

# THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH, JAIPUR ORDER SHEET

(9)

APPLICATION NO.: \_\_\_\_\_

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY


ORDERS OF THE TRIBUNAL


**10.10.2007**

**OA No. 577/2002**

Mr. V.D. Sharma, Proxy counsel for  
Mr. Ashok Gaur, Counsel for applicant.  
Mr. S.P. Sharma, Counsel for respondents.

On the request of the learned counsel for the applicant, let the matter be listed on 29.10.2007. It is made clear that no further adjournment will be granted on that date being a 2002 matter.

  
(J.P. SHUKLA)  
MEMBER (A)

  
(M.L. CHAUHAN)  
MEMBER (J)

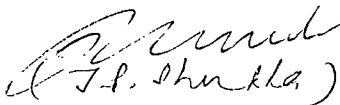
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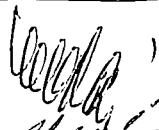
29.10.07

Mr. V.D. Sharma, Counsel for applicant  
Mr. S.P. Sharma, Counsel for respondents.

Arguments heard.


Order reserved.

  
(J.P. Shukla)  
M (A)

  
(M.L. Chauhan)  
M (J)

1.11.2007

The order pronounced today in the open court by the aforesaid Bench.

  
01/11/2007  
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 1<sup>st</sup> day of November, 2007

ORIGINAL APPLICATION No.577/2002

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Suresh Chand Dubey,  
s/o Shri Jagdish Prasad,  
aged about 57 years  
r/o Govindji Ka Mandir,  
Moori Charbagh,  
Bharatpur.

.. Applicant

(By Advocate: Shri V.D.Sharma)

Versus

1. Union of India  
through General Manager,  
Western Railway,  
Churchgate,  
Mumbai.
2. Divisional Railway Manager,  
Western Railways,  
Kota.
3. Deputy Controller of Stores,  
Western Railway, Kota.

.. Respondents

(By Advocate: Mr. S.P.Sharma)

O R D E R

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) by appropriate order or direction the impugned orders dated 6.2.2001, 7.2.2001 and 30.9.2002 may kindly be quashed and set aside and the respondents be directed to reinstate the applicant in service with all consequential benefits of salary, allowance etc.
- (ii) Any other appropriate order or direction which the Hon'ble Tribunal may consider just and proper in the facts and circumstances of the case, may also kindly be passed.

2. Briefly stated, facts of the case are that the applicant while working as Head Clerk in the office of Deputy Controller of Stores, Bharatpur was issued a Memorandum of charges dated 2.7/8.1994. It was alleged that while carrying out surprise checking, the applicant was not found residing in the Railway quarter allotted to him and he has subletted the quarter to Shri B.M.Sharma. Copy of the said chargesheet has been annexed alongwith the OA as Ann.A1. Applicant filed reply to the chargesheet denying the charges. Consequently, the Enquiry Officer was appointed and the Enquiry Officer submitted his enquiry report whereby the charge of subletting was partially proved. It may further be stated here that another chargesheet dated 22.6.98 was also issued whereby two charges were levelled against the applicant. The charges levelled were as under:-

by

- i) That Bharatpur Depot was closed down and applicant being transferred to Ratlam did not join at Ratlam and as such he was absent from 22.6.96 to 20.6.1997. It was alleged that the railway pass given to the applicant was also not deposited by him.
- ii) That on 17.12.1997 a letter was issued directing the applicant to join at Ratlam but the applicant did not join till 18.10.1997.

The applicant also filed reply to the said chargesheet. The authority being not satisfied with the reply so filed appointed Enquiry Officer and the Enquiry Officer held the charges proved. On the basis of the finding recorded by the Enquiry Officer against the aforesaid two charges, <sup>Memos</sup> the Disciplinary Authority passed the order of compulsory retirement vide impugned order dated 7.2.2001. Aggrieved by this order, the applicant has filed OA before this Tribunal which was dismissed by this Tribunal on 3.1.2002 on the ground that the applicant has not availed the statutory remedy of appeal and the applicant was directed to file appeal before the Appellate Authority. Accordingly, the applicant filed appeal on 13.12.2002. The said appeal was dismissed on 30.9.2002.

