

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 8-8-95

OA 153/94

Asad Khan s/o Shri Asraf Khan, formerly worked as Peon in the office of Loco Workshop, Western Railway, Ajmer.

... APPLICANT.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Dy. Chief Mechanical Engineer (Carriage and Wagon), Workshop, Western Railway, Ajmer.
3. Sr. Personnel Officer (Workshop), Western Railway, Ajmer.

... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN.

HON'BLE MR. N.K. VERMA, MEMBER (A)

For the Applicant

... SHRI R.N. MATHUR

For the Respondents

... SHRI S.S. HASAN

O R D E R

PER HON'BLE MR. N.K. VERMA, MEMBER (A)

In this OA, the applicant Asad Khan has sought to assail the impugned orders of removal from service passed by the disciplinary authority and confirmed by the appellate and the revisional authority as per Annexures A-2, A-1 and A-3. The facts of the case are that the applicant was a Peon in the office of the respondent No.2 and was served with a charge-sheet under Railway Servants (Discipline & Appeal) Rules, 1968, on 2.1.92, for remaining absent from duty for the period commencing from 6.9.91 to 5.12.91. A domestic enquiry in the matter was initiated and the enquiry officer inquired into the charge of having stayed away from office for 81 days between the period 6.9.91 to 5.12.91 without permission and having obtained medical attendance from private doctor during the period of this absence. Thus, he was charged with violation of the rules regarding leave on medical ground.

- N.K. Verma*
2. The enquiry was conducted by an officer appointed by the disciplinary authority who found the charge of unauthorised

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absence for the period under reference 'proved'. The disciplinary authority on the basis of this enquiry report ordered removal of the applicant from service w.e.f. 16.8.93. An appeal against this order was also rejected by Annexure A-1 on 25.11.93 followed by rejection of the revision petition on 4.1.94.

3. In the averments made by applicant the enquiry report has been assailed on the ground that the report is based on surmises and conjectures, not taking into account the fact that the applicant was seriously ill during this period and thus the applicant could not have reported on duty. He had sent information regarding his illness through his son and thus it could not be said that the applicant remained absent unauthorisedly. The applicant had earlier also remained absent and had been given lenient consideration on compassionate ground. However, in this case an extreme penalty of removal has been inflicted upon him. The appellate and the revisional authorities have also rejected his petitions because of habitual absence of the applicant, whereas there was no charge of habitual absence in the charge-sheet. The penalty of removal is extremely harsh and disproportionate to the misconduct committed by the applicant.

4. During hearing the learned counsel for the applicant, Shri R.N. Mathur, cited a number of judgements of the Hon'ble Supreme Court including one at (1991) 3 SCC 213, Ex Naik Sardar Singh v. Union of India and others, in which the court martial awarded to one Ex Naik Sardar Singh punishment to undergo rigorous imprisonment for three months but the same was vacated by the Hon'ble Supreme Court on the ground that this penalty was awarded for mere carrying of an excess bottle of liquor by the appellant in that case. In another case cited under 1985 (1) SCC 121, Hussaini v. Hon'ble Chief Justice of High Court of Judicature at Allahabad and others, the applicant, who was a low paid Safai Jamadar, was awarded maximum punishment of dismissal from service denying him all retiral benefits. The Hon'ble Supreme Court while not detracting from the view taken by the High Court was of the opinion that there is some scope for taking a little lenient view in the matter of punishment awarded to the appellant. Accordingly, the Hon'ble Supreme Court allowed the appeal and converted the order of dismissal into one of compulsory retirement. Mr. Mathur also cited a judgement of

the Hon'ble Supreme Court, reported in AIR 1994 SC 215, Union of India and others v. Giriraj Sharma, wherein the dismissal on the ground of over-staying the leave period was considered harsh and disproportionate and the Hon'ble Supreme Court modified the punishment with the directions to the respondents to punish the petitioner with a minor punishment.

