

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.383/97

Date of order: 18/1/2002

Magan Lal Meena, S/o Sh.R.L.Meena, R/o Ramanwa Patti
Kalan, Distt.Sawaimadhopur -Ex-Statistical Inspector

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly,
Churchgate, Mumbai.
2. Divisional Railway Manager, W.Rly, Kota.
3. Sr.Divisional Operating Manager, W.Rly, Kota.

...Respondents.

Mr.S.K.Jain : Counsel for applicant

Mr.S.S.Hasan : Counsel for respondents.

CORAM:

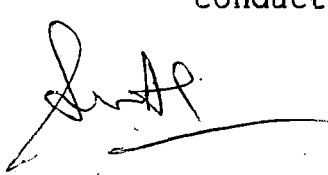
Hon'ble Mr.S.K.Agarwal, Judicial Member.

Hon'ble Mr.H.O.Gupta, Administrative Member

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash and set aside the order dated 17.7.97 (Annx.A1) passed by the appellate authority and the order dated 11.4.97 passed by the disciplinary authority and to direct the respondents to reconsider the case of the applicant for inflicting lesser penalty than the penalty of removal from service and to reinstate the applicant in service with all consequential benefits.

2. Facts of the case as stated by the applicant are that while working on the post of Statistical Inspector, respondent No.2 issued memorandum of charge-sheet dated 29.1.96 to the applicant. Enquiry officer was appointed who conducted the enquiry and held the applicant guilty of



deliberate and wilfull absence from duty from 27.4.95 to 22.1.96 and thereafter imposed penalty of removal from service of the applicant vide order dated 11.4.97. The applicant challenged the order in appeal but the appellate authority also dismissed the appeal vide order dated 17.7.97. It is stated that the applicant has not committed any misconduct and the enquiry officer has conducted the enquiry without following the rules/procedure and thus violated the principles of natural justice. It is further stated that it is a no evidence case, therefore, the finding of the enquiry officer is perverse and the punishment imposed upon the applicant is disproportionate to the gravity of the charge. Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. It is stated in the reply that the Enquiry Officer has conducted the enquiry as per rules and procedure and there has not been any violation of principles of natural justice while conducting the enquiry. It is also stated that the applicant himself did not apply for any kind of leave for the period 27.4.95 to 22.1.96 and he himself has conceded his absence from duty for the aforesaid period. Therefore, the absence of 8 months or more for which no proper defence has been given. The disciplinary authority did not commit any illegality in imposing the penalty of removal from service of the applicant. It is also stated that the appellate authority after considering the report of the enquiry officer and after considering the order of the disciplinary authority has rightly dismissed the appeal vide the impugned order dated 17.7.97. Thus the applicant has no case.

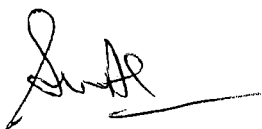


4. Heard the learned counsel for the parties and also perused the whole record.

5. The learned counsel for the applicant argued that the report of the enquiry officer is based on no evidence therefore the finding of the enquiry officer holding the applicant guilty is perverse and on the basis of such report the order passed by the disciplinary authority imposing the punishment of removal from service upon the applicant is not sustainable in law. He further argued that if the Tribunal is of the opinion that the report of the enquiry officer is not perverse then the punishment imposed upon the applicant is disproportionate to the gravity of the charge therefore the punishment should be modified accordingly. On the other hand the learned counsel for the respondents argued that the absence of the applicant without getting the sanctioned leave is fully proved by the statement of the applicant himself and this fact cannot be denied by the applicant, therefore, absence of the applicant from duty without any reasonable and probable cause is liable to be punished severely. Thus the punishment of removal from service imposed upon the applicant is not disproportionate to the gravity of the charge.

6. We have given anxious consideration to the rival contentions of the counsel for the parties and also perused the whole record.

