

Central Administrative Tribunal
Mumbai Bench, Mumbai

O.A. No. 1022 of 1997

Mumbai, dated this the 13th March 2002

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. S.L. JAIN, MEMBER (J)

N.M. Kabir,
R/o Sheetal Apartment,
Flat No. 102, Shiv Nagar,
Lal Chakki Road,
Ulhasnagar. Applicant

By Advocate: Shri K.B. Talreja

Versus

1. Union of India through
the General Manager,
Central Railway,
Mumbai CST, Mumbai.
2. The Divl. Railway Manager,
Central Railway,
Mumbai CST, Mumbai. Respondents

By Advocate: Shri Suresh Kumar

ORDER

Per S.L. Jain Member (J)

Applicant impugns the charge memo dated 3.8.94 (Annexure 7); the disciplinary authority's order dated 18.3.97 (Annexure 10) and the appellate authority's order dated 1.7.97 (Annexure 1). He seeks consequential benefits.

2. Applicant was proceeded against departmentally vide Memo dated 3.8.94 on the charge that while functioning as HXTR, Kalyan during 20.00 hours to 08.00 hours on 15/16.7.94 he was found absconding from his post of duty from 21.30 hours to 22.55 hours thereby causing dislocation to traffic.

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for two hours and resultant public agitation and damage to Railway property. He thus acted in a manner unbecoming of a Railway servant and vilated Rule 3 (1)(iii) Railway Servants Conduct Rules 1966.

3. The E.O. in para 4 of his report dated 6.10.96 (Annexure 2) held categorically that the charge against applicant of absconding from duty from 21.30 hours to 22.55 hours on the night in question could not be proved.

4. A copy of the E.O's findings was furnished to applicant for representation if any. Applicant submitted his representation on 6.11.96.

5. There~~fore~~^{upon}, the disciplinary authority by impugned order dated 18.3.97 held applicant guilty of the charge and imposed the penalty of withholding increments for a period three years with cumulative effect vide impugned order dated 18.3.97. Applicant's appeal was rejected by impugned order dated 1.7.97 giving rise to the present O.A.

6. We have heard both parties.

7. We note that although the E.O. had categorically held that the charge against applicant and absconding from duty from 21.30 hours to 22.55 hours on the night in question could not be proved, the disciplinary authority without recording his

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reason for disagreeing with the E.O's findings, and communicating the reasons for the disagreement to applicant, and giving him a reasonable opportunity to represent against those reasons for disagreement, has held applicant guilty of the alleged misconduct. The Hon'ble Suprme Court in several rulings has held that when the disciplinary authority disagrees with the findings of the E.O. the reasons for the disagreement have to be communicated in writing to the delinquent and he has to be given a reasonable opportunity of representing against the reasons for the disagreement before the disciplinary authority takes a decision in the matter. Some of the rulings are Narain Mishra Vs. State of Orissa 1969 SLR SC 657; Punjab National Ban & Others Vs. Kunji Bihari Mishra 1998 (5) SC 548; Bank of India & Anr. Vs. Degala Surya Narain JT 1999 (4) SC 489 and Yogi Nath D. Bade Vs. U.O.I. 1999 (7) JT 62.

8. Other grounds have also been taken by applicant but in our considered opinion the aforesaid ground is itself sufficient to warrant judicial interference in the O.A.

9. In the result the O.A. succeeds and is allowed. The impugned orders of the disciplinary authority and of the appellate authority are quashed and set aside. It will be open to the disciplinary authority to proceed from the stage of communicating his reasons for disagreeing with the findings of the E.O. and thereafter conclude the D.E. in accordance

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with law. While doing so the disciplinary authority will also apply his mind to the other grounds taken in the O.A. No costs.

S.L. Jain
(S.L. JAIN)

Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

karthik

~~C/~~ Judge dt 12/12/02
to
on 4/4/02

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