

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, J A I P U R

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Date of Order : 17/9/2001

O.A.NO. 32/1995

Netrapal S/o Shri Balbeer Singh aged 49 years, working as Ex. SPA in the Office of SEF (P), Gangapur City.

.....Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Senior DEE (P), Western Railway, Kota Division, Kota.
3. Additional Divisional Railway Manager, Western Railway, Kota Division, Kota (Raj).
4. Senior Electrical Foreman (P), Western Railway, Gangapur City, Shri K.D.Sharma.

.....Respondents.

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Present :

Mr. S.C.Sethi, present for the applicant.

Mr.Manish Bhandari, present for the respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

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ORDER

(PER HON'BLE MR.A.K.MISRA)

The applicant had filed this O.A. with the prayer that the order of removal dated 17.11.1993 (Annex.A/1) and the order of the appellate authority dated 9.3.1994 (Annex.A/2), rejecting the appeal of the applicant, be quashed and declared as nonest. The applicant had also prayed for a direction to the respondents that the whole period from 7.11.1993 till re-instatement be counted as spent on duty, with all consequential benefits regarding salary etc.

2. Notice of the O.A. was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. Briefly stated, the applicant was served with a Chargesheet on 18.11.1991 for remaining un-authorisedly absent from 2.4.1989 to 7.6.1989, 23.8.1989 to 15.9.1989, 7.11.1989 to 12.12.1989 and 7.3.1990 to 4.6.1990. The applicant had been suspended for remaining un-authorisedly absent. The applicant had challenged the suspension order and had also prayed for change of inquiry officer due to certain reasons and prejudices of the inquiry officer. The O.A. filed by the applicant earlier was accepted and the respondents were directed to change the inquiry officer. However, the inquiry officer was not changed and the same inquiry officer submitted his inquiry report which was the basis of passing the impugned punishment order. The applicant has challenged the order of punishment on number of grounds. It is stated by the applicant that no opportunity to defend was given to him. The Inquiry Officer

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rejected the application of the applicant on baseless grounds, inspite of the order of the Tribunal the same inquiry officer has submitted his inquiry report holding the applicant guilty of the charges. No witness was produced by the department to prove the charges. The appellate authority disposed of the appeal of the applicant in a routine manner without giving him an opportunity of hearing and passed the order without application of mind. The punishment awarded to the applicant is dis-proportionate to his guilt and deprives him of his service benefits and, therefore, deserves to be set aside. The contention of the respondents in this regard are that the applicant was in habit of remaining un-authorisedly absent; the applicant was served with a chargesheet based on the facts of applicant's un-authorised absence as indicated in the chargesheet; the charge against the applicant is fully proved; the inquiry officer, who had submitted his inquiry report has no knowledge of the order of the Tribunal directing the respondents to change the inquiry officer; the applicant himself did not attend the inquiry on baseless ground of O.A. being pending before the Tribunal; the order of the disciplinary authority is well reasoned; the appellate authority had also considered the case of the applicant and upheld the order of the disciplinary authority and the punishment order is not disproportionate to the guilt of the applicant and therefore, the O.A. bears no merit.

5. It was argued by the learned counsel for the applicant that the period of alleged unauthorised absence was t^erated as LWP by the respondents and, therefore, has been regularised by themselves, therefore, the same cannot be the basis of holding him guilty of un-authorised absence. In order to verify this aspect of the case, we have called for the service record of the applicant relating to leave account. On going through the leave account, we find that the period

