

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.35/2001

Date of order: 4.10.2002

Ishwar Lal, S/o Sh.Babu Lal, Carpenter, under Chief Inspector of Works(C), W.Rly, Ajmer.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly, Church Gate, Mumbai.
2. Chief Inspector of Works (Construction) W.Rly, Ajmer.
3. Divisional Railway Manager, W.Rly, Jaipur Divin, Jaipur.
4. Sr.Divisional Engineer, W.Rly, Jaipur Divisional Office, Jaipur.
5. Dy.Chief Engineer (Construction) W.Rly, Ajmer.
6. Executive Engineer (Construction) W.Rly, Ajmer.

...Respondents.

Mr.N.K.Bhat - Counsel for applicant.

Mr.T.P.Sharma - Counsel for respondents

CORAM:

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

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

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

The applicant was appointed as casual labour in the year 1980 in the Engineering Department, Western Railway, Jaipur. He was transferred to the office of Chief Inspector of Works (C), Western Rly, Ajmer. Subsequently, he was granted temporary status on the post of Carpenter. During the year 1996-97, it was decided by the Railway Minister that all labour should be screened and regularised against the permanent posts under action plan. In construction organisation there was no permanent cadre as such these employees were to be allotted the divisions looking to their initial appointment. The applicant



was allotted Jaipur Division. Vide order dated 31.7.77/11.9.97, his services were regularised and the applicant was found fit for absorption as Gangman in the existing vacancies of Gangman in Group-D in Jaipur Division. Before the applicant could join the said post, he proceeded on unauthorised leave w.e.f. 10.1.98. It is the case of the applicant that he felt dizziness and tiredness on 10.1.98 and he went to get himself examined to the Doctor. As per advice of the Doctor he applied for medical leave/extension of medical leave to the authority concerned. However, the applicant received back the certificate with comments that the certificate was not being accepted and further it was directed him to join the duty. It is the further case of the applicant that he had remained on medical leave as he was not in a position to resume his duty. He informed his officers about the same and prayed for further extension of sick leave to him. Since the applicant did not resume duty even after expiry of one month, the respondents informed the applicant vide letters dated 18.4.98, 30.6.98 and 14.12.98 to resume his duties but the applicant refused to accept these letters as per the endorsement made by the Postman on the envelops. As such he was chargesheeted by issuing charge-memo dated 18.3.99 alongwith which article of charges, statement of imputations, list of documents and list of witnesses were enclosed. A copy of the charge-sheet and also various orders passed during the enquiry proceedings were sent to the applicant by registered post. Since the applicant refused to take delivery of these letters, ex parte proceedings were held against him which culminated into the order of removal (Annex.A1) passed by the disciplinary authority based on the findings of the enquiry report. The matter was carried further by way of appeal before the appellate authority and the appeal



was dismissed as time barred vide order dated 8.9.2000 (Annex.A18). These orders are under challenge in this O.A and the applicant has prayed that these impugned orders Annex.A1 and Annex.A18 may be set aside, being illegal and invalid and the applicant may be reinstated with all consequential benefits with back wages.

2. The case of the applicant is that he was neither informed about the disciplinary proceedings initiated against him nor any charge-sheet, notice to attend the disciplinary proceedings, show cause notice and imputation of penalty of dismissal from service were even served upon him. He came to know about this first time only on 20.8.99 from his relative and this fact was further confirmed on 4.9.99 on which day he submitted an application to the CIOW (C) Western Rly, Ajmer, to allow him to join duties as he has been found medically fit by the Doctor w.e.f. 4.9.99. According to the applicant, he was not allowed to resume his duties, copy of this application has been placed on record as Annex.A3 alongwith Medical Certificate and Fitness Certificate (Annex.A4 to A16). Thereafter, the applicant filed appeal dated 17.9.99 which was ultimately rejected by the appellate authority vide order dated 8.9.2000 on the ground that it was filed beyond the prescribed period.

3. The respondents have contested the case by filing reply affidavit. Their case is that the applicant, without giving any information, being unauthorised absence from duty and submitted the certificate from private Doctor. Since he has not sent any information to the respondents regarding his unauthorised absence, a departmental enquiry was conducted against him in which he did not turn up and he was given full opportunity and after that the competent authority has passed the order removing him from service. It is further submitted that the

applicant had to file appeal before the competent authority within 45 days but he has not filed within the stipulated period of 45 days instead he filed it after 95 days which was time barred and no reason was given for delay and the competent authority after considering all the facts and circumstances had dismissed the appeal as being time barred.

