IN THE CENTRAL ADMINISTRARTIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

DATE OF ORDER : 03 APR 2002

OA No. 369/95

Imdad Ali son of Shri Hafiz Ali, Ex. Welder, Ticket No. 10376/22 Carriage and Wagon Workshop, Ajmer and resident of House No. 89/5, Inderkot, Ajmer.

VERSUS

1. Union of India through the General Manager, Western Railway, Churchgage, Mumbai.

2. They Dy. Chief Mechanical Engineer (Carriage) Western Railway, C&W Shops, Ajmer.

3. The chief Workshop Manager, Western Railway, Ajmer.

....Respondents.

Mr. P.D. Khanna, Counsel for the applicant.
Mr. U.D. Sharma, Counsel for the respondents.

CORAM

Hon'ble Mr. H.O. Gupta, Member (Administrative)
Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDICIAL)

Applicant has filed this application under Section 19 of the Administrative Tribunal Act, 1985 and has prayed for the following reliefs :-

(i) That the notice of Imposition of Penalty order No. CE/308/89/5/25 dated 2.4.1990 (Annexure A/1) issued by the Dy. Chief Mechanical Engineer (Carriage) Ajmer nd appellate order No. EW308/Appeal/Carriage/92-1 dated 8.8.1994 (Annexure A/2) issued by the Chief Workshop Manager, Ajmer respectively be declared illegal, wrongful, null and void and inoperative and it be further held that the applicant continues in service if the said orders have not been at all passed and entitled to be restored to his original position according to his seniority etc. vis-a-vis his juniors.

(ii) That may be declared that the applicant is entitled to receive and the respondents are liable to pay entire back wages with all allowances and enhanced from time to time w.e.f. 2.4.1990 or the date of removal to the date of reinstatement with all consequential benefits attached to the service.

(iii) That may be declared that the applicant is entitled for salary and allowances pendtilite and future at the rate of Rs. 1015/- with such increase as may be sanctioned by the respondents from time to time.

(iv) That any other relief which the Hon'ble Tribunal deem fit be granted.

(v) Cost of the application.

2. The brief facts of the case are that the applicant was initially appointed as Khallasi on 1.10.1964 in Carriage & Wagaon Workshop, Ajmer. He was promoted to the post of Welder. While working on the post of Welder in Department No. 22 in the year 1989 in Carriage & Wagon Workshop, Ajmer, the applicant was issued with a charge sheet on Standard Form No. 5 under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 on 10.3.1989. He was charged with the allegations that he remained authorisedly absent from 5.12.88 to 16.12.88 and from 27.1.89 to 31.1.89. It has also been alleged that he was removed from service in the year 1976 on the ground of unauthorised absence in 1982 also and he was imposed the penalty of removal from service but he was taken back on dated 18.1.84 by the order of Chief Works Engineer. It has also been alleged t that the applicant has been penalised with minor penalties for 13 times in the year 1987 and 1988 on the ground of unauthorised absence. In this way, it has been alleged that the applicant is habitual to remain unauthorisedly absent from duties and has voilated the Rule 3(1)(ii) & (iii) of the Railway Servants Conduct Rules 1966. The applicant has averred that he was faced with misfortunes in as much as his only son absconded from the house and finally he lost the only son. His wife became psychiatric patient. He remained sick and bed ridden and was under treatment of the private doctor without any improvement in his condition. The applicant was to nominate a defence helper but the Inquiry Officer held the inquiry and asked the applicant in regard to the charges. He was asked as to whether he

admitts the charges. The applicant admitted the charges and also explained the peculiar circumstances faced by him but the Inquiry Officer did not conduct the detailed inquiry and on the basis of the admitance of the charges held the charges as proved. The applicant was not supplied even a copy of the Inquiry Report and imposed the penalty from removal from service on dated 2.4.90. The applicant preferred an exhaustive appeal but the same was rejected vide order dated 8.8.94 (Annexure A/2). The OA has been filed on the grounds which are mentioned in the OA as Ground 5.1 to 5(24). We shall be dealing with the grounds in the later part of this judgement.

4. The OA was admitted on 10.10.95 and notices were issued to the respondents for filing the reply. The respondents have contested the OA and have filed reply to the OA. They controverted the averments and grounds made in the OA and have pleaded that there was no irregularity in passing the impugned penalty order and the applicant is not entitled for the relief claimed for.

