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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.177/2000

Date of order: 24.11.2000

Pavan Thakur, S/o Sh.Kapleshwar Thakur, R/o Kota, first employed on the post of Khallasi, Smith Shop Workshop, W.Rly, Kota.

...Applicant.

Vs.

1. The Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Production Engineer, Western Railway Kota Divn, Kota.
3. Assistant Production Manager(M), W.Rly, Kota.

...Respondents.

Applicant present in person

Mr.R.G.Gupta - Counsel for respondents

CORAM:

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

Hon'ble Mr.Gopal Singh, Administrative Member.

PER HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER.

In this application under Sec.19 of the ATs Act, 1985, applicant Pavan Thakur, has prayed for quashing and setting aside the impugned orders dated 2.11.99, 16.11.99 and 7.1.2000 placed at Annx.A1, Annx.A2 and Annx.A3 respectively and for a direction to the respondents to reinstate the applicant without any break in service with all consequential benefits.

2. The applicant's case is that he was initially appointed as Cleaner in the Railways, in the year 1962. He was promoted to the post of Revitar w.e.f. 3.3.66. The applicant was charge sheeted for refusal to accept a Special Medical Memo dated 9.1.78, directing him to appeal before DMO for medical examination and he was removed from service w.e.f. 19.3.79. Appeal filed against his removal from service was also rejected. However, the revisionary authority ordered his reappointment as Khallasi and he was taken on duty vide letter dated 22.7.85. The applicant was again served with a charge sheet dated 31.12.86 and on

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conclusion of the enquiry he was imposed penalty of removal from service vide order dated 18.7.87. Appeal filed by the applicant was rejected vide letter dated 14.11.87. The applicant had earlier approached this Tribunal vide O.A No.449/88, Pavan Thakur Vs. UOI & Ors and this O.A was decided on 19.4.91 quashing the orders dated 18.7.87, imposing the penalty of removal from service upon the applicant. However, the respondents were not precluded from continuing disciplinary proceedings in accordance with law from the stage of supply of the enquiry report. Thereafter a penalty of removal from service was again imposed upon the applicant on reprocessing the case as per directions of the Tribunal dated 19.4.91. The applicant had again filed O.A No.33/95 which was disposed of by the Tribunal on 15.9.99 observing as under:

"Therefore looking to the facts and circumstances of the case, we feel that the punishment imposed upon the applicant removing from service is disproportionate to the gravity of the charge proved against him. Therefore, end of justice will meet if this case is remitted back to the departmental authorities to consider on the quantum of punishment and pass a reasoned and speaking order in accordance with law, considering the financial and family aspect of the applicant.

We, therefore dispose of the OA by remitting this case to respondent No.3, the Assistant Production Manager (M), Western Railway, Kota, with the direction that the respondent after considering the financial as well as family circumstances of the applicant will pass a reasoned and speaking order for imposing the penalty upon the applicant, within a period of two months from the date of this order."

In compliance to the orders of the Tribunal dated 15.9.99 in O.A No.33/95 the respondents on reconsideration of the case imposed the punishment of compulsory retirement from service upon the applicant vide order dated 15.11.99 and this order of compulsory retirement have been made effective from 25.11.91. Feeling aggrieved, the applicant has filed this O.A.

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3. In the counter it has been stated by the respondents that the present application is barred by resjudicata since the applicant has filed earlier O.As also praying for the same relief and it has also been pointed out by the respondents that since the observations of the Tribunal have been complied with, the applicant cannot be permitted to raise the same issue again. It has, therefore, been submitted by the respondents that the application is devoid of any merit and deserves dismissal.

4. We have heard the learned counsel for the parties and also perused the record.

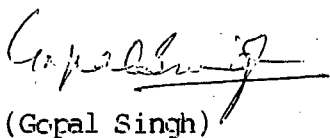
5. It is seen from records that the applicant was charged for remaining absent unauthorisedly from 27.3.86 to 20.8.86 and the applicant refused to take delivery of letter dated 15.9.86 on 7.10.86. It is also seen from records that the second charge of not accepting the respondents' letter dated 15.9.86 could not be proved in the enquiry. Only first charge i.e. absenting unauthorisedly from 27.3.86 to 20.8.86 could be proved during the enquiry. Thus for remaining absent from duty for about 5 months, initially the penalty of removal from service was imposed upon the applicant which was later on revised to compulsory retirement in compliance to this Tribunal's directions dated 15.9.99 in O.A No.33/95. It is a settled legal position of law that mere unauthorised absence from duty the extreme penalty of removal from service or compulsory retirement is not warranted and the same has been held to be disproportionate as shocking the judicial conscience. We do not consider it necessary to discuss those judgments here. We are firmly of the view that removal from service or compulsory retirement are much disproportionate to the alleged misconduct of the applicant. The case was earlier remitted back to the respondents twice for reconsideration, however finally they have imposed the punishment of compulsory retirement upon the applicant which we are of the view is disproportionate to the alleged misconduct. We are of the view that in the facts and circumstances of the case, a minor penalty like withholding of increment for a period of two to three years would have

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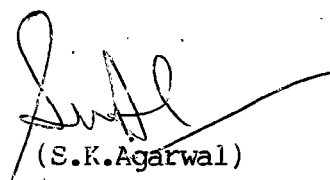
served the ends of justice.

6. In the light of the above discussion, this application deserves to be allowed.

- i) The O.A is accordingly allowed.
- ii) Respondents' orders dated 2.11.99, 16.11.99 and 7.1.2000 placed at Annx.A1, Annx.A2 and Annx.A3 are quashed and set aside.
- iii) The respondents are directed to reinstate the applicant in service on the same post from which he was compulsorily retired forthwith.
- iv) The respondents are also directed to issue fresh orders in the disciplinary case against the applicant, in terms of the directions given above.
- v) The applicant would also be entitled to 50% back wages for the period of his removal/compulsory retirement.
- vi) We allow 3 months time to the respondents to comply with these orders in regard to payment of back wages.
- vii) Parties are left with their own costs.


(Gopal Singh)

Member (A).


(S.K. Agarwal)

Member (J).