

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 17.01.03

OA No.487/2000

Revti s/o Shri Kalyan, r/o Vill. Bajoli The. Bayana,  
Distt. Bharatpur, at present employed on the post of  
Gangman under PWI (North), Maintenance Kota., Western  
Railway.

.. Applicant

Versus

1. Union of India through the General Manager,  
Western Railway, Churchgate, Mumbai.
2. Assistant Engineer (Central), Western Railway,  
Kota Division, Kota.
3. Senior Divisional Engineer (N), Western  
Railway, Kota Division, Kota.
4. Executive Engineer (Construction), Western  
Railway, Kota Division, Kota.

.. Respondents

Mr.C.B.Sharma - counsel for the applicant

Mr. S.S.Hasan, - counsel for the respondents

CORAM:

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

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

O R D E R

Per Hon'ble Mr. H.O.Gupta, Member (Administrative)

The applicant is aggrieved of the order of the  
Disciplinary Authority dated 17.11.97 (Ann.A2) whereby a  
penalty of removal from service with immediate effect has  
been imposed on the applicant being guilty on unauthorised

8

absence from duty. He is also aggrieved of the order dated 20.10.99 (Ann.A3) of the Appellate Authority whereby the Appellate Authority has modified the penalty to reduction to lowest stage in the present time scale of pay with future effect and loss of seniority on permanent basis for balance service tantamounts to initial appointment. He is also aggrieved of the memo dated 10.1.94 (Ann.A1) containing chargesheet for unauthorisedly absent from duty from 4.10.93 to 29.12.93. In relief, he has prayed for quashing the said orders.

2. The case of the applicant as made out, in brief, is that :-

2.1 He fell sick on 4.10.93 and went to his hometown for treatment from a private Doctor, since there is no medical facility at his Headquarters. Before going to his hometown, he informed his Gang Jamadar and took permission from him. He is an illiterate person. He remained under treatment from 4.10.93 to 29.12.93. After getting cured, he reported for duty on 29.12.93. He was medically examined by the Railway Doctor who issued him a duty certificate dated 31.12.93 (Ann.A4). Thereafter he was taken on duty.

2.2 The second respondent issued him a chargesheet dated 10.1.94 alleging unauthorisedly absent from 4.10.93 to 29.12.93 without any intimation and also for remaining absent habitually from duty. Based on his reply dated 11.1.94 (Ann.A5) refuting the allegations, an Enquiry Officer was appointed. Regarding the absence for the other period, he apprised the Enquiry Officer that leave for the period was granted, and as regard the proof, the same were

✓

taken away as there was theft in his quarter. The Enquiry Officer closed the enquiry thereafter. No document or witness was produced on behalf of the department. Only certain questions were asked from the applicant. He was supplied a copy of the enquiry report vide letter dated 20.10.97 (Ann.A6) holding the charges as proved in the absence of any evidence. Thereafter, a penalty of removal was imposed vide order dated 17.11.97 (Ann.A2) without considering his defence.

2.3 He preferred an appeal dated 15.12.97 (Ann.A7). The appeal was kept pending and, therefore, he had no other option but to file OA No. 127/99 before this Tribunal which was disposed of with a direction to the Appellate Authority to decide the appeal. The appeal was disposed of by order dated 20.10.99 (Ann.A3) imposing a penalty of reduction to lowest stage in the present time scale of pay with future effect and loss of seniority on permanent basis for balance service tantamounts to initial appointment.

3. The main grounds taken by the applicant are that:-

3.1 The chargesheet was issued by the respondent No.2 who was not his controlling officer at the time of issuance of the chargesheet. He was working under respondent No.4 and, therefore, the impugned chargesheet is ex-facie illegal.

3.2 He duly informed the controlling authority regarding his sickness, and it was beyond his control to attend his duties. He did not remain absent wilfully. Mere absent is not misconduct. After his treatment, he was

B

examined by the Railway Doctor who issued him a duty certificate.

3.3 The period of absence has already been regularised by grant of Leave Without Pay. Once the leave has been granted for the period in question, any string of misconduct goes away. There was no evidence produced in the enquiry in support of the charges. The applicant has been held guilty on the basis of conjectures and surmises.

3.4 The Appellate Authority has taken his absence due to sickness but on the other hand, he has imposed a grave penalty by wiping out 13 years of service for his two months absence. Such a penalty cannot be imposed. There is no penalty of forfeiture of past service and giving fresh appointment as a measure of penalty in service jurisprudence. The Appellate Authority has travelled beyond his powers. He has also not given any finding on the three mandatory points as required by statutory rules. Whatever penalty is given has to be applicable from the day the initial order of penalty was issued and not from the day appellate order has been passed. The penalty imposed by the Appellate Authority is also ex-facie disproportionate to the alleged misconduct.

