IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.947/92 Dt. of order: 2-8-1995.

Munnilal : Applicant

Vs.

Union of India & Anr. : Respondents

Mr.P.D.Khanna : Counsel for the applicant.

Mr.S.S.Hasan : Counsel for the respondents.

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Munnilal has prayed that order dated 17.4.86 (Annx.A1), imposing penalty of removal from service on the applicant, order dated 12.6.91 (Annx.A2) rejecting the appeal of the applicant and order dated 11.10.91 (Annx.A3) passed by the Revisional Authority, may all be quashed and it may be declared that the applicant is entitled to reinstatement in service and he continues to be in service with all consequential benefits, with full back wages and allowances enhanced from time to time with 18% interest from 17.4.1986 to the date of reinstatement.

2. The applicant's case is that while working as CBR Gr.II in Cariage & Wagon Workshop, W.Ply, Ajmer, he proceeded on 2 days leave from 9.4.85 to 10.4.85, as he was not well. Thereafter, the applicant became 'mentally retarded' and he did not know what happened thereafter and he left home. Ultimately he got treated by one Dr.H.B.Singh, a Psychiatrist & Sr.Specialist in mental diseases, of Agra and remained under his treatment upto 15.2.1991. He was therefore, unable to report for duty and could not inform the department about his absence or illness. He was

treated as on unauthorised absence. He did not know what happened during the period of his absence. He reported to the Railway Doctor at Ajmeron 16.2.1991 with the medical certificate dated 15.2.1991 (Annx.A8) issued by Dr.H.B.Singh. The Railway Doctor did not issue any duty certificate but enquired from the concerned Railway Department about the applicant's attendance. etc. The Railway Doctor then informed the applicant that his services have been dispensed with by order passed under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, for unauthorised absence. On receipt of this information, the applicant filed an appeal (Annx.A4) before the Chief Workshop Manager, Ajmer, explaining his circumstances as also reasons for late submission of the appeal. The appellate authority however, dismissed the appeal mechanically without application of mind on merits of the case but only on the ground that the appeal was time barred and the applicant had not given any satisfactory reason for delay in filing the appeal, although the appellate authority was empowered to condone the delay under the Rules. Thereafter, the applicant preferred a revision application on 3.8.91 (Annx.A5) to the Chief Mechanical Engineer who however, also dismissed the application without application of mind and without granting any personal hearing to the applicant though asked for by him.

3. The applicant's case is that the Assistant Works Manager(P) issued a charge sheet dated 3.9.85 to the applicant alleging unauthorised absence from 11.4.85 and probably sent it by registered post to the applicant at his house but since the applicant was not available there the charge sheet could not be served on him. Without waiting for the applicant's arrival, without nominating any Inquiry Officer, without conducting any ex parte enquiry and without following the rest of the procedure relating to holding of enquiry and disciplinary proceedings, an

order removing the applicant from service was passed. The order of removal could not be served on the applicant due to his non-availability at his house. Therefore, he had not been able to submit an appeal during the stipulated period. According to him, in his absence the Railway administration had sent a Welfare Inspector to his house who reported back that the applicant's wife had informed him that the applicant had been missing for several months and his whereabouts were not known. The applicant assailed the orders of the authorities on various grounds. One is that once a charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules ~~have~~ had been issued, the disciplinary authority could not dispense with the requirements of enquiry and remove the applicant from service under Rule 14(ii) thereon. Further, no show cause notice was issued to the applicant prior to the issue of order of penalty dated 17.4.86. No copy of the Inquiry Officer's report was sent alongwith the penalty order, nor was it supplied prior to the imposition of the penalty. The appellate authority rejected the applicant's appeal without application of mind and the revisional authority acted likewise and rejected the applicant's plea that he was mentally sick, by stating that the applicant had not furnished any certificate from a Mental Hospital or a Rilway Doctor and that the certificate from the private Doctor did not indicate that he was under his treatment for the entire period of absence. Also the revisional authority travelled beyond his jurisdiction by taking into account material which was not the subject matter of the charge sheet inasmuch as he took into account the previous conduct of the applicant while dismissing the revision application. Further, in the circumstances stated in GM's circular No.4 dated

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30.9.1954, the Railway Doctor at Ajmer could have issued a duty certificate under Rule GP9(2) in favour of the applicant but he had no authorityto refuse a private Doctor's certificate under the said circular. The Welfare Inspector who was deputed to the applicant's residence had reported that the applicant was mentally sick and had left his house during the period of mental sickness. Still however, the Rly.administration did not take this fact into account. No reasonable opportunity as provided under Article 311(2) was given to the applicant before penalty of removal from service was imposed on him.