5. We have heard the learned counsel for both the parties and have carefully perused the records of the case.

6. The learned counsel for the applicant has heavily relied upon the judgement dated 3.5.94 of this Hon'ble

Tribunal in OA No. 236/83 in Mani Ram Vs. Union of India & Others on the point of whether there was no provision regarding any admission of the charges before the Inquiry Officer in the Railway Servants (Discipline & Apeal) Rules, 1968 analgous to the provisions of Rule 14 (9) & (10) of CCS CCA Rules stipulates as under: -

"(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiry authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the Government servant thereon.

(10) The inquiring authority shall return a finding of guilty in respect of those articles of charge to which the Government servant pleads guilty."

7. We have perused the judgement in Mani Ram case, wherein the issue regarding the rules in relation to conduct the inquiry have been examined and it has been categorically held that there is no such provision like Rule 14(9) & 14 (10) of CCS(CCA) Rules, 1968. The conducting of the inquiry as per the rules is mandatory and admitting or denying before the inquiry officer has no meaning. It has been held that Article 311(2) penalty like dismissal, removal etc. cannot be held without holding any inquiry. While there is no dispute about the legal provisions made in the rules and in normal course, the detailed

inquiry is a must in case of Railway servants as per the procedure laid down under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968.

8. In the present case, the contention/ground taken by the applicant that no opportunioty was given to the applicant to defend his case, he was not supplied with the relevant documents, no inquiry was held in the matter, there is flagrant voilation of the statutory rules in conducting the inquiry etc, ought to have been accepted but we find that there is no voilation of principles of natural justice in the present case in as much as the applicant has not taken the plea that the acceptance of the charges was under duress or under undue influence. In fact the judgement/fact in Mani Ram's case are quite different from the facts of the present case in as much as a Mani Ram's case, Mani Ram accepted the charges before the Inquiry Officer but on the very next date, he submitted an application that the detailed inquiry should be held against the allegations but the detailed inquiry was refused and the charges were taken as proved on admission of the guilt. In the present case, applicant has accepted the charges and at no point of time, he made any such request for holding the inquiry. In the complete pleadings, it is no where said as to whether any prejudice was caused to him due to non conducting of the oral inquiry. No other additional material has been taken place on record in support of his defence which could have been brought out at the oral inquiry and could have shown that the applicant did not remain wilfully absent. The learned counsel for the applicant has referred to number of judgements in support of his contention that inquiry was a must but we do not consider it appropriate to discuss them here since we have

already held that as per rules in normal course the detailed inquiry is required to be held.

9. Since we have held that there was no fault in the proceedings under the peculiar facts and circumstances of this case. The penalty order cannot be quashed on the ground of procedural lapses.

10. The learned counsel for the applicant has submitted that he remained absent only for a period from 5.12.88 to 16.12.88 (12 days) and from 27.1.89 to 31.1.89 (5 days) with a total of 17 days only. As regards the various charges of absence, he was already penalised and the same could not be the basis of charge sheet. The applicant is a low paid employee. It was because of peculiar circumstances that he could not report during this period.

11. But what we have to see is whether for a period of absence from duty for about 17 days, harsh punishment of removal from service would be justified. Considering the facts of the case, we are of the opinion that punishment of removal from service is awarded to the applicant is disproportionate to the charge. This is one such case, where looking to the charges, the punishment shocks our conscience. The applicant has completed 26 years of service on the date of notice of imposition of penalty and if the Government servant like the applicant is removed from service on a charge of remaining absent from duty on medical grounds without informing the authorities as per rules, then he and his family are driven

to life of misery financially and socially both. Therefore, we are the opinion that the punishment as awarded by the discilinary authority and confirmed by the appellate authority deserves to be quashed. Since we have come to the conclusion that the order that the order of removal deserves to be quashed, it would be of no consequence to discuss the failure of the appellate authority to consider the case in the right perspective. But we may mention here that law has casted a duty on the appellate authority to consider every aspect of the case in such matters i.e. whether the inquiry has been properly conducted, whether the result arrived at by the inquiry officer is supported by the material on record and whether punishment is adequate, inadequate or otherwise in view of the facts of the case. In our opinion, if the appellate authority had examined the matter relating to the reasonableless of the punishment, probably he would have come to a different conclusion than that of the disciplinary authority but the case was not considered properly which has resulted into a prolonged litigation miscarriage of justice.

