IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JAIPUR BENCH,JAIPUR.

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Date of Decision: 26/9/2002

OA 475/99

Naresh Chand s/o Shri Joginder Singh r/o c/o Shri Ramesh Bhasin, H.No.1-CHH-25, Vigyan Nagar, Kota.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Asstt.Works Manager (R-2), W/Rly, Kota Division, Kota.
3. Production Manager, W/Rly, Kota Workshop, Kota.
4. Chief Works Manager, Kota Workshop, W/Rly, Kota, Carriage & Wagon Department.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM.MEMBER

For the Applicant ... Mr.Shiv Kumar

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

O R D E R

PER MR.A.P.NAGRATH

The applicant was working as Mukadam in Kota Workshop of the Western Railway. A major penalty memorandum dated 11.7.91 (Ann.A/1) was served upon him alleging unauthorised absence and for not following the medical rules in respect of absence from duty and being habitual of remaining absent. A departmental inquiry was held. Acting on the inquiry report, the disciplinary authority imposed upon the applicant a penalty of removal from service vide order dated 26.2.93 (Ann.A/2). The applicant filed an appeal against the said order, which was rejected vide order dated 22.7.99 (Ann.A/3). Hence this OA.

2. The grounds on which the orders of the disciplinary authority and the appellate authority have been challenged are that the applicant had submitted medical certificates covering the period of sickness and had joined duty only after being declared medically fit. The applicant contends that the inquiry officer also did not hold him guilty of the charge and had in fact observed that the applicant had followed the rules to the possible extent. The applicant contends that these observations and findings of the inquiry officer have not been given any credence by the disciplinary authority, who has passed the order of penalty arbitrarily. The appellate authority is also stated to have abruptly

rejected the appeal without applying his mind and without following the provisions of Rule-22 of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short, the Rules, 1968). It is the plea of the applicant that the inquiry report also is not inconformity with the rules and requirement of Rule-9 (25) of the Rules, 1968 has been violated. The applicant has also raised a plea that the quantum of punishment is grossly disproportionate to the alleged misconduct.

3. While repelling the contentions of the applicant, the respondents in their reply have stated that the prescribed procedure has been followed in conducting the entire case and the allegations contained in the charge-sheet have been proved. The disciplinary authority has imposed the penalty after due consideration of the inquiry report. Regarding the order of the appellate authority, the respondents have brought on record the order dated 16.4.93 which they contend the actual order passed by the appellate authority, and not the order dated 22.7.99. The applicant had challenged these orders of the disciplinary authority and the appellate authority by filing OA 562/94. Vide order dated 5.5.99 this Tribunal had disposed of the said OA accepting the plea of the applicant that the appellate authority had not considered the provisions contained in Rule-22(2) of the Rules, 1968. The matter was remitted to the appellate authority for passing a fresh order in accordance with the rules. In pursuance of these orders, the order dated 22.7.99 came to be passed by the appellate authority. The respondents claim that this order dated 22.7.99, by which the appeal of the applicant has been rejected, is a reasoned order and takes into account the provisions of Rule-22(2) of the Rules, 1968.

4. We have heard the learned counsel for the parties. In view of the fact that the applicant had earlier filed OA 562/94, which was disposed of by this Tribunal by order dated 5.5.99, the question which now survives for our consideration is limited i.e. whether the fresh order now passed by the appellate authority in pursuance of the orders of this Tribunal dated 5.5.99 suffers from any illegality. Of course, the learned counsel for the applicant took us through the entire process of the case and contended that number of infirmities have occurred in the departmental proceedings. His first contention was that there has not been proper compliance of the provisions of Rule-9(25) of the Rules, 1968, which mandate on the inquiry officer that the report must contain the findings on each article of charge and the reasons therefor. His plea was that the inquiry officer has not given any finding on the article of charge. Instead, he has only summed up as to which periods of

absence have been covered by the medical certificate and which are not. The learned counsel contended that the inquiry officer, as a matter of fact, has clearly expressed his conclusions that the applicant had followed the medical rules to the extent possible but for certain period he could not do so for the reasons beyond his control. On the allegation of unauthorised absence, in the inquiry report it has only been stated that this charge cannot be considered as baseless. This, the learned counsel pointed out, is not a finding on the charge of unauthorised absence but merely a statement that it cannot be said that the charge is without basis. Such a report of the inquiry officer was stated to be in violation of the rules. In support of his contention that the inquiry report is vitiated because of no finding on the charge, the learned counsel placed reliance on the judgement of CAT, Calcutta Bench, in the case of B.Sarkar v. Union of India & Ors., 1996 (3) (CAT) SLJ 56.

5. While drawing our attention to the impugned order dated 26.2.93 (Ann.A/2), passed by the disciplinary authority, the learned counsel for the applicant vehemently emphasised that this was a non-speaking order and completely ignores the inquiry report. No reasons for such disagreement have been disclosed. He also assailed this order for the reason that it makes a mention of the earlier penalties imposed on the applicant and stated that while dealing with the instant case the disciplinary authority could not have gone into the past record of the applicant. Otherwise, he contended that the order was cryptic and indicative of non-application of mind of the disciplinary authority. It is more so when the punishment has been imposed for the reason that the applicant is alleged to be absent from 12.12.90 not only upto the date of issuing of the charge-sheet but much beyond i.e. upto 21.12.92, which period was not included specifically in the article of charge. In such circumstances, the learned counsel for the applicant asserted that the order of the disciplinary authority was not sustainable. In support of this contention he referred to the judgement of this Tribunal of Allahabad Bench in the case of A.F.Singh v. Union of India & Ors., 1987 (2) (CAT) SLJ 312, and orders of the Principal Bench in the case of Smt.Mohini Navani v. Union of India & Ors., 1996 (1) (CAT) SLJ 523. In respect of the order of the appellate authority, the learned counsel submitted that this order was not in keeping with the provisions of Rule-22 of the Rules, 1968 as the appellate authority had not considered the three mandatory points as laid down in Rule-22(2) while disposing of an appeal. For this reason, he asserted that this order is not sustainable.