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of the alleged unauthorised absence has been shown as LWP. It was stated that the said period was mentioned as LWP only to show the absence of the individual but does not amount to regularisation of the said period. But, we are of the opinion that the period of unauthorised absence should not be shown as LWP in the leave account unless the same has been decided by the concerned authority in one way or the other. Indicating the period of unauthorised absence as LWP, in our opinion, amounts to granting of the leave without pay. If an individual remains unauthorisedly absent for a number of days, then there should not be any difficulty in mentioning the same as unauthorised absence in the leave account and on decision by the competent authority in that regard, the same could be mentioned as per the decision as LWP or medical leave or any other kind of leave. No doubt, from the perusal of the service file (leave account), we find that the applicant had regularly been treated as LWP that means, the applicant had made it a practice to remaining on leave without pay on one pretext or the other. It appears that applicant had availed all sorts of leave available to him and had also remained on LWP for number of days in a particular year. But, that fact apart, the chargesheet is required to be attended as per the facts available relating to the charges and proof tendered in support of that. In this respect, the statement of Shri Suresh Kumar, is available on the inquiry file, who had stated that Netrapal Singh had not informed to his superior officer about his private sick period but necessary date-wise detail of the subject matter of the chargesheet, has not been stated by the witness, therefore, this evidence, in our opinion, is not sufficient to hold the charge as proved. From the inquiry file, it is also clear that inspite of repeated notices, the applicant did not participate in the inquiry proceedings. He had taken the ground that he had prayed for change of inquiry officer and, therefore, he would wait for the decision of the Tribunal in

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that regard. But, this is clear that no stay was granted in favour of the applicant in respect of the inquiry, therefore, the applicant's non participation in the inquiry on the ground that his O.A. in respect of change of the inquiry officer, was pending is without any force. In our opinion, he ought to have participated in the inquiry when no stay was granted in his favour. An important fact which is to be noticed is that the order of the Tribunal directing the respondents to change the inquiry officer was passed in favour of the applicant on 6.9.1993 (Annex.A/5) whereas the inquiry officer gave his report on 18.9.1993 holding the charges as correct and Netrapal Singh a defaulter. This finding of the inquiry officer was ex-parte. Looking to the fact that the inquiry officer was ordered to be changed by the Tribunal the report of the inquiry officer cannot form the basis of conviction and for this simple reason, the order of the disciplinary authority cannot be sustained. Likewise, the appellate authority had also over-looked this aspect while disposing of the appeal. Even if, the direction of the Tribunal for changing the inquiry officer was not brought to the notice of the either of the three authorities then also the inquiry report given by the same inquiry officer, who was ordered to be changed, cannot form the basis of conviction of the application. Otherwise, the order of the Tribunal passed in the earlier O.A. would be of no consequence and the applicant would suffer the punishment which he was anticipating as mentioned in the earlier O.A. Therefore, without going into the other aspects of attack, we would be justified in quashing the impugned punishment order.

6. For the reasons stated above, we are of the opinion that the impugned inquiry report dated 18.9.1993, the impugned punishment order passed by the disciplinary authority dated 17.11.1993 and the order of the appellate authority dated 9.3.1994 deserve to be

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quashed.

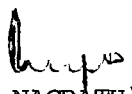
7. Now, the question remains to be debated is about the consequential benefit of pay etc., as claimed by the applicant. Considering the facts of the case, we are of the opinion that applicant deserves to be reinstated in service forthwith on the same post and pay (corresponding pay on the basis of new pay scale), but he is not entitled to any back wages, ~~xxx continuity xxx service xxx~~ The applicant for no sufficient reasons, did not participate in the inquiry which is being set aside on technical grounds and not on merits of the charges or proof thereof, therefore, the applicant, in our opinion, is not entitled to any back wages. Further, since the applicant had rendered no service during the said period of removal, therefore, he is not entitled to get this period counted as qualifying service for purposes of pension etc, the prayer of the applicant in this regard deserves to be rejected.


8. In view of the above discussions, the applicant succeeds in part and the Original Application deserves to be accepted in part.

9. The Original Application is, therefore, partly accepted. The impugned order of removal passed by the disciplinary authority dated 17.11.1993 (Annex.A/1) and the impugned order of the appellate authority rejecting the appeal of the applicant dated 9.3.1994 (Annex.A/2), are hereby quashed and set aside. The applicant is directed to be reinstated in service by the respondents within a period of one month from the date of communication of this order on the same post and on the same pay (corresponding new/revised pay scale). The respondents shall, however, be free to resume the inquiry against the applicant from the stage of serving of the chargesheet on the applicant, if they so desire.

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The applicant shall not be entitled to any service benefits including the pay etc. for the period of removal till re- instatement nor this period shall be counted for any pensionary benefits. The parties are left to bear their own cost.


(A.P.NAGRATH) 17/9/2001
Adm.Member


(A.K.MISRA)
Judl.Member ✓

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