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CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

No.O.A.1120 of 1999.

DATE OF ORDER : 27.10.2000

BETWEEN :

V.V.SUBBAIAH S/o V.Ramanaih,
H.S. Fitter Gr.II,
Gowravaram Village,
Via Bitragunta,
Pin-524142 (Nellore District).

... Applicant

A N D

1. Works Manager,
Wagon Workshop,
South-Central Railway,
Guntupally, Near Vijawada.
2. Dy.Chief Mechanical Engineer,
Wagon Workshop, South-Central Railway,
Guntupally, Near Vijayawada.
3. Chief Workshop Engineer,
South-Central Railway,
Rail Nilayam, Secunderabad.
4. The General Manager, South-Central Railway,
Rail Nilayam, Secunderabad.
5. The Secretary, Railway Board,
New Delhi.
6. The Secretary,
Ministry of Railways,
Govt. of India, New Delhi.

... Respondents

Counsel for applicant : Mr.P.V.P.Mutyunjaya Rao.

Counsel for respondents: Mr.V.Bhimanna.

C O R A M :

1. The Hon'ble Mr.R.Rangarajan, Member (A).
2. The Hon'ble Mr.B.S.Jai Parameshwar, Member (J).

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O R D E R

B.S.Jai Parameshwar, Member (J).

ld.counsel
Heard Mr.P.V.P.Mutyunjaya Rao for the applicant and Mr.V.
Bhimanna, ld.standing counsel for the respondents.

2. The applicant, while working as H.S. Fitter Gr.II, T.No.31184, in the Wagon Workshop at Guntupally, remained absent from duties from 28.1.1987 to 31.12.1987.

3. A charge memo was issued for this unauthorised absence. An inquiry was conducted ex parte. Earlier by an order dated 10.12.88, he was removed from service w.e.f. 20.12.1988.

4. The said punishment came to be set aside by this Tribunal in O.A.762 of 1991 dated 27.11.1994. This Tribunal, directed the respondents to reinstate the applicant into service and to treat the period from 10.4.1989 till the date of disposal of the O.A., as under/suspension. Further, the respondents ~~were~~ deemed given liberty to proceed against the applicant for his alleged unauthorised absence.

5. Accordingly, the Asstt. Works Manager (R), Wagon Workshop, South-Central Railway, Guntupalli, has issued the charge memo dated 8.3.1995 (page 16 of the O.A.).

6. The applicant sent a reply to the charges levelled against him. The inquiry was conducted by the Shop Superintendent, Special Works, Bay-II. The inquiry officer submitted his report dated 18.5.1995 (annexure-6 to the O.A.), holding the mis-conduct alleged against the applicant as proved.

7. A copy of the report of the inquiry officer was furnished to the applicant. The applicant submitted his representation.

8. The respondent no.1 is the disciplinary authority. The respondent no.1 by his order dated 8.6.1995, removed the applicant from service w.e.f. 10.6.1995. The applicant has not produced

a copy of the order passed by the disciplinary authority. However, the same has been produced by the respondents alongwith their reply at annexure 'R/VIII'. Against the said penalty order, the applicant submitted his appeal dated 22.7.1995. The respondent no.2 considered the appeal and by his proceedings dated 24.8.1995, rejected the appeal.

9. Against the order passed by the appellate authority, the applicant submitted a revision petition dated 7.10.1995. The respondent no.3 considered the revision petition and by his proceedings dated 14.2.1996, rejected the revision application.

10. The applicant has filed this application for the following reliefs:-

(i) To set aside the order of the disciplinary authority dated 8.6.1995, imposing a penalty of removal from service, as confirmed by the appellate authority, revisional authority and reviewing authority.

(ii) To direct the respondents to reinstate the applicant with full benefits of salary, etc.

11. The applicant has challenged the impugned orders on the following grounds :-

(a) The punishment of removal from service is disproportionate to charge of mis-conduct levelled against him.

(b) The order passed by the Asstt. Works Manager (R), Wagon Workshop, South-Central Railway, Guntupalli, appointing the inquiry officer is illegal.

(c) The said Asstt. Works Manager (R), Wagon Workshop, is not the disciplinary authority and as per Rule 9(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968, it is only the disciplinary authority who is competent to appoint an inquiry officer. The Asstt. Works Manager (R), therefore, exceeded his jurisdiction in appointing an inquiry officer.

