IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. No:990/96 Date of decision: 25-6-1999.

Between:

K. Edward .. Applicant

A N D

1. The Divisional Electrical Engineer,
   Traction Rolling Stock,
   South Central Railway,
   Vijayawada.

2. Assistant Electrical Engineer,
   Traction Rolling Shed,
   South Central Railway,
   Vijayawada .. Respondents

Counsel for the applicant : Mr. J.M. Naidu

Counsel for the respondents :Mr. N.R. Devraj

Coram:

Hon'ble Shri Justice D.H. Nasir, Vice-Chairman

Hon'ble Shri H. Rajendra Prasad, Member (A)

...2/-

28

O.A.990/96 Date of decision :

(Per Hon'ble Shri H. Rajendra Prasad, Member (A)

Mr. J.M. Naidu for the Applicant and Mr. N.R. Devraj for the Respondents.

1. The Applicant began his career as casual labourer in 1977, was regularised in 1984, and had been working under the control of Respondent 2 since 1986. During 1992 he was unauthorisedly absent from duty owing, according to his version, to an accident to himself and illness of his wife. A minor penalty of non-cumulative stoppage of increments for 3 years was imposed on him on 7-10-1993. Again, a memo of charges proposing a major penalty was issued to him for unauthorised absence from duty. An Inquiry Officer was duly appointed and the inquiry was held on 17th August, 1994, in which the Applicant participated. The inquiry report was submitted to the Disciplinary Authority on 25th August,1994, and a show-cause notice was issued to the applicant on 7th September,1994, to which he responded in time. The penalty of removal from service was imposed on the applicant by respondent -2 on 7th February,1995, against which an appeal was submitted to Respondent-1 on 7th March,1995. The appeal was disposed of on 25th July,1995, upholding the penalty earlier imposed on the applicant.

2. This OA has been filed questioning the decisions of the Disciplinary Authority and Appellate Authorities on the ground that in imposing/upholding the penalty of removal from service these authorities had.-

(i) taken into consideration the periods of the applicant's absence preceding and following the spells which had been cited in the Memo of Charges dated 31st August,1993; and

(ii) imposed a Minor as well as a Major Penalty on him for certain spells of absence which figured in both the proceedings, which in effect amounted to punishing him twice for the same spells of absence.

3. The Respondents in their counter-affidavit confirm the basic sequence of facts recorded in the

..3/-

preceding paragraphs but point out that inasmuch as the applicant has not submitted a Revision Petition as provided under the Railway Servants (D&A) Rules, and as the Applicant has approached the Tribunal without having exhausted the normal remedies available to him under the Departmental regulations, the OA is premature. They submit further that the Applicant had not brought it to their notice, nor had he pointed it out in his appeal, that the alleged periods of absence covering 11-4-1993 to 1-6-1993, cited in the proceedings for the imposition of a major penalty had already figured in the disciplinary proceedings which ended in the imposition of an earlier minor penalty. The authorities had themselves noticed this duplication of dates and had, therefore, treated the minor penalty already imposed on the Applicant as "null and void", and this had been duly communicated by the Appellate Authority while disposing of the appeal submitted by the Applicant.

4. We have carefully considered the facts. The Applicant quotes the Inquiry Officer as holding out an assurance to him that a lenient view would be taken of his absences and that there was no need for him to engage the services of a Defence Counsel to assist him (para VI, 4-page 3 of the OA) and, on the basis of that allegation, contends that the proceedings violated the principles of natural justice. The record of inquiry proceedings, which were directed to be produced for our perusal, do not, however, suport this grievance of the Applicant. The record reveals that the Inquiry Officer (vide E.O.No.B/P5/II/93/TRS/15 J-2-94 dated 23-7-94) did infact give an opportunity to the Applicant to nominate a Defence Counsel as well as Defence Witnesses on or before 05-8-1994. This opportunity was not availed of by the Applicant. On 17-8-1994, during the course of the enquiry the following is found recorded :

> Q.2 You have been given opportunity to nominate defence helper to defend your case vide my notice No.B/E.150/TRS/II/3/K.E. of 23-7-94 if you desire on or before 5-8-94. But nothing has been heard from you in this connection. state whether you have accompanied with any defence helper now ?

..4/-

Ans. No. I have no defence helper.

At this the initial examination of the charged employee is over.

