

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**MUMBAI BENCH**

**ORIGINAL APPLICATION NO.:** 744 of 1998.

Dated this Monday, the 24th day of June, 2002.

Shri Krishna Chandra Shrivastava, Applicant.

Shri N. C. Saini, Advocate for the Applicant.

**VERSUS**

Union of India & Another, Respondents.

Ms. Supriya Daware for Advocate for the  
Shri Suresh Kumar, Respondents.

**CORAM** : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri Shankar Raju, Member (J).

- (i) To be referred to the Reporter or not ? *Yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library ? *No*

*B-S*  
**(B. N. BAHADUR)**  
**MEMBER (A).**

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Shri Krishna Chandra Shrivastava,  
Working as TXR, Junior Engineer,  
Pune Yard, Central Railway.  
Residing at - Behind Ganesh Bakery,  
Lal Chakki, Ulhasnagar - 421 004,  
Dist. Thane.

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Applicant.

(By Advocate Shri N. C. Saini)

VERSUS

1. Union of India through  
the General Manager,  
Central Railway,  
Mumbai C.S.T.

2. The Divisional Railway Manager,  
Central Railway, Mumbai C.S.T.,  
Maharashtra.

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Respondents.

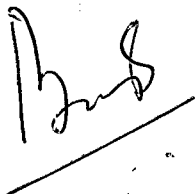
(By Advocate Ms. Supriya Daware for  
Shri Suresh Kumar).

**O R D E R** (ORAL)

**PER** : Shri B. N. Bahadur, Member (A).

This is an application made by Shri K. C. Shrivastava, who comes up in grievance against the penalties imposed upon him following the charge-sheet issued to him for absenting himself from service. The facts of the case are that after the Department Enquiry following such charge-sheet, the Disciplinary Authority made his order dated 05.06.1997 whereby the penalty of

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Removal from Service was imposed on the Applicant. The Applicant made an appeal to the Appellate Authority who considered the appeal and modified the order as below. The relevant paragraphs read as follows :

"However, on your assurance and on humanitarian grounds I decide to reduce the penalty to that of Reduction in pay in same time scale of pay you were holding. With immediate effect, you are reduced in pay stages to the minimum of Grade i.e. Rs. 1400/- in the time scale of Rs. 1400-2300 (RPS) for a period of three years with the effect of postponing your future increment (with cumulative effect).

The intervening period i.e. the date from which you were Removed from service to the date you are reinstated in service shall be treated as unqualified service."

It is against this order that the Applicant is before us seeking for its quashing and setting aside and praying for all consequential monetary benefits and other benefits and arrears.

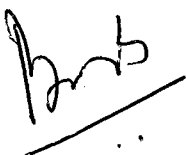
2. The Respondents have filed a Written Statement in reply resisting all the claims made by the Applicant, and providing the facts and parawise replies to the averments made in the O.A. It is stated that the penalty has been imposed after following due procedure in a departmental enquiry. A copy of Enquiry Report was duly provided to Applicant, and that, in fact, the Appellate Authority has already reduced the penalty of Removal from Service to reduction in pay in the same time scale to the minimum. It is further added that a review application was also filed on 09.09.1997, which has been disposed of on 27.01.1998.



3. We have seen all papers in the case and have heard Learned Counsel on both sides, namely - Shri N. C. Saini for the Applicant and Ms. Supriya Dhaware for Shri Suresh Kumar for the Respondents.