(d) The main document to support the charge was not produced during the inquiry. According to the applicant, the gate admission card, was ^{the} relevant document and the respondent-

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authorities failed to produce the same inspite of a request made to the inquiry officer.

(e) The respondent-authorities relied upon a certificate issued by one Shri S.K.Gupta regarding the applicant's absence (page 18 of the O.A.), without examining him. The said S.K.Gupta was a material witness to prove ^{the} documents enclosed to the charge memo.

(f) When the Assistant Works Manager (R) was a witness to the mis-conduct, he should have not been allowed to issue the charge memo; and

(g) The appellate authority and the revisional authority failed to apply their mind to the various contentions raised by the applicant and the orders issued by them are not speaking orders.

12. As regards the competency of the Asstt. Works Manager (R), appointing the inquiry officer, the respondents were asked to file a reply at the time of admission of the O.A. At that time, the respondents filed a reply justifying the action of the Asstt. Works Manager, appointing the inquiry officer. The respondents have stated that the applicant was working in the scale of pay of Rs.1200-1800 and hence, the Assistant Officer is competent to impose ^{above} the ~~punishments~~ in terms of Schedule of Powers that he has initiated the disciplinary proceedings and, ^{that} therefore, he is competent to appoint an inquiry officer.

13. In the detailed reply, the respondents submitted that the applicant remained absent unauthorisedly from 28.1.1987 to 31.12.87, that, therefore, the authorities found it proper to impose a major penalty of removal from service and that accordingly a charge sheet was issued by the Asstt. Works Manager and the punishment was imposed by the Works Manager and, therefore, the respondents have taken action in accordance with the rules. Further, they submitted that the appellate authority as well as the revisional authority have considered the representations of the applicant and found no merit in the same and accordingly rejected the representations.

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14. After hearing the ld. counsel for the parties, the following points arise for our consideration :-

(i) Whether the issuance of charge memo dated 8.3.1995 by the Asstt. Works Manager (R) is in order?

(ii) Whether the material placed on record was justified for the authorities to take a decision to impose a major penalty on the applicant?

(iii) Whether the impugned orders are liable to be interfered with ?

(iv) Whether the Asstt. Works Manager (R) is competent to impose a penalty of removal on the applicant?

15. In fact, the Railway Board in its letter bearing no.E(D&A) 70 RG 6-36 dated 4.2.1971, has observed as follows -

"It may be mentioned that while framing the Railway Servants (Discipline & Appeal) Rules, 1968, a deliberate decision was taken to the effect that only an authority competent to impose any of the major penalties should initiate disciplinary proceedings for imposition of such a penalty on non-gazetted staff. As such, the authority for all purposes of institution of disciplinary proceedings and issue of charge memorandum for imposition of major penalty is the authority competent to impose any of the major penalties."

Railway

The applicant is a non-gazetted/employee. When the authorities found that his unauthorised absence has to be dealt with by imposition of a major penalty, then the competent authority should have issued the charge memo. The authority who removed the applicant from service by the final order is only competent to issue the charge memo.

15. Even though the applicant made a submission in the beginning that the Asstt. Works Manager was not competent to appoint an inquiry officer, the respondents have taken shelter under the schedule of powers and stated that the Asstt. Works Manager is competent to appoint an inquiry officer.

16. Further, the final order on the charge memo was issued by the Works Manager. The Works Manager alone was competent to initiate disciplinary proceedings against the applicant in view of Railway Board's letter dated 4.2.1971.

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17. The respondents have not during the inquiry, placed the gate admission card to prove the absence of the applicant from 28.1.1987 to 31.12.1987. In fact, the applicant had made a request for production of those documents. The grievance of the applicant is that the inquiry officer has not secured those documents. In this connection, he has relied upon a letter dated 4.5.1995 (annexure R-VI), wherein the respondents have stated that all the records of gate attendance card were weeded out in the year 1994 as per the procedure and though no preservation period was prescribed by the Railway Board for gate admission card. It further stated that the records have been weeded out last year at the convenience of the office in view of accommodation difficulty.

18. At that time, this Tribunal in the earlier O.A. on 27.11.1994 had given liberty to the respondents to proceed against the applicant for his unauthorised absence. If the respondents felt those gate admission cards were essential, they could have preserved and utilised those in the inquiry.

