

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 05.05.1999

OA 562/94

Naresh Chand, last employed on the post of Mukadam in the office of Wagon Repair Shop, Yard Repair Shop, Western Railway, Kota.

... Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Asstt. Works Manager, Western Railway, Kota Division, Kota.
3. Production Manager, Western Railway, Kota Workshop, Kota.
4. Chief Works Manager, Kota Workshop, Western Railway, Carriage and Wagon Department, Kota.

... Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

HON'BLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant

... Mr. Shiv Kumar

For the Respondents

... Mr. Manish Bhandari

O R D E R

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

Applicant, Naresh Chand, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of the disciplinary authority dated 26.2.93, at Annexure A-2, by which the penalty of removal from service was imposed upon him as also the order of the appellate authority dated 16.4.93, at Annexure A-3, by which the order of the disciplinary authority was upheld and the appeal was dismissed.

2. We have heard the learned counsel for the parties and have carefully perused the records.

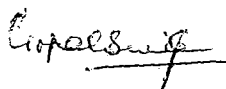
3. Applicant's case is that during his posting as Mukadam in the office of the Wagon Repair Shop, Kota, in the Western Railway, he was served with a charge-sheet for major penalty vide memo dated 11.7.91, at Annexure A-1, alleging therein that the applicant remained unauthorisedly absent from duty w.e.f. 13.10.90 to 27.10.90 and thereafter w.e.f. 12.12.90 to 21.12.92. An inquiry was held into the allegations and the enquiry officer submitted his report vide Annexure A-11 dated 3.2.93. A representation on the inquiry report was made by the applicant and the disciplinary authority after going through the inquiry report and the representation made by the applicant held the charges against the applicant as proved and imposed upon him the penalty

of removal from service. An appeal was preferred against the order of the disciplinary authority but the same was rejected by an order dated 16.4.93, at Annexure A-3. The contention of the applicant is that the disciplinary authority while inflicting punishment upon him ignored the observations of the enquiry officer in regard to his absence for the period from 13.10.90 to 27.10.90 and also the finding of the enquiry officer that as far as possible the applicant had followed the medical leave rules.

4. On the other hand, the respondents have stated that the applicant himself had admitted his guilt inasmuch as he had failed to make compliance with the Medical Attendance Rules and in fact he had not submitted any certificates in support of his illness for the periods in question.

5. Our attention was drawn to the provisions contained in Rule-22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968 (for short, the Rules), which provide that the appellate authority, in case of an appeal, shall consider whether the procedure laid down in the rules has been complied with, whether the findings of the disciplinary authority are warranted by the evidence on the record, and whether the penalty imposed is adequate, inadequate or severe, and then pass an order. After a careful perusal of the appellate order, we are of the view that such considerations, as envisaged by Rule-22 (2), referred to above, have not been made by the appellate authority while deciding the appeal.

6. In the result, we quash the appellate order dated 16.4.93, at Annexure A-3, by which the applicant's appeal was rejected and the penalty imposed was upheld. The matter is remitted to the appellate authority for passing a fresh order in accordance with the provisions contained in Rule-22 (2) of the Rules, after providing an opportunity of hearing to the applicant in the interest of justice, within a period of four months from the date of receipt of a copy of this order. The OA stands disposed of accordingly with no order as to costs.


(GOPAL SINGH)
ADM. MEMBER


(GOPAL KRISHNA)
VICE CHAIRMAN

VK