12. After hearing both the parties, we find force in the contention of the learned counsel for the applicant that the penalty imposed on the applicant is not commensurate to the charge levelled against him. We are aware of the well settled legal position that the Tribuinal cannot re-appreciate the evidence, also cannot interfere with the quantum of penalty imposed by the Disciplinary Authority except in case where it shocks the conscience of the court or Tribunal. The Hon'ble Supreme court in the case of B.C. Chaturvedi vs. Union of India JT 1995(8) SC 65 has held that the High Court/Tribunal while exercising the power of judicial review cannot normally

substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either directing the discplinary/appellate authority to consider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases, impose appropriate punishment with cogent recources in support thereof. In the case of Shamsher Bahadur Singh vs. State of Uttar Pradesh and Others, 1993(2) SLJ 16, Allahabad High Court has held that oridinily the maximum penalty resulting in an economic death of an employee could be awarded only in cases of grave charges where lesser punishment would be inadequate and may not have any curative effect. The same view is held by the Hon'ble High Court of Punjab & Haryana in the case of Ex-constable Balwant Singh Vs. state of Haryana in CWP 12406 of 1995 decided on 7.12.98 1994(2) ATJ 113.

13. Having come to the conclusion that the penalty of removal is not commensurate to the charge, we faced with a question as what should be done now, whether the case for proper order or proper punishment be passed in this regard or any substitution or order of punishment given by the disciplinary authority in terms of observations made in B.C. Chaturvedi's case (supra). As her from the facts ot the case that this matter is 14 years old now and incident relating to the year 1988. The impugned penalty order were also passed as back as in the year 1990 i.e. about 12 years back from today. In view of these facts, we do not propose to remand the matter to departmental authority and propose to modify/substitute the penalty.

14. As regards the penalty to be substituted from the facts of the case, it is evident that the applicant became habitual of remaining absent and despite giving opportunities to reaffirm himself, he remained absent from servie off & on. He proved himself to be incorrigible. In such situation, the Apex Court has given a verdict in State of Punjab vs. Ram Singh, AIR 1992 SC 218 as under :-

> "Despite giving such opportunities if the delinquent officer proved to be incorrigible and found complete unfit to remain in service than to main discipline in the service, instead of dismissing the delinquent officer, a lesser punishment of compulsory retirement or demotion to a lower grade or rank or removal from service without affecting his future chances of re-remployment, if any, may meet the ends of justice. Take for instance the delinquent officer is habitually absent from duty when required. Despite giving an opportunity to reform himself he continues to remain absent from duty off and on. He proved himself to be incorrigible and thereby unfit to continue in service. Therefore, taking into account his length of service and his claim for pension he may be compulsorily retired from service as to enable him to earn proprotionate pension."

The same view was taken by the Jodhpur Bench of this Tribunal in case of Rajendra Kumar Pareek vs. Union of India & Others reported in SLJ 2001(3) CAT 97. That was the case, applicant remained absent due to medical reasons for over two years and did not follow the medical rules of informing the sickness/submit the sick certificate to the controlling authority, the punishment of removal from service was reduced

to stoppage of three increments, keeping the young age of the applicant.

15 In view of the above discussion, we are of the opinion that the impugned punishment order dated 2.4.90 (Annexure A/1) deseves to be modified to the extent that penalty of removal from service be substituted by penalty of compulsory retirement and Appellate order deserves to be quahsed. Therefore, we pass the order as under :-

"OA is partly accepted. The impugned removal order dated 2.4.90 (annexure A/1) is modified to the extent that penalty from removal from service is substituted by penalty of compulsory reitrement consequently the appellate order dated 8.8.94 (Annexure A/2) stands set aside. The applicant shall be entitled to all consequential retiral benefits as per rules in force. The respondents shall comply these directions within a period of three months from the date of redceipt of a copy of this order. No order as to costs.

(J.K. KAUSHIK)
MEMBER (J)

(H.O. GUPTA)
MEMBER (A)