4. The respondents have contested this application and, inter alia, submitted that:-

4.1 The applicant is working as Gangman under PWI, Bundi and subsequently transferred to the Chief PWI (North), Kota. There is a Railway Hospital as well as a Government Hospital at Bundi. Therefore, the applicant was required to report at the Railway Hospital, Bundi for his illness, but the applicant remained under private sick and

B

he absented himself from 4.10.93 to 29.12.93 without obtaining prior permission from the competent authority. Though the applicant was initially under the Construction Department, the applicant remained as casual or temporary. Permanent appointment was given after screening on open line. At present the PWI, Bundi is under the A.En. (Central) Kota as such the Disciplinary Authority of the applicant is A.En. (Central), Kota. The enquiry was conducted by the Enquiry Officer in a fair and reasonable manner. In the enquiry report, the charge against the applicant stood proved. The applicant did not submit any representation against the enquiry report and thus the A.En. (Central) Kota has imposed penalty on the applicant vide order dated 17.11.97 (Ann.A2).

4.2 On appeal, considering the case of the applicant sympathetically, the order of removal was revised to reduction to the lowest stage in present time scale of pay with future effect and loss of seniority on permanent basis for balance service tentamounts to initial appointment and the applicant was allowed to resume duty.

4.3 The applicant was in the habit of remaining unauthorisedly absent as stated in the chargesheet. In 1993, the applicant remained unauthorisedly absent for 61 days. It is submitted that the applicant has obtained a certificate from the Railway Doctor, but the said Railway Doctor only opined that he is fit to resume duty. The Appellate Authority has given reasons while disposing of the appeal. The penalty imposed on the applicant is not disproportionate to the misconduct.

B

5. No rejoinder has been filed.

6. Heard the learned counsel for the parties and perused the record.

6.1 It is an admitted fact that the applicant was absent from duty from 4.10.93 to 29.12.93. The applicant has not produced or filed any document/evidence to establish that he has informed his superior officers or took permission before going to his home town. The respondents have submitted in their reply that there is a Railway Hospital, at the Headquarter at Bundi. This submission is not controverted by the applicant by filing the rejoinder or during the course of arguments by his learned counsel. The Disciplinary Authority has held the applicant guilty of being unauthorisedly absent from duty. The Disciplinary or the Appellate Authority has nowhere stated that the charge stands proved or that he is also found guilty of being repeated absent from duty unauthorisely. <sup>However 12</sup> Therefore, the charge of being unauthorisedly absent from 4.10.93 to 29.12.93 which is based on record is established. The applicant himself has accepted in his letter dated 10.1.94 that he could not inform the office of his sickness. We do not agree with the contention of the applicant that since his absence was regularised as Leave Without Pay, the charge does not sustain. The period of absence has to be regularised and cannot be left as such. The leave has not been regularised as leave on medical grounds. Therefore, this case cannot be said to be a case of no evidence.

6.2 We agree with the learned counsel for the

*b*

applicant that the enquiry is not conducted as per procedure prescribed. The documents and witnesses contained in the chargesheet were not proved/examined. The findings are based on the examination/cross-examination of the applicant by the Enquiry Officer himself. Such an enquiry deserve to be quashed. But keeping in view the fact that the applicant remained absent without permission, we do not wish to order fresh enquiry after 8 years for the type of misconduct. However, it is seen that there is also no findings by the Enquiry Officer with regard to the charge of being repeated unauthorisedly absent from duty in the past.

6.3 The next contention of the learned counsel for the applicant is that the appellate order is without application of mind and is not in accordance with the rules. The operating portion of the appellate order is as under:-

"Reduction to lowest stage is present time scale of pay with future effect and loss of seniority on permanent basis for balance service tantamounts to initial appointment."

There is no provision in Railway Servants (Discipline and Appeal) Rules, 1968 whereby the Appellate Authority/Disciplinary Authority has powers to impose such a penalty. In case of penalty of reduction to a lower stage, loss of seniority cannot be ordered. Therefore, we agree with the contention of the learned counsel for the applicant that the order of the Appellate Authority is without application of mind.

6.4 The learned counsel for the applicant further submitted that the applicant was sick and was under

*D*

treatment of a private doctor. On being declared fit by the private doctor, he was examined by the Railway Doctor and duty certificate was given by him as would be seen from the duty certificate dated 31.12.93 (Ann.A4). In this certificate it is clearly mentioned that the applicant was under private doctor's treatment from 4.10.93 to 29.12.93. The applicant being sick could not join the duties and, therefore, he cannot be said to be wilfully absent from the duty. Accordingly, as per laid down law, the punishment imposed by the Disciplinary and Appellate Authority would be grossly disproportionate to the misconduct even if it is held that the applicant did not inform the authorities for being absent. We find force in the contention of the learned counsel for the <sup>applicant B</sup> respondent.

7. In view of above discussions, this OA is disposed of with a direction to the respondents that the case of the applicant, alongwith a copy of this order, be sent to the Revising Authority, who shall modify the order of the Appellate Authority and shall be at liberty to impose such penalty as would meet the ends of justice, lower than the penalty of dismissal/removal/compulsory retirement/reduction in rank, within a period of 3 months from today.

8. No order as to costs.

9. Let the Deputy Registrar send a copy of this order to the Chairman, Railway Board, Rail Bhawan, New Delhi for such corrective action as he may deem fit.

  
(M.L.CHAUHAN)

Member (J)

  
(H.O.GUPTA)

Member (A)