It may be stated here that the Appellate Authority vide impugned order dated 30.09.2002 <sup>exonerated</sup> ~~excluded~~ the applicant of the charges regarding sub-letting of the quarter. However, the applicant was held guilty for the charges of remaining absent from 22.6.96 to 20.6.97 and also disobeying the order dated 17.12.97

whereby he was asked to join at Ratlam and affirmed the order of the Disciplinary Authority regarding imposition of penalty of compulsory retirement. In fact it is these orders of the Disciplinary Authority and Appellate Authority so far it relate to the chargesheet dated 22.6.98 (Ann.A2) which is under challenge and consideration before this Tribunal.

As per the case set out by the applicant in the OA, the stand of the applicant is that he was fallen seriously ill on 20.6.97 as he was a TB patient and had undergone treatment. It is further averred that the application in this regard was sent by the applicant from time to time through UPC. The applicant has also placed reliance on the letter dated 14.8.96 issued by the Deputy Controller of Stores, Western Railway, Kota wherein it has been stated that the applicant has been transferred to Ratlam and the correspondence regarding sickness and medical leave was also to be considered by the Controller of Stores, Ratlam enclosing application for medical leave dated 6.8.96. The applicant has also pleaded that he has also sent an application dated 27.6.2000 seeking voluntary retirement. The applicant has further pleaded that subsequently also the applicant fell sick on 3.6.2000 and underwent medical treatment from 3.6.200 to 19.6.2000 at Bharatpur in railway Hospital. However, he was not taken on duty when he has reported to duty on 20.6.2000 and he was allowed to join his

duty only when he was declared fit to join duty by the Board. It is further averred that on account of physical condition of the applicant he was not able to join at Ratlam and punishment imposed is highly excessive.

3. The respondents in the reply have denied the allegation that the applicant was declared TB patient. It is further stated that neither the applicant submitted any certificate nor anything in writing was given by him. The applicant was transferred from Bharatpur to Ratlam Depot on closure of Bharatpur Depot for which necessary pass was given to him to report duty at Ratlam, but he has not gone to his place of posting and no information in this regard was given to his immediate officer i.e. Divisional Controller of Stores, Ratlam, where he was transferred and therefore vide letter dated 14.8.96 he was directed to report duty in the office of Divisional Controller of Stores, Ratlam and for any correspondence in regard to sick/leave, he was further directed to make correspondence in the office where he was posted. It is further stated that when the applicant was examined by the Medical Board, the Board certified that the applicant was not sick at the time when he was examined, though this certificate does not refer to the period for which he got treatment from the private Doctor. It is further stated that the

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application of the applicant for voluntary retirement was not accepted on account of major DR case pending against him. Since the applicant was found guilty of charges, as such, order passed by the Disciplinary as well as the Appellate Authority is in conformity with the gravity of the misconduct committed by the applicant.

4. We have heard the learned counsel for the applicant and gone through the material placed on record.

5. We are of the view that the applicant has not made out any case for our interference. As already stated above, since the charge of sub-letting the premise has been dropped by the Appellate Authority, as such, no reference is required to be made on the chargesheet issued to the applicant qua this charge as well as the order passed by the Disciplinary Authority. The only issue which requires our consideration is regarding charges levelled vide chargesheet dated 22.6.98 that on closure of the Bharatpur Depot the applicant was transferred to Ratlam Depot where he did not join and remained absent from 22.6.96 to 20.6.97 and also for not obeying the directions given vide letter dated 17.12.96 whereby the applicant was directed to join at Ratlam. The factum of the applicant being remaining absent from