4. The respondents in their reply have stated that the application is not within the period of limitation inasmuch as it has been filed after an inordinate and unexplained delay of 2373 days from the date of removal from service, namely 17.4.'86. They have further stated that the claim that the applicant was mentally retarded is an afterthought and if it had been so his family members would have given information to this effect to the employer. A bare reading of the medical certificate (Annx.A8) shows that the alleged mental sickness of the applicant and his disappearance were within the knowledge of the family. In the absence of any information to the employer in this regard, the applicant was rightly treated as on unauthorised absence. Since the applicant is alleged to have been medically treated at Agra when he was residing at Ajmer, some family members of the applicant would have accompanied him to Agra but none made any effort to inform the Rly.authorities. Thus non-intimation in this regard casts serious doubt on the theory of mental sickness of the applicant. No name of the Railway Doctor to whom the applicant is said to have reported with the medical certificate of the Doctor from Agra has been indicated in the application. Although the applicant had submitted appeal to the Chief Workshop Manager, W. Rly, Ajmer, the circumstances stated in the appeal regarding delay in submission thereof are misconceived. Further,

according to them the charge sheet was duly sent to the applicant through registered post A/D at the last known address of the applicant but it came back undelivered. A welfare Inspector was sent to the applicant's residence and he was informed by the applicant's wife that he had disappeared and she had no knowledge of his where-abouts. In these circumstances, recourse was had to the provisions of Rule 14(ii) of the Rly. Servants (Discipline & Appeal) Rules. In these circumstances, the disciplinary authority had a good reason for holding that enquiry was not practicable. They have denied that the Welfare Inspector had reported that the applicant was mentally sick. There is no rule of procedure requiring that the respondents should have waited for the applicant before proceeding further against him. Since provisions of Rule 14(ii) were invoked for taking action against the applicant, it was not necessary to have recourse to the provisions of Rule 9 of the aforesaid Rules for holding a regular enquiry, nor was it necessary to issue any show cause notice to the applicant. There has been no violation of provisions of Article 311(2) of the Constitution nor any violation of principles of natural justice. The appellate authority had considered the circumstances of the case and applied its mind while disposing of the appeal. Since the appellate authority was dis-satisfied with the reasons given for failure to submit the appeal in time, the delay in filing the appeal was not condoned by him. There was no justification for remitting the case to the disciplinary authority because the procedure laid down in Rule 14(ii) had been complied with in letter and spirit. The revision application had been considered and rejected because the applicant had not furnished any certificate from a government Mental Hospital or a Rly.Doctor, in support of his illness and the certificate issued by the private Doctor was not admissible and it did not establish that the applicant was under treatment of the said Doctor through-out the period of alleged sickness.

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They have denied that the revisional authority had considered any extraneous material while upholding the penalty imposed on the applicant.

5. During the arguments, the learned counsel for the applicant stated, while reiterating the reasons and ground mentioned in the O.A, that once a charge sheet had been issued to the applicant, and if there was no response from the applicant, only only course open to the disciplinary authority was to hold an ex parte enquiry and thereafter take appropriate action. It was not proper for the disciplinary authority to resort to the provisions of Rule 14(ii), in the circumstances of the case. He also cited before us certain judgments in support of the case of the applicant. The first judgment cited by him is Jaswant Singh Vs. State of Panjab & Ors. AIR 1991 SC 385, wherein the Hon'ble Supreme Court held that where enquiry is dispensed with in the departmental proceedings, the subjective satisfaction of the concerned authority must be fortified by independent material and it cannot be rested solely on the ipse dixit of the concerned authority. According to the learned counsel for the applicant, there was no independent material to justify dispensing with the enquiry in this case. Next he cited the judgment of the Hon'ble Supreme Court in Jai Shanker Vs. State of Rajasthan, AIR 1966, SC 492, wherein the facts were that the appellant overstayed his leave period and was discharged from service in view of regulation 13 of Jodhpur Service Regulations providing for automatic termination of service for overstaying leave for more than one month. The Hon'ble Supreme Court held that the Constitutional protection afforded by Article 311(2) of the Constitution cannot be taken away and the appellant was entitled to an opportunity to show cause against the proposed removal from service. In the absence of such show cause notice having been issued, the removal from service was set aside. He thereafter

