

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 30.04.2002

O.A. No. 200/1996.

Shri Baboo s/o Shri Sona, aged about 49 years, resident of village and post Bandaretha Teh. Bayana Distt. Bharatpur, last employed on thepost of Trolleyman under permanent way Inspector Fatehpur Sikri, Western Railway.

... APPLICANT.

versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Additional Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Senior Divisional Engineer, Western Railway, Kota Division, Kota.

... RESPONDENTS.

Shri Shiv Kumar, counsel for the applicant.
Shri Manish Bhandari, counsel for the respondents.

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Hon'ble Mr. Justice O. P. Garg, Vice Chairman.
Hon'blr Mr. A. P. Nagrath, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Justice O. P. Garg)

The applicant was employed in the Railway Department as a Gangman. In course of time he was promoted to thepost of Trolleyman. A test for promotion to the post of PW Mistry was proposed. The essential eligibility criteria for the said post was five years service as a Gangman/Keyman, having middle class pass, as educational qualification. It is alleged that with a view to appear in the said test, the applicant has submitted a false certificate, showing him to have passed the VIIth class. A departmental enquiry was initiated against him by order dated

for

30.05.1990. The Disciplinary Authority agreeing with the report of the Disciplinary Authority, inflicted the punishment of removal from service upon the applicant. The applicant filed an appeal which resulted in rejection on 19.04.1995 (Annexure A-3). It is in these circumstances that the applicant has come before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to challenge the order of removal from service as well as the order by which his appeal was rejected.

2. A detailed reply has been filed on behalf of the respondents.

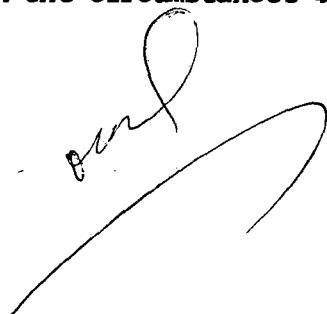
3. Heard the learned counsel for the parties at considerable length.

4. To begin with, it may be mentioned that the applicant has already attained the age of superannuation and even if this Original Application is allowed he cannot be taken back in service. Keeping this fact in view, we proceed to consider the various submissions made by Shri Shiv Kumar, learned counsel for the applicant. Learned counsel for the applicant pointed out that there was no occasion for the applicant to apply for the post of PW Mistry, as on the relevant date he has put in only $3\frac{1}{2}$ years of service and was only Class IV pass. It was also pointed out that, as a matter of fact, the applicant never appeared in the selection test for the post of PW Mistry. Learned counsel for the respondents pointed out that the applicant himself has admitted that he has put his signature on

A handwritten signature in black ink, appearing to read "J. K. Mistry".

the prescribed form for the test. The applicant tried to explain the circumstance before the Enquiry Officer by stating that some other employee had obtained his signature on some paper, which was subsequently treated as application for test for the post of PW Mistry. We have perused the report of the Enquiry Officer as well as the reasoned order passed by the Disciplinary Authority which was upheld and affirmed by the Appellate Authority. Having done so, we find that there is no infirmity in the Enquiry Report. The order of acceptance of the Enquiry Report cannot be faulted on any ground. The jurisdiction of this Tribunal in the matter is quite limited. Unless the report of enquiry is vitiated on account of the absence or lack of evidence or there is flagrant violation of the principles of natural justice or the statutory rule, this Tribunal would not be justified in interfering with the findings of the Disciplinary Authority or that of the Appellate Authority. In this connection, a reference may be made to various decisions of the Apex Court, namely, B.C. Chaturvedi v. Union of India, (1995) 8 JT (SC) 65, State of Tamil Nadu v. T. V. Venugopalan, (1994) 6 SCC 302, Union of India v. Upendra Singh, (1994) 3 SCC 357, Government of Tamil Nadu v. A. Rajapandian, (1995) 1 SCC 216, and Union of India v. B. S. Chaturvedi, (1995) 6 SCC 749, Tamil Nadu and Another v. S. Subramaniam, AIR 1996 SC 1232, Director General of Police and Ors. v. Jani Basha, 1999 AIR SCW 4802, and Syed Rahimuddin v. Director General, CSIR and Others, 2001 AIR SCW 2388.

5. Shri Shiv Kumar, learned counsel for the applicant, however, pointed out that in the circumstances of the case, the



order of removal of the applicant from service was not only harsh but unjustified and unconscionable. We have given our thoughtful consideration to this aspect of the matter and find that there is some weight in the submission of Shri Shiv Kumar. Whatever the fate of the enquiry has been, the fact remains that the applicant was not eligible to appear in the selection test for the post of PW Mistry. He did not fulfil the eligibility criteria either with regard to the length of service or academic qualification. The applicant also did not appear in the examination. The applicant has been the victim of the circumstances. The telling circumstances of the case indicate that the applicant, who was ^apetty employee, requires sympathetic consideration in the matter of punishment. Shri Manish Bhandari, Learned counsel for the respondents, pointed out that this Tribunal cannot interfere with the order of punishment passed by the Disciplinary Authority as it is within the exclusive domain of the Disciplinary Authority to gauge and determine the nature of punishment. On principle we agree with Shri Manish Bhandari, but the fact remains that every case has to be judged on its own facts and merits. There is a decision of the Apex Court in which it has been observed that in exceptional circumstances the Tribunal would be justified in substituting the order of punishment passed by the Disciplinary Authority by passing appropriate orders. In B. C. Chaturvedi's case (Supra), the Hon'ble Supreme Court observed in paragraph 18 of the report as follows :

"18.....If the punishment imposed by the disciplinary authority shocks the conscience or the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to

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reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In view of the above observations, this Tribunal has the power to substitute the order of punishment in very sparing circumstances, if the order of punishment has been disproportionate to the gravity of the charge established against the delinquent employee or is unwarranted in the circumstances of the case. In the present case, as said above, the applicant has been a victim of the circumstances. There was a possibility of his not having at all applied for the selection test as he was not eligible. Right from the very beginning, the applicant has asserted that he was only IVth class pass and had not completed the required length of service and, therefore, he was not eligible to appear in the selection test. He did not appear in the test. The applicant stands superannuated. On account of the order of removal he has been deprived of his pensionary and retiral benefits. Certainly the extreme penalty of removal from service has visited the applicant and his family members with serious evil consequences. Emphatic denunciation of the established misconduct of the applicant would be amply ^{reflected} ~~reverted~~ if the penalty of compulsory retirement is substituted for the punishment of removal from service, as in that event, the applicant would be entitled to the benefit of pensionary/retiral benefits. In our view, the order of removal from service is not only harsh or unjustified but shockingly unconscionable. We would like to do well to substitute the punishment of compulsory retirement for the punishment of removal from service as imposed by the Disciplinary Authority.

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6. In the result, the Original Application is allowed in part with the observation that instead of the extreme penalty of removal from service, imposed by the Disciplinary Authority and as affirmed by the Appellate Authority, the applicant shall suffer the punishment of compulsory retirement from service. The applicant shall be entitled to all the consequential benefits, treating him to have been retired compulsorily. No order as to costs.

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(A. P. NAGRATH)
MEMBER (A)

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(JUSTICE O. P. GARG)
VICE CHAIRMAN