4. The main stand taken by Learned Counsel, Shri Saini, was that due procedure had not been followed, in that, the documents asked for by the Applicant had not been supplied. Providing the details of the documents, Learned Counsel took us to page 116, which is a letter dated 03.11.1997. It is seen that this is a request made four months after the order of the Appellate Authority. At this point, we asked the Learned Counsel to show if, indeed, as per rules any request or protest was made regarding non-supply of documents during the enquiry, either to the Disciplinary Authority or to the Inquiry Officer or to anyone else. This would be an important piece of evidence in the argument taken. We have gone through all papers with the assistance of the Learned Counsel but no such request was shown to be on record. Indeed, we went through a number of pages i.e. statement of various witnesses recorded and there is no such request, even indirectly indicated. Thus, in fact, on this count Learned Counsel for Respondents, Ms. Dhaware, drew our attention to page 26 of the Paper Book which contains the proceedings of the enquiry. This is a statement dated 28.03.1996 which is perhaps the starting of the enquiry. From the last question on page 26 it is noted that the Inquiry Officer advised the Applicant that he could inspect documents within next ten days which are available in Sr. D.M.E's Office. After carefully going through the contentions taken, we are at a loss to

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understand as to how the contention taken by Learned Counsel Shri Saini can at all be sustained in the absence of any record whatsoever. Thus it is clear that there is no flaw of any record or document asked for not been provided. The argument raised by Learned Counsel for Applicant does not hold water.

5. Learned Counsel for the Applicant then took us over almost the entire evidence that is contained between pages 25 and ahead of the Paper Book. One of the main ground taken was that, in fact, the Applicant was present on duty on 23rd and at one stage, the statement of Shri Gaikwad was relied to make the point that even though his duties started at 0.00 hrs. the Applicant indeed appeared for duty about an hour late, at 1.00 a.m. Shri Gaikwad has conversely stated in his evidence that he was doing double duty and could not hand over charge on his own since the Applicant came late. We have already seen some of the other statements, specially those of Shri Gaikwad. It must be recorded here that while going through the evidence we are conscious of the law settled in this regard by the Hon'ble Apex Court in more than one judgements that Tribunals like ours will assess evidence only to find out whether a case is of no evidence or whether there is perversity in the decision taken viz-a-viz the evidence on record. It is not open to us to re-assess evidence and to arrive at an independent conclusion. We cannot do that and we have indeed not proceeded to do it. Suffice to say that after carefully going through all the evidence with the assistance of the Learned Counsel on both sides we are unable to come to a conclusion that there is any element of perversity in the decision. Certainly, it cannot be a case of no evidence.

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6. Learned Counsel for Respondents, Ms. Dhaware, indeed took us over the Inquiry Report to make the point that the enquiry was carried out totally according to rules and all due procedures were followed. She rightly pointed out that Applicant was present in the enquiry and had indeed cross examined the Witnesses. Further, she also rightly point out that in the inquiry report, a copy of which is available at page 61, the Enquiry Officer has assessed the evidence in a systematic manner. There is no argument provided even today for the other dates on which the Applicant is alleged to have absented himself, as contained in the charge-sheet. Even on the one date on which he came late, we cannot come to any conclusion that any unfairness or injustice was caused to him.

7. We are, therefore, convinced that this is not a case where interference can be made in the penalty imposed by the Appellate Authority. We must however refer to the third para of this order by Appellate Authority dated 30.07.1997. It decides as to how the intervening period, namely - the date of removal from service till the date of reinstatement is to be treated. It merely states that it would be treated as "unqualifying service". It is confirmed across the bar to us that this only means that the period which is from 05.06.1997 to 13.08.1997 would be the only period which will be taken as unqualified service, obviously, for pension and pensionary benefits. This part of the order would certainly need to be clarified and it should not occur that by any chance it can be treated as break in service, etc. which can cause unintended harm when the Applicant retires much later. We also feel that it would be appropriate to direct

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and hereby direct the Appellate Authority to reconsider this part of the order, for example to say, if he could convert it into Extra Ordinary Leave (E.O.L.) without break in service so far as pension and pensionary benefits are concerned.

8. Subject to the above directions to the Appellate Authority, we find no reason to interfere in the matter and hereby dismiss the O.A. with no order as to costs.

S. Raju

(SHANKAR RAJU)  
MEMBER (J)

B.N. Bahadur

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(B.N. BAHADUR)  
MEMBER (A)

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