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referred to the judgment of the Hon'ble Supreme Court in Chief Security Officer & Ors. Vs. Singasan Rabi Das, AIR 1991 SC 1043, wherein the Hon'ble Supreme Court found that the reasons given for dispensing with the enquiry of a person employed in the Railway Protection Force to the effect that if enquiry is ordered, witnesses of security/Rly.employees would suffer personal humiliation, etc. and might become targets of acts of violence, were insufficient for the purpose. Accordingly, the Hon'ble Supreme Court held that there was total absence of sufficient material or good grounds for dispensing with enquiry in that case. Thereafter, the learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in S.J.Mashram Vs. Union of India & Ors. 1987(Supp) SCC 164 wherein the reasons for dispensing with the enquiry were that there was likelihood of distruction of evidence and of nonappearance of members of Mahila Samity to adduce evidence for fear and loss of vital document showing actual amount of misappropriation wilfully caused by the delinquent employee. The Hon'ble Supreme Court held that these are irrelevant and ex facie inadequate reasons for dispensing with enquiry, and the consequential removal order was set aside. He also referred to the judgment of the Hon'ble Supreme Court in Union of India Vs. Giriraj Sharma, AIR 1994 SC 215 wherein penalty of dismissal was imposed in a case where the government servant had overstayed the period of leave by 12 days. The Hon'ble Supreme Court held that in such a case the appellant could impose a minor penalty on the applicant. Finally, he referred to the judgment of this Bench of the Tribunal in Rajendra Kumar Vs. Union of India delivered on 18.1.'94 in T.A. No.373/92. On the facts of this case, the Tribunal held that the authorities were not justified in dispensing with the enquiry.

6. The learned counsel for the respondents stated that the applicant had been absent from duty for a period of nearly 6 years without intimation to the authorities. The certificate

Annx.A8, produced from a Doctor at Agra did not show that the applicant had been continuously under treatment of the said Doctor. Since the charge sheet served on the applicant had come back undelivered, the respondents have no option but to have resort provisions of Rule 14(ii) of the aforesaid rules. The appeal filed was considerably late with reference to the penalty order passed in April 1986 and therefore, the appellate authority was justified in rejecting it as time barred. He added that the Revisional authority had also rightly rejected the revision application of the applicant. There was no justification for remiting the case to the disciplinary authority inasmuch as there were justifiable reasons for dispensing with the enquiry and the applicant's absence for a period of nearly 6 years was unexplained. He concluded by saying that the applicant had made a false averment at item No.5, para 18, page 11 of the O.A that the Welfare Inspector who had been deputed to enquire at the applicant's residence had reported that the applicant was mentally sick.

7. We have heard the learned counsel for the parties and have gone through the material on record as also the judgments cited before us. The objection regarding limitation taken by the respondents is not tenable because the decision of the revisional authority was communicated to the applicant on 23.3.'92 and the O.A. was filed on 18.10.'93. In this case the charge sheet sent to the applicant could not be served on him because he was not available at his residence. Since the whereabouts of the applicant were not known and the charges could not be communicated to him, there was no question of holding an enquiry or even an exparte enquiry. Even an exparte enquiry is possible or permissible where the applicant is either aware of the charges or he has refused to accept the charge sheet. Neither of these situations prevailed in this case. There-fore, the respondents were justified in resorting to the provisions relating to

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dispensing with the enquiry and passing an order in terms of Rule 14(ii) of the Rly.servants (Discipline & Appeal) Rules. It is also to be noted that while the applicant disappeared in April '85, the disciplinary authority passed order of removal from service in April 1986, after enquiring through the Welfare Inspector as to his whereabouts and after waiting for one year. The fact that the respondents issued a charge sheet to the applicant and sought to serve it on him at his residence shows that they have not lightly or without any justifiable reason dispensed with the requirement of enquiry. It is only after they found that the charge sheet could not be served on the applicant and that his whereabouts were not known, as reported by the Welfare Inspector, that they decided to dispense with the requirement of enquiry. We cannot therefore, fault the respondents' action in dispensing with the enquiry and resorting to the provisions of Rule 14(ii) of the aforesaid rules. Therefore, since no enquiry was held, there was no question of following the other steps towards finalising of the enquiry or furnishing the applicant with a copy of the enquiry report before passing order imposing penalty on him. Therefore, the applicant's grievance that principles of natural justice were not followed or that provisions of Article 311(2) were violated is misconceived.

