

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.488/2000

Date of order: 14.2.2003

Naboo, S/o Sh.Hareti, R/o Vill.Bajoli, Post Lehchora Kala, Bayana, Distt.Bharatpur, working as Gangman under Section Engineer, Bundi, Western Railway.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Asstt.Engineer (Central) W.Rly, Kota Divn, Kota.
3. Sr.Divisional Engineer(N), W.Rly, Kota Division, Kota.
4. Addl.Divisional Rly. Manager, Kota Division, W.Rly, Kota.

...Respondents.

Mr.C.B.Sharma - Counsel for applicant.

Mr.S.S.Hasan - Counsel for respondents.

CORAM:

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

Hon'ble Mr.M.L.Chaunan, Judicial Member.

PER HON'BLE Mr.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant was initially appointed as Casual Labour, under IOW Construction in Kota Division of Western Railway. Subsequently he was absorbed on the post of Gangman w.e.f. 29.4.86. While working as such, the applicant remained absent from duty w.e.f. 4.12.93 to 27.12.93. According to the applicant, he fell sick on the night of 4.12.93 and went to home-town for treatment from a private Doctor. He joined duty on 28.12.93 and he ~~was~~ submitted fitness certificate from Railway Doctor on 31.12.93. Respondent No.2 issued SF-5 dated 10.1.94 containing two charges namely: (i) for unauthorised absence from duty w.e.f. 4.12.93 to 27.12.93 without any intimation; and (ii) absence from duty for the following period

during the year 1993, thus the applicant became habitual of remaining absent from duty:

1. 1.1.93 to 1.2.93 32 days
2. 5.4.93 to 22.4.93 18 days
3. 2.6.93 to 22.6.93 21 days
4. 12.7.93 to 19.7.93 7 days
5. 10.8.93 to 23.8.93 14 days

Enquiry Officer was appointed who conducted enquiry after giving number of opportunity to the applicant and recorded his statement, as is evident from the proceeding dated 12.8.97 (Annex.R2). Ultimately the Enquiry Officer found the applicant guilty of the charges levelled against him and submitted his report. The enquiry report was sent to the applicant vide letter dated 23.8.97 (Annex.R3), which is stated to have been received by the applicant on 30.9.97, giving the applicant an opportunity to file representation within 15 days. Despite the opportunity given to the applicant, he did not submit any representation and as such penalty of removal from service was imposed upon the applicant vide order dated 23.1.98 (Annex.A2) by the disciplinary authority. The applicant filed appeal against the order of the disciplinary authority and the appellate authority after considering the case of the applicant sympathetically, reduced the penalty of removal from service to reduction to lowest time scale of pay in scale 2610-3540 at Rs.2610/- permanently with loss of seniority and future effect, for balance service i.e. till retirement, vide order dated 15.12.99 (Annex.A3). The applicant further filed revision to the Additional Divisional Railway Manager, Kota, who after taking sympathetic view has reduced the penalty vide order dated 4.4.2000 (Annex.A4) to the lowest pay of Rs.2610/- in scale Rs.2610-3540 for 5 years with future effect. It is against

these orders, the applicant has filed this O.A thereby praying for quashing the impugned SF-5 dated 10.1.94 (Annex.A1), the order of the disciplinary authority dated 23.1.98, the order of the appellate authority dated 15.12.99 (Annex.A3) and the order of the revising authority dated 4.4.2000 (Annex.A4) with further prayer that the applicant be granted all consequential benefits. The application has been filed mainly on the ground that the enquiry has not been held as per law and the finding has been given on the basis of the statement made by the applicant during the course of enquiry and also that the enquiry report was not made available to the applicant. He has also pleaded that the penalty imposed upon the applicant is ex-facie disproportionate to the gravity of the alleged misconduct and the Tribunal has ample power to quash, modify, reduce or substitute the penalty on this ground alone.

2. The respondents have contested the matter by filing reply in which it has been stated that the applicant left the Headquarters without any prior permission and remained unauthorisedly absent w.e.f. 4.12.93 to 27.12.93. There is a Railway Hospital at Bundi as such the applicant was required to report at the Railway Hospital Bundi for his illness but he remained absented himself from 4.12.93 to 27.12.93 without prior permission from the competent authority. It has also been submitted that a copy of the enquiry report was sent to the applicant vide letter dated 23.8.97 (Annex.R3) which was received by him on 30.9.97. It is also stated that the enquiry was held according to law and the Enquiry Officer having found the applicant guilty, the penalty was rightly imposed upon the applicant.