22.6.96 to 20.6.97 for a period of one year has not been denied by the applicant. The explanation given by the applicant for remaining absent during this period was that he has fallen sick on 20.6.96 as he was a TB patient and was undergoing treatment and for that purpose intimation was given to the respondents. The explanation so submitted by the applicant was not accepted by the Enquiry Officer and he has been held guilty of the charge. Even the Appellate Authority has given a reasoned finding why such explanation cannot be accepted. At this stage, it will be useful to quota operating portion of the order passed by the Appellate Authority, which thus reads:-

"In regard to the other charge sheet No.E/308/1/Stores/SC/40/98 dtd. 22.6.98 of unauthorized absence without giving proper intimation to the administration, from the evidence adduced during the course of enquiry it has been confined that you were absent without intimation from 22.6.96 to 20.6.97. You being a Head Clerk were a responsible official and as such should have informed about your whereabouts. You have failed to return the transfer pass issued to you Ex-Bharatpur to RTM. The charge of unauthorized absence from an employee of your stature cannot be left unpunished. The circumstances and the chronological events in the present case goes to prove that you were trying to hoodwink the administration as such an exemplary penalty is warranted in this case and as such the penalty of "Compulsory Retirement" which is commensurate with the offence is allowed to stand."

We have given due consideration to the submissions made by the learned counsel for the applicant and also perused the findings recorded by



the Enquiry Officer and order passed by the ~~Disciplinary~~ <sup>Appellate</sup> Authority. We are of the view that the explanation given by the applicant cannot be accepted on the face of the charge having proved by the Enquiry Officer. It may be stated here that treatment taken by the applicant during the period in dispute was taken from the private Doctor, whereas it has come on record that even on earlier occasions as well as subsequently the applicant was taking treatment from the Railway Doctor. Thus the contention of the applicant that he was taking treatment from private Doctor cannot be accepted and such a stand has been taken by the applicant only to justify his unauthorized absence. From the material placed on record it is evident that he was transferred on account of closure of the Bharatpur Depot. It is not the case of the applicant that his condition was so serious that he could not join during the aforesaid unauthorized absence of one year. On the contrary, he was directed by the respondents vide letter dated 17.12.97 to join at Ratlam and submit his claim regarding medical leave before the authority at Ratlam. Had the condition of the applicant been so serious that he could not join the new place of posting, in that eventuality, he instead of taking treatment from private Doctor as outdoor patient, he should have taken treatment from a Railway Hospital or recognized hospital as indoor

patient. Thus, the explanation given by the applicant cannot be accepted.

The applicant is governed by the Railway Services (Liberalised Leave) Rules, 1949. Rule 503 of the Indian Railway Establishment Manual Vol.I (Fifth Edition) 1985 provided that leave cannot be claimed as a matter of right and leave of any kind may be refused or revoked by the authority competent to grant it. Further as per Rule 521 *ibid*, an application for leave on medical certificate made by the railway servant in Group C and Group D shall be accompanied by a medical certificate given by a Railway Medical Officer, defining as clearly as possible the nature and duration of the illness. As per Railway instruction issued by the Railway Board, where a railway employee remained on medical leave upto and including three days duration and reported back for duty with a fitness from the medical practitioner, he may be allowed to join duty without obtaining fitness certificate from the Railway Medical Officer subject to the condition that the employee furnished a declaration that he had not suffered during this period from any eye disease. Thus, the defence of the applicant that he could not join duty for a period of one year on account of his sickness cannot be accepted. It was incumbent upon him to join at new place of posting even if he was ill and made proper application to the appropriate authority after his joining thereby

enclosing a certificate of his undergoing treatment under medical advice. It cannot be accepted that condition of the applicant during this prolonged period of absence of one year was such that he was not in a position to join at the new place of posting pursuant to his transfer order especially when, as stated above, the applicant was not admitted in any railway/recognized hospital, but was taking so called treatment from private Doctor. Under these circumstances, contention of the applicant that finding recorded by the Enquiry Officer, order of punishment passed by the Disciplinary and Appellate Authorities is without any basis, cannot be accepted. Facts remain that the applicant remained absent during the aforesaid period. He has also not joined at the new placing of posting despite letter written in that behalf to the applicant. As such, it cannot be said that the condition of the applicant was such that he could not join at the new place of posting and action of the respondents is arbitrary. According to us, remaining absent without sanctioned leave is a misconduct. Further the applicant has also not joined at new place of posting despite instructions issued in that behalf by the authorities. Thus, according to us, both charges stand fully proved.