8. It is a serious matter that the applicant has made a mistatement of facts in his application when he has stated that the Welfare Inspector who had been deputed to his residence to enquire about his whereabouts had reported back that the applicant was mentally sick and had escaped from his house. The only document which shows that the Welfare Inspector was deputed to his residence is the Annx.A1 dated 17.4.86 which contains reasons for imposition of penalty on the applicant. In this document there is no mention that the Welfare Inspector had reported that the applicant was mentally sick. Ordinarilly, an

application is liable to be dismissed solely on the ground that there is a mistatement of facts therein. However, still we have chosen to consider this application on merits.

9. The judgments cited by the learned counsel for the applicant have no applicability to the facts of the present case. The Hon'ble Supreme Court's judgments in Jaswant Singh's case would have no application to this case because there were adequate reasons available for the respondents to dispense with the enquiry in this case. The Hon'ble Supreme Court's judgment in Jai Shanker's case would also have no applicability here because action in the case before the Hon'ble Supreme Court was taken on the basis of Jodhpur Service Regulations whose provisions were found to be violative of Article 311(2) of the Constitution. Clause (b) of the proviso to Article 311(2) of the Constitution itself provides that action can be taken against a government servant where the concerned authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold such enquiry and it was in view of the circumstances of the present case that the disciplinary authority had decided to dispense with the enquiry. In the case of Chief Security Officer & Ors. the Hon'ble Supreme Court had found that the reasons given for dispensing with the enquiry namely that if enquiry was held witnesses of Security/Fly employees would suffer personal humiliation and might face violence etc. were not adequate. The circumstances of the present case as discussed above are entirely different. Similarly, the facts of S.J.Meshram are also totally different and therefore this judgment of the Hon'ble Supreme Court would have no applicability in the present case. As regards the judgment of the Hon'ble Supreme Court in Giriraj Sharma's case, the Hon'ble Supreme Court had disapproved of imposition of penalty of dismissal for overstaying leave for 12 days. Here in the present case, absence from duty was for a period of nearly 6

years and therefore, this judgment will have no applicability of the present case. The facts of the case decided by the Tribunal by order dated 18.1.94, Rajendra Kumar Vs. Union of India & Ors. are also different. In that case, the applicant was alleged to have resorted to physical violence and therefore, the authorities decided to dispense with enquiry. The Tribunal had held that these were not sufficient circumstances to justify dispensing with the enquiry.

10. Coming to the merits of the case, the applicant was absent without any intimation to the Ply authorities for nearly 6 years. As regards Annx.A8, which is a certificate dated 15.2.91 from a Psychiatrist of Agra, it does not show that the applicant was under his treatment throughout this period. Therefore, on the facts available before the disciplinary authority, he was not unjustified in resorting to provisions of Rule 14(ii) and imposing a penalty which he considered appropriate in the circumstances of the case.

11. The appellate authority had rejected the appeal of the applicant solely on the ground that it is time barred, because, the appeal was filed by the applicant some time in 1991 although he had been dismissed from service by order dated 17.4.1986. Fact however, is that even the order dated 17.4.86 could not be served on the applicant at the relevant time and it appears to have been served on him some time in 1991. Therefore, it was not appropriate on the part of the appellate authority to dismiss the appeal of the applicant solely on the ground that it was time barred and that the applicant had not given any satisfactory reason for not filing the appeal in time. We are of the view that in the interest of justice, all the grounds raised by the applicant in his appeal should be considered by the appellate authority on merits, and none of our findings and observations as above should be construed as fettering the powers of the

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appellate authority to decide the appeal on merits including consideration of quantum of penalty imposed.

12. Accordingly, we set aside the order of the appellate authority dated 12.8.91 (Annx.A2) and direct that he shall consider the appeal of the applicant on merits having regard to all the grounds raised therein and shall pass a reasoned order also having regard to the provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules including the quantum of penalty imposable on the applicant. The fresh appellate order be passed within a period of 4 months from the date of the receipt of a copy of this order. For this purpose, the order of the Revisional authority (Annx.A3) dated 11.10.91 is also set aside. The order of the disciplinary authority has however not been disturbed by us. The O.A. stands disposed of accordingly with no order as to costs.

(Ratan Prakash)
Member(Judl)

(O.P.Sharma)
Member(Adm.).