IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JAIPUR BENCH,JAIPUR.

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Date of Decision: 27.7.2001

OA 250/96

Munni Lal, Ex CBR Gr.II, T.No.43709, Carriage & Wagon Workshop, Western Railway, Ajmer.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Chief Mechanical Engineer, Carriage & Wagon, Western Railway, Ajmer.
3. Asstt.Works Manager (R), Carriage & Wagon Workshop, Western Railway, Ajmer.

... Respondents

CORAM:

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

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.Shiv Kumar

For the Respondents ... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.A.K.MISHRA, JUDICIAL MEMBER

The applicant had filed this OA with the prayer that the impugned order dated 3.9.85 (Ann.A/1), SF-5 for major penalty, punishment order dated 17.4.86 (Ann.A/2), imposing the penalty of removal from service, and the order dated 24.11.95 (Ann.A/3), rejecting the appeal of the applicant, be declared illegal and be quashed, with all consequential benefits.

2. Notice of the OA 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. The applicant was appointed on 23.4.71 under the control of the respondents in C&W Workshop, Ajmer. While he was working in the Workshop, he proceeded on two days' casual leave from 9.4.85 to 10.4.85. But thereafter due to mental illness the applicant could not report on duty and ultimately after having been treated by Dr.H.B.Singh, Senior Mental Disease Specialist of Agra, upto 15.2.91, he reported on duty on 16.2.91 with a Medical Certificate dated 15.2.91 but he was not taken on duty and was informed that he was removed from service due to continuous absence from duty. Thereafter, the applicant obtained the copy of the removal order and filed an appeal before the competent appellate authority but the appellate authority dismissed the appeal of the applicant on the ground of limitation. Other grounds of challenge were not decided by the appellate authority. Then the applicant moved an OA before the Tribunal in the year 1992, which was disposed of vide order dated 2.8.95 (Ann.A/6), and the appellate authority was directed to consider the appeal of the applicant on merits having regard to all the grounds raised therein and pass a reasoned order keeping in view the provisions of Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short, the Rules, 1968) including the quantum of penalty imposed upon the applicant, within a period of four months. Thereafter, the applicant presented another memorandum of appeal on 26.9.95 before the appellate authority, which was rejected by the appellate authority vide impugned order dated 24.11.95 (Ann.A/3).

5. In the counter, the respondents have stated that the applicant absented from duty after having been gone on

casual leave. All efforts on the part of the respondents to inform the applicant, asking him to report on duty, had gone in vain because the applicant was not available at his given residential address. A memorandum of charges was drawn against the applicant, that too could not be served upon him because of his non-availability on the given address in spite of number of attempts to serve the same upon the applicant. A Welfare Inspector was deputed to find out the whereabouts of the applicant but he too could not trace the applicant and reported that the applicant is not available at his given residential address, neither the whereabouts of the applicant were known to his family members. When all the efforts to serve the applicant remained futile, the disciplinary authority acted under Rule 14(ii) of the Rules, 1968 and passed the order of removal of the applicant from service, which is under challenge.

6. It was argued by the learned counsel for the applicant that having drawn the charge-sheet against the applicant, the disciplinary authority was not within its power to exercise its jurisdiction under Rule 14(ii) of the Rules, 1968 and, therefore, the impugned removal order deserves to be set aside. The appellate authority also failed to appreciate the various grounds raised by the applicant in his memorandum of appeal and passed the impugned order dated 24.11.95 (Ann.A/3) in a mechanical manner without application of mind. Therefore, both these orders cannot be allowed to remain in force against the applicant. It is also argued by the learned counsel for the applicant that the applicant had remained mentally ill throughout these years and when he was fully cured of his mental disorder, he reported on duty with the certificate of the treating Doctor and in view of this, the order of

removal is disproportionate to the guilt of the applicant and deserves to be set aside and the applicant is entitled to be reinstated in service.

7. On the other hand, it was argued by the learned counsel for the respondents that the applicant was not traceable at his given residential address and all efforts to serve the applicant with the notices of the inquiry including the memorandum of charges remained unsuccessful. Due to this, the disciplinary authority had no other alternative but to have recourse of Rule 14(ii) of the Rules, 1968 in passing the impugned order. He has further argued that there is no provision under the rules to wait for the absentee government servant till he reports on duty at any time to be chosen by him, at his own convenience. Moreover, the applicant was not given the liberty to file a fresh memorandum of appeal before the appellate authority. The appellate authority was to dispose of the appeal, which was earlier disposed of by him on technical ground of limitation. Therefore, the contentions raised by the applicant in the fresh memorandum of appeal are of no consequence. It was also argued by the learned counsel for the respondents that the applicant has failed to conclusively prove that he suffered mental illness right from 1984 and was continuously under the treatment of the Doctor upto 15.2.91. Therefore, the present OA deserves to be dismissed.