7. On a perusal of the statement of the applicant recorded during the course of enquiry, the applicant himself has admitted the fact that the applicant was absent for the period from 27.4.95 to 22.1.96. On the basis of evidence produced, it is also abundantly clear that the applicant



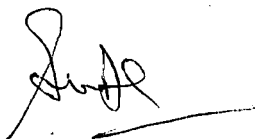
remained absent without getting any kind of leave sanctioned and even during the course of enquiry no reasonable and probable cause has shown by the applicant for his absence. Therefore, holding the applicant guilty for wilfull and deliberate absence for the aforesaid period is fully established and we are not in agreement with the learned counsel for the applicant that it is a case of no evidence and the finding of the enquiry officer holding the applicant guilty is perverse and no penalty can be imposed upon such finding.

8. Now the question arises whether the punishment imposed upon the applicant is disproportionate to the gravity of the charge.

9. In catena of judgments High Court/Tribunal while exercising the powers of judicial review it has been held that if the punishment imposed upon the delinquent govt. servant is disproportionate to the gravity of charge, the Court/Tribunal can interfere.

10. In Ranajit Thakur's case, Hon'ble Supreme Court has interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking.

11. In B.C.Chaturvedi Vs. UOI, 1996(6) SCC 719(3), it was held by the Apex Court that if the punishment imposed by the disciplinary authority or the appellate authority appears to be disproportionate to the gravity of charge for High Court or Tribunal, it would be appropriate to mould the relief by directing the disciplinary authority or appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself impose appropriate punishment



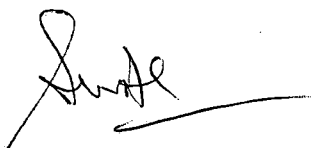
with cogent reasons in support thereof.

12. A similar view was taken in Indian Oil Corpn. Vs. Ashok Kumar Arora (1997) 3 SCC 72, it was held that the Court will not interfere unless the punishment is wholly disproportionate.

13. In Apparel Export Promotion Council Vs. A.K.Chopra, 1999(2) ATJ SC 327, Hon'ble Chief Justice observed that High Court cannot substitute its own conclusion with regard to the guilt of the delinquent for that of departmental enquiries unless the punishment imposed by the authorities is either impermissible or such that it shocks the conscience of the High Court.

14. On the basis of the law laid down by Hon'ble Supreme Court, we can safely say that the Court/Tribunal can interfere with the quantum of penalty if the same is disproportionate to the gravity of the charge or it shocks the judicial conscience.

15. The applicant in this case appears to have joined the Railway service in the year 1991 and thereafter he was promoted as Statistical Inspector through departmental examination on 19.3.93. There is nothing adverse on record against the applicant except the charge of absence from duty on the basis of the impugned order of punishment has been passed. The applicant was initially became absence due to death of his mother and thereafter continued this absence because of his mental tension and it appears that the applicant has committed this act because of his mental tension. The applicant is a young man having responsibility to maintain his family for so many years to come. In such circumstances, looking to the gravity of the charge proved



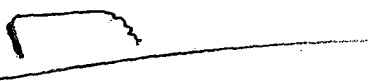
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Sydney
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Dear Sir,
I am writing to you regarding the
information that you have provided.

against the applicant, the punishment of removal from service will be too deterrent and disproportionate and end of justice will be served if a lenient view is taken in place of deterrent punishment imposed upon the applicant and the applicant may be imposed any other penalty except the punishment of removal or compulsory retirement, as the disciplinary authority deems it fit after hearing the applicant.

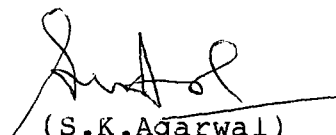
16. We, therefore, quash the impugned order of removal from service of the applicant dated 11.4.97 (Annex.A2) and the order of the appellate authority dated 17.7.97 (Annex.A1) and direct the respondents to reinstate the applicant in service forthwith. We also direct the disciplinary authority to reconsider the quantum of punishment ^{to be} awarded to the applicant for the alleged misconduct in the light of the observations made by us as above. The whole exercise must be completed within a period of 3 months from the date of passing of this order.

17. No order as to costs.



(H.O. Gupta)

Member (A).



(S.K. Agarwal)

Member (J).