Q.9. Do you accept the charges framed against you vide the said chargesheet or do you defend the same ?

Ans. I accept the charges framed against me and I defend the case myself.

In view of this clear evidence on record the allegation of the Applicant that he was not allowed to have any Defence Counsel - or was told that no Defence Counsel would be needed since a lenient view was going to be taken - cannot be accepted. There is no substance in this grievance, nor in the complaint that the principles of natural justice were in any way violated.

5. The learned counsel for the Applicant vigorously urged that :

(a) lapses, viz., spells of alleged unauthorised absence from duty, other than those included in the Memo of Charges had been taken into consideration while arriving at a decision to impose the penalty of Removal from service on the applicant;

(b) a second/subsequent punishment was awarded in the form of a major penalty for certain periods of his unauthorised absence whereas a minor penalty had already been imposed on him taking into consideration these very spells, among others, of unauthorised absence.

6. We have carefully examined the facts of the case. As regards the grievance of the applicant recorded in para 5(a) and (b) it is to be mentioned that we had in a recent identical case examined the very same aspect of the matter i.e., inclusion of spells of alleged unauthorised absence from duty otherthan those included in the memo of charges; and

imposition of a second and subsequent punishment for unauthorised absence in respect of certain spells which had resulted in the earlier punishment. In the said OA (No.1019/96 disposed of on 9-9-98) the following observations were recorded:

> "8.Learned Standing Counsel for the respondents drew out attention to the fact that the applicant was earlier punished by withholding of one increment without cumulative effect for missing from place of duty vide order dated 23.12.1992. It was further urged before us on behalf of the respondents that two disciplinary procedings were pending against the applicant at the time of imposition of the penalty of dismissal from service, out of which one related to habitual irregular attendance during the period from 2/93 to 9/93 and unauthorised absence from duty from 1.10.1993 to 19.2.1994. By Memorandum dated 25.7.1995 the applicant was charged with continued unauthorised absence from duty from 31.3.1995 onwards However, those disciplinary proceedings could not be concluded in view of the imposition of penalty of dismissal with effect from 14.8.1995. As already stated earlier, the applicant filed the appeal dated 11.9.95 to the appellate authority, but his appeal was dismissed vide order dated 16.7.1996 and it was against the said order that the present OA is filed by the applicant.
>
> 9.A great emphasis was laid by the learned counsel for the applicant on the proposition that the disciplinary authority as well as the appellate authority took into consideration the past misconduct as well as the misconduct allegedly committed by the applicant at a stage when the appeal was under consideration and therefore, the impugned order of dismissal stood vitiated on account of the fact that extraneous considerations were taken into account for awarding the penalty

..6/-

of dismissal and that the applicant would have been left with a minor punishment if such extraneous considerations were not allowed to influence the mind of the disciplinary authority as well as the appellate authority.

10. In the case of Ashok Kumar v. Union of India and another (1988(2) SLR(SC)209) the Hon'ble Supreme Court held that the punishment imposed was grossly disproportionate to the charge levelled against the appellant of having absented himself from duty for three days without leave. However, in the case before us, the allegation is not that simple and it was not an isolated incident of misconduct committed by the applicant and therefore, this decision of the Supreme Court does not come to the rescue of the applicant.

11. ...

12. ...

13. ...

14. In our opinion, if the misconduct alleged against the applicant in the present case was an isolated one-time misconduct, there is no doubt that a lenient view could have been taken and the Tribunal would not have hesitated in arriving at a conclusion that the punishment of dismissal was grossly disproportionate to the misconduct committed by the applicant. However, we cannot expect the disciplinary authority to shut their eyes totally to the past misconduct in view of the fact that the gravity of misconduct in question takes a serious proportion in view of the fact that strong reason emerges to believe that the applicant was a habitual offender, when one past misconduct had already been proved which was not altered or set aside by any superior authority in the department or by any court of law. If a view is taken that for no purpose whatsoever, the past

..7/-

misconduct could be taken into consideration, the element of habitual misconduct would disappear from the scene and give a clean chit to the delinquent by letting him believe that he need not bother about the past misconduct even for examining whether the punishment for the present misconduct would stand aggravated on account of similar misconduct committed in the past. The disciplinary authority indeed should not be allowed either to alleviate or to enhance the severity of punishment exclusively on that ground but he cannot be prevented from taking note of the conduct of the delinquent in his short tenure of 7 years of service with the present department. In such cases, if the delinquent is let off with a minor punishment, it would amount to putting a premium on the misconduct and the deterrent potential of punishment would take a back seat inducing the delinquent to have no compunction in repeating such acts of misconduct.