5. Mr. S.S. Hasan, learned counsel for the respondents, rebutted the arguments of the learned counsel for the applicant on the ground that the applicant had stayed away from his duties without any application to grant leave either on medical or on other grounds. While accepting that the applicant had informed the office initially about his not being able to attend the office, it was incumbent upon him to have followed it up with the written application for grant of leave due or admissible either on medical grounds or otherwise which he had failed to do for a few months i.e. 81 days and he reported back to duty only when an intimation was sent to him that he has been staying away from the office unauthorisedly during the course of enquiry also. The applicant never denied his failure to make any application for grant of leave of any kind and therefore the enquiry officer found the charge of unauthorised absence from duty 'proved', which was fully endorsed by the disciplinary authority, who imposed the punishment of removal from service. As per the prevalent rules on the subject, the disciplinary authority has full discretion to impose any of the penalties prescribed under the rules on the charged official. While the cases cited by the learned counsel for the applicant have shown that the harsh punishment given for very minor irregularities were modified by the Hon'ble Apex Court, in this case the punishment awarded cannot be said to be disproportionate. In the case of Army official, the court martial had punished him with rigorous imprisonment for three months which not only forfeited the service of the appellant in that case but also his services including his retiral benefits. The crime for which he was punished by the court martial was for carrying a bottle of liquor unauthorisedly. ~~The recent~~ case cited by the learned counsel for the applicant was a case of over-staying leave granted to Shri Giriraj Sharma, who was the respondent in that case, and the Hon'ble Apex Court took a lenient view in that case by remitting the matter to the disciplinary authority for awarding minor penalty. The learned counsel for the respondents also brought to our notice that the applicant was a habitual

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offender as is evident from Annexure A-1, which is the appellate order. He had earlier also been removed from service in 1981 and had been given a re-appointment in 1982. The official had absented for 96 days in 1989 and again for 66 days in 1990, for which he was not given any punishment.

6. We have given careful consideration to the averments and arguments made on behalf of the applicant by the learned counsel. It is an admitted fact that the applicant remained absent for 81 days at a stretch unauthorisedly without submitting any application to that effect or any evidence from any Railway Hospital or Government Hospital that he required such a long period of medical treatment. The only certificate submitted by the applicant is granted by the JLN Medical College/Hospital, Department of Psychiatry, which has given him a discharge ticket saying that he was admitted in the hospital on 8.6.92 and discharged on 16.6.92. This certificate does not corroborate the statement that he was sick either physically or mentally for the entire period of his absence from duty. The reason for his not submitting any application for grant of leave to the controlling authority/head of the office was not explained by the learned counsel. The learned counsel for the applicant argued that the appellate authority and the revisional authority should not have taken into account the extraneous consideration of his being a habitual offender. However, the disciplinary authority had full discretion to award any punishment prescribed under the rules to the applicant. The enquiry officer had found him guilty of the charge of unauthorised absence for 81 days at a stretch. It cannot be considered to be a very minor or technical lapse on the part of the government servant. If other government servants start behaving like this and claim a lenient view on such misconduct, the administration will have no control over their staff. While the disciplinary authority had not indicated that he had taken the extraneous consideration about his being habitual offender of absenting from duties, it is only the appellate authority who has referred to the applicant being absent from duty for very long spells in the past as well, and for which he had been punished also. While ordering his removal from service the appellate authority and the revisional authority have taken those extraneous considerations into account while rejecting his appeal and revision petition. However, in view of the decision of the Hon'ble Supreme Court in 1989 (2) SCC 177, Union of India

V. Parma Nanda where the Court observed as under:-

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of Constitution of India. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment should meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority."

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Staying away from duties by the applicant without sending any leave application or medical certificate to support his unauthorised absence for such a long duration has been held to be the ground for his removal from service by the Disciplinary Authority as per the provisions contained in the Central Civil Services (Classification, Control And Appeal) Rules, 1965. The punishment of removal from service on the ground of unauthorised absence for such a long period of 81 days cannot be interfered with unless ~~malafides~~ arbitrariness or the fact of enquiry being inconsistent with the rules are ~~establish~~<sup>ed</sup>. We do not find any such averments or pleadings in this O.A.

7. In the circumstances, there is no merit in this O.A. and the same is dismissed. There shall be no order as to costs.

*N. K. Verma*

( N.K. VERMA )  
ADMINISTRATIVE MEMBER

*Gopal Krishna*

( GOPAL KRISHNA )  
VICE CHAIRMAN