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

5. In order to appreciate the contention raised by the learned counsel for the applicant, that he was not informed about the disciplinary proceedings initiated against him nor any charge-sheet/notice was served and notice of imputation of penalty, etc were served upon him, the record of disciplinary proceedings was called. The counsel for the respondents has produced the enquiry file pertaining to the applicant. At page 7 of the file is an envelop vide which charge-sheet dated 18.3.99 was sent to the applicant by registered post which was received back with an endorsement to the effect that the applicant has refused to take delivery. Similarly, there are letters dated 21.4.99, 21.5.99 and 30.4.99 whereby the applicant was informed to file defence statement, to intimate name of the defence assistant within 10 days. These letters were sent by registered post which were received back as undelivered as applicant refused to take delivery of the same. These envelops also forms part of the enquiry file. Lastly at page 20 of the enquiry file there is a letter dated 27.5.99 whereby the applicant was again intimated to appear before the Enquiry Officer on 9.6.99 alongwith his defence assistant failing which ex parte decision will be taken. This letter was also refused by the applicant as is apparent from the endorsement made in the envelop which also forms part of the

enquiry file. At page 23, there is a note in which it has been recorded that the enquiry proceeding against the applicant was fixed at 10.00 AM on 9.6.99 but the applicant nor his defence assistant has put appearance till 11.00 AM, hence this document is being prepared. This note is signed by the Executive Engineer (C), Ajmer and witnessed by three officials i.e. Sh.A.K.Gupta, Chief Works Inspector(C II), Sh.Itharav Hussain, Chief Works Inspector (C III) and Sh.Lal Chand. Thereafter, the Enquiry Officer, without holding any further enquiry and recording evidence, gave his finding. Such enquiry report is at page 24 of the file. The Enquiry Officer, after stating the facts held that the charge stands proved. The reasons given for such finding is that "...Till date he has not resumed his duties nor accepted the Transfer Orders. Moreover he failed to submit any medical certificate for the period 10.2.98 till date. Thus the allegation charged upon are proved and he was found guilty for remaining unauthorised absent without any sanction on medical grounds". The disciplinary authority who appears to be the enquiry officer, inflicted the penalty upon the applicant on the basis of the enquiry report. This order was confirmed in appeal by the appellate authority by dismissing the appeal being time barred vide order dated 8.9.2000 (Annx.A18).

6. Now the question which requires our consideration is whether the procedure adopted by the Enquiry Officer while holding the ex parte proceedings were meticulously followed as per rules/instructions on the point.

7. So far as the procedure for holding ex-parte enquiry is concerned, it may be stated that whenever an official continues to remain absent from duty or overstays leave without permission and his movements are not known, or he fails to

reply to the official communications, the disciplinary authority may initiate action against the delinquent under the relevant rules. In all such cases, the competent authority should, by a Registered A.D letter addressed to the official at his last known address, issue a charge-sheet in the form prescribed for the purpose and call upon the official to submit a written statement of defence within a reasonable period to be specified by the authority. If the letter is received undelivered or if the letter having been delivered, the official does not submit a written statement of defence on or before the specified date or at a subsequent stage does not appear in person before the enquiry officer, or otherwise, fails or refuses to comply with the provisions of rules under which he has been charged, the enquiry authority may hold ex parte enquiry. The notices of all hearings should be served on the accused or communicated to him. In ex parte proceedings, the entire gamut of the enquiry has to be gone through. The notices to witnesses should be sent, the documentary evidences should be produced and marked, the Presenting Officer should examine the prosecution witnesses and the enquiring authority may put such questions to the witnesses as it thinks to be fit. The enquiry authority should record the reasons why he is proceeding ex parte and what steps he had taken to ask the accused official to take part in the enquiry and avail of all the opportunities available under the provisions of the rules. In such a case, the details of what has transpired in his absence, including depositions, should be furnished to the accused officer. During the course of enquiry the accused is free to put in appearance and participate in the enquiry. If the accused appears in the enquiry when some business has already been transacted, it is not necessary to transact the

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same business again unless the accused official is able to give justification to the satisfaction of the enquiry officer for not participating the enquiry earlier. The competent authority may thereafter, proceed to pass the final orders dismissing or removing the official from service after following the prescribed procedure.

8. From well established procedure for holding exparte enquiry as stated above, it is clear that if the charged officer does not submit his written statement within the time specified or does not appear before the Inquiry Officer or otherwise fails to refuses to comply with the provision of the rules, the Inquiry Officer may hold the inquiry exparte, recording reasons for doing so. It does not mean that the findings should be given without investigation. Inquiry is till necessary, although it would be in the absence of the charged officer. The Inquiry Officer has to examine the records and witnesses to enable him to come to a valid conclusion as to the culpability of the charged officer based on the evidence led before him. If the Inquiry Officer has not done all this, it cannot be said that the charge against the delinquent officer stand fully proved and in that eventuality the report made by the enquiry officer will be based on no evidence and that can be successfully challenged by invoking Article 311 of the Constitution of India.

