

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

DATE OF ORDER : 03.04.2002

OA 369/1998

S.J. Mishra son of Shri J.M. Mishra, aged about 40 years  
resident of T-95 P, Railway Loco Colony, Jaipur.

....Applicant.

VERSUS

1. Union of India through General Manager, Western  
Railway, Churchgate, Mumbai.
2. F.A. & C.A.O., Western Railway, Church Gate, Mumbai.
3. Sr. Divisional Accounts Officer, Western Railway,  
Jaipur.

....Respondents.

Mr. N.K. Gautam, Counsel for the applicant.  
Mr. U.D. Sharma, Counsel for the respondents.

CORAM

Hon'ble Mr. Gopal Singh, Member (Administrative)  
Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

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

In this application filed under Section 19 of the  
Administrative Tribunal's Act, the applicant has challenged  
the order of removal from Service dated 14.11.96 (Annexure  
A/8) and the appellate order dated 8.10.97 (Annexure A/10).  
The brief facts of the case are that the applicant was  
faced with peculiar circumstances. He fell ill and lost his



only son. He met with an accident. He suffered with fracture in his left and right leg. The applicant sent the intimation of his sickness to his Controlling Officer and Sr. DMO from time to time. The applicant was issued a charged sheet vide Memorandum dated 8.3.91. He denied the allegations and submitted reply to the charge sheet. An inquiry was ordered in the matter and as per the averments made, the Inquiry officer did not conduct any inquiry. He was not supplied with any documents asked by him as well annexed with the charge sheet. He was suddenly supplied with copy of the Inquiry Report and the charges were held to be proved. Thereafter the penalty order was passed and he was imposed with the penalty of removal from service. He submitted an appeal against the penalty order but his appeal has been rejected. He has also submitted an revision petition to the competent authority but the same remained pending. Hence he filed this OA.

2. The OA was admitted on dated 24.5.99 and notices for admission were sent for filing the reply. The respondents have filed the reply and have denied the facts and grounds in the OA. The applicant has also filed rejoinder, generally repeating facts which are taken in the OA.

3. We have heard the learned counsel for the parties and have perused the records of this case.

4. The applicant has vehemently argued and stressed that the inquiry was improper and in fact no inquiry was conducted. He was not supplied with the copy of the documents, least to say that the documents listed to the charge sheet. In this matter as evident from the inquiry report, there was only one witness, Shri V.D. Sharma and said Shri witness was examined and relied upon documents have also been examined. The applicant has admitted receipt of certain documents in his statements, a copy of which has been submitted by the applicant (Annexure A/4). In his statement dated 30.11.92, he was asked a very



specific question; have you taken inspection of the documents mentioned in the Memorandum. The applicant answered, I have been supplied photostate copy of the relied upon documents and I may submit my balance defence before the next inquiry is fixed. Thus contention of the applicant that he has not supplied with the relied upon documents is not sustainable. Thus the inquiry has been held as per rules in force.

5.. The next ground that the penalty is disproportionate to the alleged misconduct. This questions needs to be examined. In this case the period of absence is from 1.10.90 to 8.1.91 ie. about four months. The applicant is a low paid employee and was faced with peculiar domestic problems in as much as he met with an accident, lost his son. The applicant was sick and he submitted medical certificate and on the basis of medical fitness certificate, issued by Railway Doctor, he was taken on duty. The only emphasis of the respondents is that applicant did not inform the controlling authority regarding his sickness as per rules. There has been violation of the rules and for this maximum penalty, removal from service, is imposed on the applicant. For this, the maximum penalty of removal from service has been imposed upon the applicant by the respondents which has resulted in his economic death. He has further submitted that the penalty imposed by the respondents is disproportionate to the charges levelled against the applicant.

6. 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 Tribunal cannot re-appreciate the evidence and also cannot interfere with the quantum of penalty imposed by the disciplinary authority except in the cases where it shocks the conscience of the Court or Tribunal. In the present case,



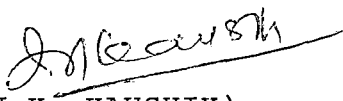
the applicant remained absent due to sickness for four months and has been imposed the penalty of removal from service. It shocks the conscience of this Tribunal. The Hon'ble Supreme Court in the case of B.C. Chaturvedi vs. Union of India JT 1995 (8) SC 65 has held that the High Court/Tribunal while 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 disciplinary/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 resources 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 ordinarily 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).

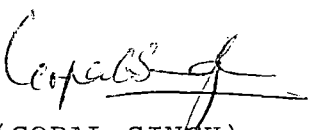
7. The same view has been taken in OA No. 701/97 vide order dated 4.3.2002 by the Hon'ble Tribunal of Mumbai Bench, T.M. Lavantra vs. Union of India in which one of us was the Member (Mr. J.K. Kaushik). In that case also the matter was regarding penalty of removal from duty was set aside and the case was remanded for imposition of imposition of lower penalty than that of removal from service and compulsory retirement.

8. In view of the above, we consider that penalty of removal from service by the disciplinary authority upon the applicant is disproportionate. We hereby set aside the order dated 14.11.96 (Annexure A/8) passed by the Disciplinary authority, order dated 8.10. 97 (Annexure



A/10) passed by the Appellate authority and order dated 4.12.1999 (Annexure R/1) passed by the Revising Authority and remand the case back to the Disciplinary authority to reconsider the matter and impose any of the penalty other than the penalty of removal, dismissal or compulsory retirement upon the applicant. The respondents are directed to reinstate the applicant immediately. He, however, make it clear that the applicant will not be entitled for the payment of backwages and the intervening period from date of removal from service till date of reinstatement shall count as qualifying service for pensionary benefits. NO order as to costs.

  
(J.K. KAUSHIK)  
MEMBER (J)

  
(GOPAL SINGH)  
MEMBER (A)