6. While summing up the arguments, the learned counsel for the

applicant made a plea that the applicant had undergone a prolonged period of sickness and was passing through a difficult time because of personal circumstances. He pleaded that for the charge levelled against the applicant the punishment imposed is oppressive and disproportionate for which he urged the Tribunal to direct the respondents to mould the relief suitably in the event the Tribunal came to a conclusion that the other pleas of the applicant were not acceptable.

7. Shri U.D.Sharma, learned counsel for the respondents, very forcefully emphasised that nothing is wanting in the departmental proceedings and the disciplinary authority and the appellate authority have passed the orders after taking all the facts into account. The disciplinary authority had to take into account the past record as that was a charge specifically mentioned in the charge-sheet. The applicant has been found to be a habitual offender and for this reason the disciplinary authority considered it proper to impose a penalty of removal from service. The appellate authority found no merit in the appeal and thus rejected the same. In regard to the inquiry report, Shri Sharma stressed that there were no infringement of the rules and any deviations, if at all, could be only minor. The applicant cannot allege any prejudice having been caused to him for non-compliance of any particular rule. On the theory of prejudice, Shri Sharma referred to State Bank of Patiala & Ors. v. S.K.Sharma, 1996 (2) SLR 631, and State of U.P. v. Harendra Arora and Another, 2001 SCC (L&S) 959.

8. We have given our anxcious consideration to the rival contentions. On the point that the inquiry officer's report is a departure from the procedural requirement, we do not find any merit in the plea of the applicant or the arguments advanced on his behalf. We have perused the report of the inquiry officer carefully. In the very first sentence of the conclusion it has been stated that the evidence during inquiry confirms that Shri Naresh Chand, Mukadam, was habitual of remaining on unauthorised absence in the past and that he had been punished on five occasions earlier. This is a very clear finding and does not leave any scope of doubt. Regarding charge of his absence from 13.10.90 to 27.10.90 and from 12.12.90 onwards the inquiry officer has concluded that from 13.10.90 to 21.12.90 medical certificates were sent by the applicant but from 12.12.90 onwards he did not inform the authorities. This lapse the inquiry officer, as per his own perceptions, has stated to be because of compelling circumstances. For the period from 13.10.90 to 27.10.90 also there is no proof of intimation though the inquiry officer has recorded that it appears that this certificate might have sent through

UPC. It is admitted position that all certificates sent by the applicant were from private medical practitioners. While joining his duty on return after 21.12.92 he did produce a fitness certificate from a Railway Medical Officer. Shri Shiv Kumar very strenuously tried to prove that this fitness certificate would absolve the applicant of the entire charge as this would stand to regulate the entire period of absence. This assertion of the learned counsel is totally misplaced. The certificate of fitness from the Railway Doctor only certifies the fitness of the person after he has reported from his alleged sickness. This fitness certificate has nothing to do with the entire period of absence which the employee tried to cover by private medical certificates. The fact remains that the applicnt failed to inform the authorities about his absence from 12.12.90 onwards. His plea that it was because of compelling circumstances though found acceptable to the inquiry officer, has not been considered so by the disciplinary authority. It is apparent that the inquiry officer did give his findings which have been accepted by the disciplinary authority though he has not given any weightage to the recommendation of the inquiry officer for taking a lenient view. It is not in the domain of the inquiry officer to make such a recommendation. But, this does not take us away from the fact that the inquiry officer did give a finding on the charge levelled. The cases relied upon by the learned counsel for the applicant do not support the case of the applicant at all on this issue.

9. Now coming to the orders of the disciplinary authority, we do not find these as suffering from any flaw. He has merely agreed with the inquiry officer's finding and which has been so stated in the order. Taking into account the period of unauthorised absence and past record of the applicant, he decided to impose a penalty of removal from service. The appellate authority's order, passed in pursuance of the Tribunal's order dated 5.5.99, is quite reasoned and as per statutory provisions. The learned counsel for the applicant pleaded that the appellate authority's order has not commented on the quantum of punishment. We find this argument without basis when we read the order of the appellate authority. He has very clearly stated that the order of removal from service is a proper order keeping in view the entire facts of the case and thus he reached a conclusion that the applicant was not a person fit for being retained in the Railway service. For this reason, he upheld the order of the disciplinary authority. In this order, requirement of the Rule 22(2) of the Rules, 1968 have been fully complied with. In the circumstances of this case, we are not able to see any infirmity or discrepancy in the order of the disciplinary authority or the appellate

authority. The fact that the applicant is habitual of absenting himself without any authority is not denied. He has been punished in the past on five occasions for similar charge. It is obvious that such a person who repeatedly remains absent from duty has a very casual interest in his job. Such a person, who despite repeated punishments and warnings does not reform himself, cannot be considered a fit person to be retained in service. In the background of this case, we are clearly of the view that the punishment imposed cannot be termed as disproportionate. We see no infirmity in the impugned orders and the same do not call for any interference by this Tribunal.

10. This OA is, therefore, dismissed but with no order as to costs.

(A.P.NAGRATH)
MEMBER (A)

(G.L.GUPTA)
VICE CHAIRMAN