19. The certificate of absence was issued by S.K.Gupta, Asstt. Works Manager and he was the only witness who examined the documents. If that was so, it was not proper on the part of Asstt. Works Manager to issue the charge memo. In fact, the applicant had requested the inquiry officer to summon S.K.Gupta, but for reasons best known to the inquiry officer, his request was not considered.

20. The ld.counsel for the applicant, in this connection, relied upon a decision of the Ernakulam Bench of this Tribunal in the case of V.D.Joseph vs. UOI & Ors. (1990 14 ATC 99), to contend that non-production of railway official for cross-examination amounted to denial of reasonable opportunity.

21. The main document based on which the absence of the applicant is to be substantiated is the gate admission card. The respondents submit that the Office Superintendent, Time Office, has noted down the absence of the applicant and on that basis, he has issued the letter dated 10.2.1988, which gives the details of the absence of the applicant. It is also stated that the said details were



taken from the said gate admission card.

22. When a case is initiated against an employee and the said case is based on certain documents, it is essential for the respondents to produce those documents. Even if the letter dated 10.2.1988 has been issued after going through the gate admission cards, which were not available at the time of inquiry and hence could not be produced in the inquiry, certain mistakes could have crept in the letter dated 10.2.1988. Hence, the document relied on cannot be taken note of to come to the conclusion that the applicant was absent. Even if the applicant was absent during the period, material records have to be produced in the inquiry to come to the just conclusion. If the documents relied upon are not produced, then a doubt arises whether the document prepared by S.K.Gupta is an authentic one or not. Such a query cannot be brushed aside without dealing with the same. In our opinion, mere reliance on the letter dated 10.2.1988 which did not take into consideration the gate admission card, cannot be taken as an authentic material to come to the conclusion that the applicant was absent during the period.

23. The Asstt. Works Manager intimated that the gate admission card has the details of the absence of the applicant. But he has not been examined and cross-examined by the defendant. Had Shri S.K.Gupta been examined, some credibility could have been given to the authenticity of the details.

24. In the order dated 27.11.1994 passed in the earlier O.A., this Tribunal had observed that S.K.Gupta should also be examined as a witness. However, the same has not been done. In our opinion, the above missing link needs to be taken note of and it has to be observed that the findings were given on the basis of no evidence.

25. In view of the above discussion, the charge sheet dated 8.3.1995 may not be sustainable for the following reasons :-

- (i) Incompetent authority has issued the charge sheet, when the major punishment given was removal of the applicant from service.
- (ii) The documents to substantiate the charges especially the gate admission card were not produced and any decision taken without the production of the gate admission card is



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to be treated as a case of no evidence.

(iii) Non-examination of Shri S.K.Gupta, Asstt. Works Manager is to be treated as violation of the principles of natural justice.

26. On all the three counts mentioned above, the O.A. is liable to be allowed and the impugned punishment orders are liable to be set aside.

27. A question may arise whether liberty is to be given to the respondents to conduct a de novo inquiry. The present case is over 13 years old. Hence, at this juncture, especially in the context of non-availability of gate admission card, the question of conducting a de novo inquiry is not warranted, as the same will be a futile exercise. Hence, liberty as indicated above, cannot be given to the respondents in this case.

28. The applicant was removed from service w.e.f. 10.6.1995. He has approached this Tribunal only on 17.6.1999. He had approached this Tribunal earlier through O.A.762 of 1991 which was disposed of on 27.11.1994. If no adequate action has been taken by the respondents in response to the order dated 27.11.1994 in the earlier O.A., the applicant could have approached this Tribunal for the delay in conducting the inquiry. As he has approached this Tribunal on 17.6.1999, there is delay on the part of the applicant also to approach this Tribunal. If any back wages are allowed in this case, the Railway will have to shell out a considerable amount, which we feel not warranted in this case.


29. In view of the above, the orders of the disciplinary authority, the appellate authority and the revisional authority, are hereby set aside.


30. Hence, the applicant should be reinstated into service without any back wages. However, he is entitled for the ^{notional} increments during the period he was away from service and on that basis, his pay should be fixed after his reinstatement. The period of absence shall be counted for purposes of pension and other

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pensionary benefits.

31. The O.A. is ordered accordingly. No costs.


 B.S. Jai Parameshwar)
 Member (J)
 27.10.00


 (R. Rangarajan)
 Member (A)

DATED THE 27TH OCTOBER, 2000

 DICTATED IN OPEN COURT


 31/10/00

r.s.