8. We have given our thoughtful consideration to the rival contentions and facts of the case.

9. From the decision of the Tribunal rendered on 2.8.95 (Ann.A/6), we find that in the earlier OA the applicant had challenged the action of the disciplinary authority of

invoking powers under Rule 14(ii) of the Rules, 1968 in passing the removal order but after lengthy discussion it was held by the Tribunal that respondents' action in dispensing with the detailed inquiry and resorting to the provisions of Rule 14(ii) of the Rules, 1968 cannot be found at fault. In other words, the action of the disciplinary authority in passing the removal order under Rule 14(ii) of the Rules, 1968 was upheld and in view of this the applicnat cannot reagitate the same matter now. The OA was accepted with the limited object of directing the disciplinary appellate authority to dispose of the appeal as per the law, keeping in view the provisions and also the quantum of punishemnt awarded to the applicant. Therefore, presently all we have to see is whether the appellate authority had properly exercised its power under the provisions of the rule. As noted earlier, the applicant was not expected to submit a fresh memorandum of appeal to the appellate authority. Memorandum of appeal submitted by the applicant earlier is not available on record. Therefore, we are at loss to know what was the ground raised by the applicant in the earlier memorandum of appeal.

10. The applicant is basically aggrieved of the disciplinary authority having proceeded against him without following the procedure meant for detailed inquiry but in view of his prolonged absence and unsuccessful attempts of the department to serve the applicant with the papers relevant to the inquiry, the appellate authority came to the conclusion that the disciplinary authority had not committed any mistake in adopting the course as provided under Rule 14(ii) of the Rules, 1968. We too do not find any fault in the order of the appellate authority in upholding the procedure adopted by the disciplinary authority. The

department had done all what could be expected of it. The department had repeatedly sent the registered notices to the applicant at his given residential address. Moreover, the registered letter was tried to be served by the Postman on number of dates starting from 7th October to 15th October and ultimately returned the letter with the note that the applicant is avoiding service of the letter. Not only this, even the Welfare Inspector, deputed to find out the applicant, also remained unsuccessful in tracing him. Therefore, we too are of the opinion that the disciplinary authority had rightly resorted to the provisions of Rule 14(ii) of the Rules, 1968. In view of all these facts, the applicant cannot successfully raise the point that the inquiry had proceeded almost exparte against him.

11. From the facts, as available on record, the applicant was removed for absence from duty in the year 1986 by the impugned order of the disciplinary authority. The applicant reported on duty in the year 1991 with the certificate of private doctor of 15.2.91 but there is nothing on record to show that the same doctor had treated the applicant right from the begining i.e. from April, 1985 onwards. In the certificate (Ann.A/5) all what the doctor has written is that the patient was alright till April, 1985 and thereafter he developed sleeplessness, lack of interests, used to remain sad and his appetite was reduced but this cannot amount to mental illness so as to conclude that the applicant was not in a position to understand his own welfare by either reporting on duty or on being available at his residence etc. Therefore, solely on the basis of medical certificate dated 15.2.91 it cannot be concluded that continuous absence of the applicant from duty was due

to his mental illness.

12. Considering the point of punishment, it is settled position of law that the conclusion of the disciplinary authority in awarding punishment is not subject to interference by the Tribunal unless the punishment is shocking to the conscious. In the instant case, ~~when~~ initially the applicant had remained absent for couple of years and was removed because of his absence and thereafter also the applicant remained absent for number of years and tried to report on duty with an excuse, which is difficult to believe. We do not think that removal of the applicant from service is disproportionate to his guilt. In the given circumstances, we do not find that the removal is shocking to the conscious. The applicant had rendered only 14 years of service to the respondents when he absented from duty and thereafter almost 16 years have lapsed, out of which more than 6 years were said to have been spent by the applicant due to mental illness and remaining 8 to 9 years spent in litigation. The age of the applicant, who could have rendered useful services to the respondents during his prime youthful years has almost passed away and when the applicant has become more than 50 years of his age or may be around 55, then any direction of reinstatement of the applicant would be simply improper and in view of this also the removal order of the applicant deserves to be maintained.

13. In our opinion, the applicant has not been able to make out a case for interference in the impugned order. The OA, in our opinion, is devoid of any merit and deserves to be dismissed.

14. The OA is, therefore, dismissed. Parties are left to bear their own cost.

Gopal Singh

(GOPAL SINGH)
MEMBER (A)

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(A.K.MISRA)
MEMBER