

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

Jaipur, the August, 24th 2006

ORIGINAL APPLICATION NO. 526/2002

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN

HON'BLE MR. J.P. SHUKLA, MEMBER (ADMINISTRATIVE)

Rameshwar son of Shri Bhagwan Singh aged about 40 years, resident of Village Arjun Ka Nangla, Post Samogar, Tehsil Bayana, District Bharatpur, last employed on the post of Gangman in Bhiwani Mandi under PWI, Western Railway, Kota Division.

....Applicant

By Advocate: Mr. Shiv Kumar.

Versus

1. The Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Assistant Engineer (South), Western Railway, Kota Division, Kota.
3. Divisional Engineer (South), Western Railway, Kota Division, Kota.

....Respondents

By Advocate : Mr. S.S. Hassan




ORDER (ORAL)

The applicant has filed this OA assailing the order dated 26.08.1997 (Annexure A/1) whereby charge sheet was issued to the him for remaining absent w.e.f. 30.01.1997 onwards without any information.

2. Applicant submitted the reply. Therein he admitted his negligence and admitted that he was absent. Inquiry Officer submitted the report holding the applicant guilty on the basis of his admission. The Disciplinary Authority passed the order of termination of his services. The applicant filed an appeal but the same was not decided. The applicant approached this Court by filing OA No. 591/2001 which was disposed of vide order dated 03.07.2002 (Annexure A/7) and respondents were directed to decide the appeal of the applicant by passing a speaking order within a period of two months from the date of receipt of a certified copy of the order. The Appellate Authority decided the appeal and reduced the penalty of removal from service to stoppage of 20 increments with future effect and also holding the period as Dies Non and also holding that applicant shall not be eligible for counting of his services for his pensionary benefits.

3 The applicant in the OA challenged the same and submitted that the charge sheet is illegal, arbitrary and against the rules. There is no evidence to prove his charge since as per the charge sheet, two witnesses were mentioned ~~who~~ were not produced by the Presenting Officer. It was the case of non application of mind. The Appellate order does not fulfill the requirement of Rule 22(2) of Railway



Servant (Discipline & Appeal) Rules, 1968. Therefore, the said impugned order should be quashed.

4. The respondents have contested the OA. The respondents in their reply have stated that the Charge-sheet was issued under SF 5 for remaining unauthorized absent. It is submitted that the Inquiry Officer had conducted the inquiry as per rules and ample opportunity was given to the applicant to defend his case. The Disciplinary Authority had passed the order dated 17.03.1999 (Annexure R/1), removing the applicant from duty. Since the applicant has preferred an appeal, the Appellate Authority considered the case of the applicant on humanitarian grounds and issued order dated 08.04.2003 (Annexure R/2) by which penalty of removal from service has been modified to the extent of stoppage of 20 annual grade increment with future effect. The Appellate Authority had passed the order in accordance with rules. NO fault can be said on the part of the respondents.

5 We have heard the learned counsel for the parties and have gone through the material placed on record.

6. The applicant is challenging issuance of charge sheet. We find that applicant could not prove before this Court how the charge sheet is illegal and against the rules. We find that the charge sheet issued to the applicant has been issued on standard proforma and <sup>is</sup> in accordance with rules. The allegation of unauthorized absence against the applicant has been fully proved. The applicant himself admitted the charge that he remained absent from duty. We do not find any violation in issuance of the charge sheet.



7. The next contention of the learned counsel for the applicant that the Inquiry Officer had passed the order without any evidence but in this regard it is submitted <sup>u</sup>by *Ref/12* that he has himself admitted the charge.

8. However, we find that the Inquiry Officer had not examined the witnesses whose name were mentioned in the charge sheet because the applicant himself had admitted the allegation leveled against him in the charge sheet. So in such a situation, we are of the view that there is no need to examine any witness since the delinquent employee himself had admitted the charges. So based upon his admission, the Inquiry Officer submitted his report. Accordingly, the Disciplinary authority had passed the order of removal from service.

9. Learned counsel for the applicant pointed out that though the Appellate Authority had modified the punishment order from removal of service to stoppage of 20 future increments but the punishment awarded by the Appellate Authority is quite excessive when he directed that 20 future increment be stopped and besides that he had also directed that the period of absence be treated as Dies Non. For Dies-non, the applicant was not given any notice/opportunity of hearing.

10. As regards the charge against the applicant with regard to unauthorized absence from duty is concerned, that stand proved viz.a.viz on his own admission itself. Now as regards the award of penalty is concerned, the Disciplinary Authority had passed the order of removal from service but

the Appellate authority had reduced the penalty to stoppage of 20 increments but also added that the period of absence shall be treated as dies non. The Appellate Authority had the power to set aside the order of removal from service and to pass the order of stoppage of 20 increments with future increments but as far as directing that the period of absence to be treated as Dies Non, we are of the view that the applicant should have <sup>been</sup> put to separate notice as required under FR SR and analogous provisions applicable to the applicant under ~~CCS (CCA) Rules~~ and Railway Servants (Discipline & Appeal) Rules provided analogous penalties which can be awarded to the delinquent employee. The order of dies-non is one <sup>which has far reaching consequences</sup> against the Swamy's Manual on Disciplinary Proceedings <sup>has</sup> noted - the question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard But in this case Appellate Authority had awarded not only penalty of stoppage of 20 increments but also passed the order of holding the period of absence as dies non which has a far reaching consequences and is quite harsh upon a low paid Group 'D' employee which also shocks the conscience of the Court because the order of dies non takes the entire service rendered by the applicant before his unauthorized absence. So we are of the considered opinion that the order of dies non cannot be sustained as it neither in the provisions of prescribing penalties nor opportunity on this aspect has been given to the applicant.

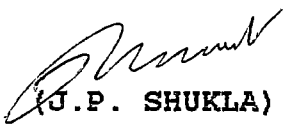
12 We also know that ordinarily the Court/Tribunal should not interfere with the penalty awarded by the Disciplinary

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authority but in this case the treating the period of unauthorized absence as Dies-Non in fact take the valuable right of the applicant and as per provisions of FR 54, a notice regarding treating the period as dies non should also be given separately but in this case no notice was given to the applicant. Thus we are of the view that the penalty of treating the period of unauthorized absence as dies non cannot be sustained in the eyes of law.

13. Accordingly, we partly allow the OA and hold that the order of treating the period of unauthorized absence as dies non be quashed and set aside. However, the order of stoppage of 20 increments is maintained.

14. With these observations the OA is partly allowed. No order as to costs.

  
(J.P. SHUKLA)  
MEMBER (A)

  
(KULDIP SINGH)  
VICE CHAIRMAN

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