Absence from duty for prolonged period has been viewed by the Apex Court very seriously. In the case

of State of Rajasthan and Another vs. Mohd. Ayub Naz,

2006 SCC (L&S) 175 held as under:-

"9. Absenteeism from office for a prolonged period of time without prior permission by government servants has become a principal cause of indiscipline which has greatly affected various government services. In order to mitigate the rampant absenteeism and willful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a government servant remains willfully absent for a period of exceeding one month and if the charge of willful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondents to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself had admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grave error that the respondent can be deemed to have retired after rendering of service of 20 years with all retiral benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondents herein who was willfully absent for 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Services Rules is proved against him and, therefore, he may be removed from service.

10. This Court in Om Kumar vs. Union of India while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor has any irrelevant fact been taken into account nor any illegality committed by the

authority nor was a punishment awarded shockingly disproportionate. The punishment was awarded in the instant case after considering all the relevant materials, and, therefore, in our view, interference by the High Court on reduction of punishment or removal was not called for."

Further, the Apex Court in the case State of Punjab vs. Bakhshish Singh, 1997 (6) SCC 381 held that:-

"Where the respondent a police constable was dismissed on account of absence without leave from 7.11.1986 to 1.3.1988. The disciplinary rule applicable to him provided that dismissal could be resorted to, if there was a "gravest act of misconduct." The trial Court dismissed the suit but the appellate court remanded the matter for reconsideration by the trial court on the point of punishment. It was held by the Supreme Court that it is for the disciplinary authority to pass appropriate punishment, the civil court cannot substitute its own view to that of the disciplinary as well as the appellate authority on the nature of punishment to be imposed upon the delinquent officer. The appellate court, in view of its own findings, that the respondent's conduct was grave, ought not have interfered with the decree of trial court."

Thus, viewing the matter from the law laid down by the Apex court in the case of Mohd. Ayub Naz (supra) and also the law laid down by the Apex Court in the case of Bakhshish Singh (supra), we are of the view that there is no infirmity with the impugned orders. Further, the Apex court in the case of Om Kumar vs. Union of India, 2001 SCC (O&S) 1103, which decision was relied upon in the case of State of Rajasthan and Another (supra) whereby it was observed

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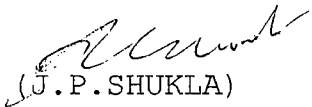
that while considering quantum of punishment, role of administrative authority is primary and that of court is secondary.

The learned counsel for the applicant relied upon the judgment of the Apex Court in the case of Harjit Singh and Anr. Vs. The State of Punjab and Anr., 2007 (4) SLR 645. We fail to understand how this decision is applicable in the facts and circumstances of this case. In that case before the Apex Court the penalty of dismissal from service was converted to the compulsory retirement. That was a case where the appellant before the Apex Court remained absent from duty for the intervening night of 19<sup>th</sup>/20<sup>th</sup> May, 1984 i.e. for few hours and therefore the order of dismissal was converted into compulsory retirement. In this case the applicant has been awarded penalty of compulsory retirement for unauthorized absence from duty for a period of about one year and not complying with the instructions of the higher authorities. Therefore, this judgment is not applicable in the facts and circumstances of the present case.

Thus, in view of the decision rendered by the Apex Court, it cannot be said that the findings of the Enquiry Officer or the competent authorities are arbitrary or utterly perverse or suffer from procedural impropriety or punishment was shockingly disproportionate so as to shock the conscience of the

Court. Accordingly, we are of the view that this is not a case where interference is called for.

6. The OA is accordingly dismissed with no order as to costs.

  
(J.P. SHUKLA)

Adm. Member

  
(M.L. CHAUHAN)

Judl. Member

R/