9. In the instant case, in view of the facts quoted in para 5 above, it is quite evident that till 9.6.99, the Inquiry Officer has conducted the exparte proceedings in conformity with the procedure as prescribed under the Rules/instructions on the point. However, on 9.6.99, the Inquiry Officer recorded the finding against the applicant without holding any kind of enquiry and without examining any evidence orally or

documentary against the applicant and held the charge as proved. Thus, from the finding as given above, it is quite evident that the Inquiry Officer has not followed the procedure as laid down under the Rules by not examining the prosecution witnesses nor the documentary evidence as find mentioned in Anxx.A-III attached with the charge-sheet, as such the finding given by the Inquiry Officer is based on no evidence. Similarly, the disciplinary authority as well as the appellate authority did not look into this aspect and proceeded to pass the penalty of removal from service against the applicant which order cannot be legally sustained. As such, we are of the view that the impugned order Anxx.A1 and Anxx.A18 passed by the disciplinary authority and the appellate authority respectively deserve to be quashed and set aside.

10. Now the next question which requires our consideration is as to whether it will be appropriate to remit the case back to the appropriate authority to hold fresh enquiry *denovo* after complying the provisions of the Rules and to hold enquiry by giving reasonable opportunity to the delinquent at this stage.

11. In this case, the incident pertains to the year 1998-99. The applicant was charged for remaining absent unauthorisedly since 10.1.98 to 18.3.99. Admittedly, the applicant proceeded on leave without prior sanction. The reason for proceeding on unauthorised absence is that he was tired and was feeling dizziness on 10.1.98 and he got himself examined by a Doctor and subsequently submitted Medical Certificate for his absence for a period of one month. Other reason given by the applicant is that he could not resume duty on account of his illness which fact he brought to the notice of the officer concerned and sought further extension of sick leave from time to time. The applicant has placed on record copy of Medical Certificate

alongwith his application dated 4.9.99 (Annex.A3 to 15). The respondents have specifically denied that the applicant submitted the Medical Certificate from time to time except the Medical Certificate for one month commencing from 10.1.98. The applicant has not placed on record any contemporaneous record to show that he has sent the Medical Certificate Annex.A4 to Annex.A15 to the concerned authority from time to time. From perusal of the material placed on record, it appears that the applicant has not submitted the Medical Certificates except the one for 37 days commencing from 10.1.98. For the first time on 4.9.99, the applicant vide his application Annex.A3, i.e. much after his removal from service, submitted the Medical Certificates (Annex.A4 to Annex.A16). Thus, from the material placed on record, it is evident that the applicant remained unauthorisedly absent from February 98 onwards and it was incumbent upon him to submit the Medical Certificate periodically, so that the matter could have been decided by the authorities concerned, in accordance with the rules. To that extent, the charge against the applicant stands proved. It will be futile to remit back the case to the appropriate authority to initiate denovo enquiry afresh at this belated stage.

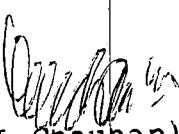
12. Now the question which requires our further consideration as to whether the penalty of removal which has been imposed by the disciplinary authority and subsequently confirmed by the appellate authority is proper and serve the ends of justice, in the facts and circumstances of this case.

13. We have considered the matter carefully. We are also conscious of the fact that ordinarily this Tribunal should not go into the matter so as to investigate regarding the quantum of punishment when the charge stand proved, but at the same time it is equally judicially established that such punishment

imposed by the disciplinary authority if shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either directing the disciplinary/appellate/revisionary authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In the instant case we are of the view that the punishment of removal from service imposed by the disciplinary authority is too harsh. The facts remains that the applicant unauthorisedly remained absent from duty w.e.f. 10.1.98. For the first one month he has produced the medical certificate which period was not treated as absent from duty by the Enquiry Officer. Regarding the remaining period, the applicant did not submit any medical certificate but have now annexed as Annex.A4 to A-15, with the O.A. It is not a case of the respondents that these certificates annexed by the applicant are not genuine nor it has been impleaded that the applicant was not suffering from any such disease. The charge against the applicant has been proved on the ground that he failed to submit any medical certificate for the period 10.2.98 till date. In view of the facts enumerated above, according to us, it is not a case which warrants the imposition of major penalty like removal, dismissal or compulsory retirement from service which is highly disproportionate to the gravity of the charge and it is not a type of case which may merit action for imposing the major penalty which deprives the applicant of his job. However, from the perusal of the Railway Servants (Discipline & Appeal) Rules, 1968, it is evident that the applicant has also got a remedy available to him by way of the provision under Rule 25 of the said Rules, which is equally effective and efficacious remedy. In such circumstances, it will be in the ends of

justice if direction is given to the Revising Authority to invoke the provisions of Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 and entertain the representation of the applicant and pass appropriate order regarding quantum of penalty to be imposed upon the applicant, other than removal/dismissal/compulsory retirement from service, in view of the gravity of the charge and our observations as made above.

14. We, therefore, direct the applicant to make a representation to the Revising Authority within four weeks from today and by speed post to avoid delay, giving copy to the Disciplinary Authority for information. In that event, respondent No.2 is directed to ensure that the revising authority passes appropriate order within six weeks from the date of receipt of the revision petition and the applicant is informed promptly thereafter. With these directions, the O.A is disposed of with no order as to costs.



(M.L.Chauhan)

Member (J)



(H.O.Gupta)

Member (A).