CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

DATE OF ORDER: 15-07-2004

Original Application No. 448/2002

with

Misc. Application No. 195/2004

Ganpat Lal son of Gulabchand aged about 40 years, Ex Peon in the office of Dy. Chief Mechanical Engineer (Carriage) Ajmer in General Section , Resident of Gulabbari Naya Ghar Tejaji Ka Devli Ke Pass, Ajmer. ....Applicant

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur, Rajasthan.
2. Chief Works Manager Carriage & Wagon North Western Railway, Ajmer.
3. .Assistant Works Manager (W), Carriage & Wagon North Western Railway, Ajmer.

....Respondents

Mr. Nand Kishore, Counsel for the applicant.

Mr. Tej Prakash Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. S,K. Agrawal, Member (Administrative)

Hon'ble Mr. J.K. Kaushik, Member (Judicial)

ORDER

PER HON'BLE MR. J.K. KAUSHIK

Shri Ganpat Lal, applicant, has filed this OA thereby praying for the following reliefs:-

"It is prayed that the entire record concerning the case may be called and after examination of the same, respondents letter No. CE/308/93/5/31 dated 10.10.95 annexure A/1 and Memorandum of charges No. CE/308/93/5/31 dated 25.5.93 annexure A/2 and rejection o f appeal vide respondents letter No. CE/308/93/5/31 dated 5.11.96 annexure A/6 and rejection of revision vide respondents letter 28.01.97 annexure A/7 may be quashed and set aside. The respondents may be directed to take the applicant on duty with back wages for the period involved."

2. We have heard the learned counsel for both the parties and have carefully perused pleadings and records of this case. The indisputed facts of this case are that the applicant was appointed on 4.9.1982 on compassionate grounds on the post of Peon at Jaipur Divisional Office. Subsequently, he was allowed inter-divisional transfer to Ajmer where he was posted in the office of Deputy Chief Mechanical Engineer, Ajmer on 4.8.1984. The applicant fell ill on 1.9.1992 and he was taking treatment near his vilage for the disease of Jaundice and Lalbukhar. After getting cured, he reported to the Railway doctor of the Railway Hospital who gave 'Fit Certificate' and in pursuance of which, he joined his duty on 27,2.1993. Thereafter he continued to perform his duties till the date of removal order mentioned in succeading paras.

3. The applicant was issued with a charge-sheet vide Memo dated 25.5.1993 alleging absence from duty without permission w.e.f. 1.9,1992 to 16.2.1993 and that he has not folowed the rules relating to Medical Sickness. Shri S.C. Nirmal was appointed as Inquiry Officer and the applicant was asked to submit the name of his Defence Assistant which he could not gave due to his personal reasons. The inquiry was held on 7.6.1994, 22.6.1994 and 21.7.1994, which the applicant could not attend due to some of his personal problems. The applicant was ordered to be removed from service vide order dated 10.10.95 and the applicant preferred an appeal, which came to be decided on 5.11.1996. Thereafter he preferred an Revision Petition which also came to be dismissed. Thereafter, he preferred a Mercy Appeal to the General Manager and sent reminders for the same but the same has also been turned down on the ground that no second Revision Petition lies and thereafter he has filed this OA on multiple grounds mentioned in Para No. 5 and its sub paras.

4. As regards variances in the facts, it is averred by the applicant that he was not supplied with copy of the Inquiry report and the Inquiry Officer did not follow the relevant rules. The Disciplinary Authority and the Appellate Authority have passed order without application of mind. The Revising Authority has taken into account certain extraneous matter and the punishment imposed is disproportionate to the alleged misconduct and has caused immense sufferings to the family of the applicant.

5. The respondennts have refuted these factual aspects and have submitted that the applicant was duly supplied with copy of the inquiry report and the inquiry was held in accordance with the rules. In addition, it has been averred that the Disciplinary Authority and Asppellate Authority have passed the impugned order with due application of mind.

6. The MA has been filed for seeking condonation of delay in filing of the OA. It has been averred that the applicant has been awaiting the order of the Revision Petition and subsequently on the mercy petition, the final order has been pased on 28.8.2002 and firstly the application is within limitation and if at all technical rules of the limitation is applied then applicant has sufficient cause for condonation of the delay in filing of the OA. He was holding the Group 'D' post and was shouldering the responsibility of the family and expected that proper justice would be imparted to him. The respondents have not choosen to file any reply to the Misc. application. Before proceeding further in the matter, we considered it expedient to dispose of this MA. There can be hardly any dispute that OA cannot be strictly said to be within limitation. However, since the applicant has been consistently and insistently endeavouring to get justice from the respondents, it cannot be said that he was not vigilent in the matter. However, we feel that it is fit case where delay should be condoned and the case should be decided on merits by applying justice oriented approach. In this view of the matter, the MA has been accepted and the delay in filing of the OA is hereby condoned.

