SLJ 127. In the case of Ashok Kumar Singh, the petitioner was removed from service and he had challenged the matter before the Tribunal by filing an OA. The Tribunal dismissed the OA. The petitioner moved the matter before the High Court and the High Court set aside the order of punishment of removal from service holding that absence from duty would not amount to such a grave charge and punishment was not ⁱⁿ commensurate with the gravity of the charge. The Hon'ble Supreme Court has, however, not appreciated this observation of the Hon'ble High Court and has held that absence from duty on several occasions without sanctioned leave is a grave misconduct and no interference with the punishment order was called for by the High Court. In the present case, as we have stated earlier, it is our considered opinion that the charge has been of remaining absent for long periods constitutes a grave misconduct and the punishment imposed is not harsh that shocks the judicial conscience. In this view of the matter, we do not find any cogent reasons to interfere with the punishment imposed at our level or issue any direction to the disciplinary/appellate authority to review the punishment and substitute it by a lesser punishment.

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9. In the result of the above, none of the grounds taken by the applicant in assailing the impugned order survive and therefore the OA. is devoid of merits. The OA. is accordingly dismissed with no order as to costs. MP 344/99 stands disposed of accordingly.

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

R.G. Vaidyanatha
27/1/99
(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.