3. We have given careful consideration to arguments of the learned counsel for the parties and perused the material on

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record.

4. The learned counsel for the applicant, Mr.C.B.Sharma, rightly realising the scope of judicial review in such matters is very limited when there is some evidence to reasonably support the finding of the enquiring authority and this Tribunal cannot go into the question that the evidence adduced before it is sufficient, has scrupulously avoided to raise any argument in respect of the same. The broad argument which has been pressed into service is, that even according to the finding of the Enquiry Officer, the applicant has been held guilty of remaining absent unauthorisedly due to unavoidable circumstances as the applicant remained absent from 4.12.93 to 27.12.93 as health of his brother was not good and prior to it the applicant remained absent because of unfavourable circumstances for which he submitted that in future he will not remain absent without prior permission. Thus according to the learned counsel for the applicant, even the Enquiry Officer has justified the absent of the applicant because of unfavourable circumstances and thus harsh penalty of reduction to the lowest pay of Rs.2610/- in scale Rs.2610-3540 for 5 years ultimately imposed vide Annx.A4 was not warranted in the fact and circumstances of this case even if it is assumed that charge of remaining unauthorisedly absent is held to be proved. We have perused the finding given in the enquiry report as well as other material placed on record. It appears that this finding was recorded by the Enquiry Officer on the basis of the statement as recorded during the proceeding dated 12.8.97 which has been placed on record in which it has been stated that during the period 4.12.93 to 27.12.93, the health of his brother was not good and died on 8.12.93. Further during the year 1993 he remained absent without prior permission on

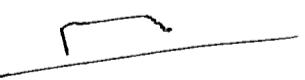
account of unavoidable circumstances and his mother also died in this period. Since there is some evidence that the applicant remained absent without prior permission during the period which was the subject matter of charge-sheet and the learned counsel for the applicant has also not made any grievance on this aspect and also that the factum of remaining for unauthorised absent during the period has also not been disputed by the applicant as can be seen from the ground of appeal before the appellate authority whereby he has given the reasons for remaining unauthorised absent from duty which are not found acceptable to the appellate authority, therefore, the appropriate authority was within their power to impose the appropriate penalty in accordance with law. Now the question which requires to be examined is whether in the facts and circumstances of the case, can it be said that the penalty imposed by the revising authority can be said to be ex-facie disproportionate to the gravity of the alleged misconduct so as to call for interference by this Tribunal. The law on the point is well settled by the decision of the Apex Court. It has been firmly established that once the charges levelled against the delinquent official are found to be proved on his pleading guilty or during the course of enquiry, it is not for the court to determine the quantum of punishment unless the penalty imposed are grossly excessive and not in commensurate with the gravity of charges so as to shock the conscience of the court. In the instant case, the charge levelled against the applicant was that in the year 1993, he remained absent repeatedly as mentioned in the earlier part of this order unauthorisedly and without prior permission. The disciplinary authority awarded the penalty of removal from service which was reduced by the appellate authority and was further reduced by the revising

authority vide Anxx.A3 & A4 respectively. Thus, according to us, it cannot be said that the penalty ultimately imposed by the revising authority is highly excessive so as to shock the conscience of this Tribunal and highly disproportionate to the gravity of the charge levelled against him. At this stage it may be relevant to mention the decision of the Apex Court in the case of Union of India & Ors Vs. Narain Singh, 2002 SCC (L&S) 623, whereby the Apex Court held that it was not for the Court to reduce, on the misplaced grounds of sympathy and mercy, the punishment of dismissal to reinstatement with certain other punishment like stoppage of three increments. Further in the case of Apparel Export Promotion Council Vs. A.K.Chopra, (1999) 1 SCC 759, it has been held by the Apex Court that it is within the jurisdiction of the competent authority to decide what punishment is to be imposed and the question of punishment is outside the purview of the High Court's interference unless it is so disproportionate to the proved misconduct as to shock the conscience of the Court. It has been held that reduction of sentence by the High Court would have a demoralising effect and would be a retrograde step. It has been held that repentance/unqualified apology at the last appellate stage does not call for any sympathy or mercy.

6. For the reasons mentioned above, we see no force in this O.A which is dismissed with no order as to costs.

  
(M.L. Chauhan)

Member (J)

  
(H.O. Gupta)

Member (A).