7,. Now we would advert to the merits of this case. Both the learned counsel for the parties have reiterated their pleadings. The learned counsel for the applicant has submitted that the applicant was not wilfully absent but his absence was beyond his control inasmuch as he was suffering from the illness and remained under constant medication. He has submitted that besides infirmity in the procedure adopted by the Inquiry Officer as well as non application of mind by the Disciplinary and Appellate Authority, the punishment imposed on the applicant is disproportionate to the alleged misconduct and the same cannot be sustained in the eye of law. In support of his contention, he has cited certain judgements.

8. On the contrary, the learned counsel for the respondents

with usual vehemence has countered the submission made on behalf of the applicant. He has submitted that the Railway Organisation is very sensitive organisation and the applicant has remained absent without any information to the Department. He did not participated in the Inquiry and non-leniency should be extended to him. The impugned orders have been passed after due application of mind.

9. We have considered the rival submissions putforth on behalf of both the parties. At the very outset, we may notice that scope of judicial review is very limited and the Tribunal would not act as an Appellate Authority over the orders issued by the Administrative Authority. The Tribunal will, however, be competent to interfere in case where the case is of no evidence or the decision making process is faulty or else there is perversity in the order of penalty. Basically it is incumbent upon the Appellate Authority to specifically examine as to whether the penalty is adequate or inadequate. As far as the instant case is concerned, we do not find that there has been any infirmity as regards the conducting the inquiry is concerned. The only point for our consideration would be regarding proportionality or otherwise of the punishment. In the case, the applicant is absent w.e.f. 1.9.92 to 16.2.93. The reason for his absence was undoubtedly his sickness. As per rules, if a person undergoes treatment with a private doctor, the Railway doctor would examine him and issue the duty certificate and the same has been done in the instant case. It is also not the case of the respondents in any way that the applicant was malingering. The only charge against the applicant was that he did not obey the rules relating to the Reporting sickness may be called as Medical Rules. We are of the consiered opinion that this is a case where punishment shocks our conscience and ex-facie the penalty is disproportionate to the alleged misconduct. The applicant has completed about 12 years of service and has remained absent for a period of about five and a half months and if the Government servant like the applicant is removed from service on a charge of remaining absent from duty on medical grounds without informing the authorities as per rules, then he and his family are driven to life of misery financially and socially both. Therefore, we are of the opinion that the punishment as awarded by the Disciplinary Authority and confirmed by the Appellate Authority deserves to be quashed. Since we have come to the conclusion that the order of removal deserves to be quashed, it would be of no

consequence to discuss the failure of the Appellate Authority to consider the case in the right perspective. But we may mention here that law has casted a duty on the Appellate Authority to consider every aspect of the case in such matters i.e. whether the inquiry has been properly conducted, whether the result arrived at by the Inquiry officer is supported by the material on record and whether punishment is adequate, inadequate or otherwise in view of the facts of the case. In our opinion, if the Appellate Authority had examined the matter relating to the reasonableness of the punishment, probably he would have come to a different conclusion than that of the Disciplinary Authority but the case was not considered properly which has resulted into a prolonged litigation miscarriage of justice.

10. We are aware of the well settled legal position that the Tribunal cannot re-appriciate the evidence, also cannot interfere with the quantum of penalty imposed by the Disciplinary Authority except in case where it shocks the conscience of the Court or Tribunal. The Hon'ble Supreme Court in the case of B.C. Chaturvedi vs. Union of India JT 1995(8)SC65 has held that the High Court/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief either directing the Disciplinary/Appellate Authority to consider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases, impose appropriate punishment without cogent recources in support thereof. In the case of Shamshet Bahadur Singh vs. State of Uttar Pradesh and others, 1993(2)SLJ 16, Allahabad High Court has held that ordinarily the maximum penalty resulting in an economic death of an employee could be awarded only in cases of grave charges where lesser punishment would be inadequate and may not have any curative effect. The same view is held by the Hon'ble High Court of Punjab & Haryana in the case of ex-constable Balwant Singh vs. State of Haryana in CWP 12406 of 1995 decided on 7.12.1998 1994(2)ATJ 113.

11. Having come to the conclusion that the penalty of removal is not commensurate to the charge, we are faced with a question as what should be done now, whether the case for proper order or proper punishment be passed in this regard or any substitution or

order of punishment given by the Disciplinary Authority in terms of observations made in B.C. Chaturvedi's case (supra). As per the facts of the case that this matter is 9 years old and incident relating to the year 1993. The impugned penalty order were also passed as back as in the year 1995. In view of these facts, we do no propose to remand the matter to departmental authority and propose to modify/substitute the penalty.

12. In view of what has been stated and discussed above, the OA is partly allowed. The impugned removal order dated 10.10.1995 is modified to the extent that penalty of removal from service is substituted by penalty of with-holding of increments for a period of five years with cumulative effect. Subsequent orders passed by Appellate Authority as well as Revising Authority also stand modified accordingly. The applicant shall be entitled to all consequential benefits on notional benefits but without any monetary effects. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(J.K. KAUSHIK)
MEMBER (J)

(S.K. AGRAWAL)
MEMBER (A)

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