15. ..

16. ... In a short period of 7 years of service, this was not the only occasion but in the past, similar misconduct had been committed and in the given facts and circumstances of the case, it would be a misplaced sympathy to say that the past misconduct should not have at all been referred to for giving a colour of misconduct having been aggravated eventually leading to the dismissal of the delinquent from service. We are, therefore, not inclined to interfere with the punishment of dismissal of the applicant from service awarded by the competent authority."

There is no reason to depart from our views and findings, recorded in the said OA., in disposing of this present case.

..8/-

7. Lastly, there remains a question raised by the Respondents in their counter-affidavit - and the Sr. Standing Counsel during the hearing of the case - that the applicant had not exhaused all departmental remedies available to him for a possible redressal of his grievance in that he had not filed a petition before the revisional authority. To determine the legal position in this regard we can do no better or more than to reproduce an extract from a judgment delivered by Hon. Karnataka High Court, cited by the learned counsel for the Applicant, in the case of P. Bhargava v. Superintendent of Police & anr. (1983 (2) SLJ 453) which addresses precisely this very question, among others. The following paragraphs of the judgment are relevant :

> "12. Learned counsel for the respondents, however, has raised a preliminary objection to the effect that the petitioners have alternative remedy by way of revision petition under S.25(2) of the Karnataka Police Act.
>
> 13. It is true that the petitioners could have preferred a revision petition before the Government under that section, but this Court in the case of L.B. Shirajuppi v. Dy. Supdt. of Police (1977(2)Kar.LJ 225) has held that a revision was not like an appeal, a substantive remedy and, therefore, non-presentation of a revision petition to the Government was no bar to entertain a petition under Article 226 of the Constitut
>
> 14. In the circumstances of the case and i particular as the defect pointed out for th petitioners goes to the root of the matter, I do not think that there is any justificat to ask the petitioners to prefer revision petition and that too at this distance of time i.e. after five years, during which period the petitions have been pending befo this court."

..9/-

Further comment is unnecessary in view of the position - as regards the nature of a revision petition and the need or otherwise of an official to avail of the same - brought out clearly by the Hon. High Court. It is therefore to be held that although it was undoubtedly open to the Applicant to submit a revision petition in terms of Rule (25) of Railway Servants (D&A) Rules, it was not his mandatory statutory duty to seek this remedy because, unlike an appeal, a revision cannot be regarded as a substantive remedy. It follows, therefore, that in not exhausting this particular "remedy" the applicant cannot be said to have not exhausted all available statutory avenues for the redressal of his grievance. In such view of the question, we do not find the argument of the Respondents acceptable on this aspect of the case.

8. In view of what is recorded by us in para-7 above the OA fails and is accordingly disallowed and disposed of.

(H. RAJENDRA PRASAD)
Member (A)

(D.H.NASIR)
Vice-Chairman

MD

COPY TO:-
1. HDHNJ
2. HHRP M(A)
3. HBSJP M(J)
4. D.R.(A)
5. SPARE

IST AND IIND COURT

TYPED BY . CHECKED BY
COMPARED BY APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR.JUSTICE D.H.NASIR
VICE - CHAIRMAN

THE HON'BLE MR.H.RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR.R.RANGARAJAN :
MEMBER (A)

THE HON'BLE MR.B.S.JAI PARAMESWAR :
MEMBER (J)

ORDER: 25695

ORDER / JUDGEMENT

MA./RA./CP No.

in

OA. No. 990/96

ADMITTED AND INTERIM DIRECTIONS ISSUED.

ALLOWED.

C.P.CLOSED.

R.A.CLOSED.

C.A. CLOSED.

DISPOSED OF WITH DIRECTIONS.

DISMISSED.

DISMISSED AS WITHDRAWN.

ORDERED / REJECTED.

NO ORDER AS TO COSTS.

SRR

Disallowed

2 copies

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH
-9 JUL 1999
हैदराबाद न्यायपीठ
HYDERABAD BENCH