CENTRAL ADMINISTRATIVE TRIBUNAL,JAIPUR BENCH,JAIPUR.

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Date of Decision: 5-10-04

OA 404/2003

Mukti Lal Raigar s/o Shri Hukma Ram Raigar r/o Renwal, Kishangarh, Raigaron ka Mohalla, Jaipur.

... Applicant

Versus

1. Union of India through General Manager, North West Railway, Opp. Railway Hospital, Jaipur.
2. FA & CAO (Adm), North West Railway, Zonal Office, Headquarters, Jaipur.
3. Sr.DAO, Sr.Division Accounts Office, North West Railway, DRM Campus, Jaipur.

... Respondents

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)

HON'BLE MR.A.K.BHANDARI, MEMBER (A)

For the Applicant ... Mr.Sunil Samdariya

For the Respondents ... Mr.S.S.Hasan

ORDER

PER HON'BLE MR.A.K.BHANDARI

This OA has been filed u/s 19 of the Administrative Tribunals Act, 1985, against the order of penalty of removal from service under Rule-6 of the Railway Servants (Discipline & Appeal) Rules, 1968, and sustained by appellate authority on allegation of remaining wilfully absent from duty. Exact relief clause reads as under :

> "It is therefore prayed that Your Lordship may graciously be pleased to call for the entire record of the case and after examining the same the orders dated 21.7.2003 and dated 5.5.2000 be quashed and set aside and the applicant be allowed to join the duties and further the respondents be directed to pay the backwages, arrears and other benefits to the applicant which are due from the date he resumed back his services in the department.
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> ii) Any prejudicial order to the interest of the applicant, if passed during the pendency of the application, the same may kindly be taken on record and after examining the same be quashed and set aside."

2. Brief facts of the case are that the applicant, an Accounts Clerk, received order dated 5.5.2000 (Ann.A/2) from respondent No.3, by which penalty of removal from service was imposed upon him on the charges that

he remained absent from duty without informing the office for the duration; 83 days in year 1997, 326 days in 1998 and 21 days in January, 1999 (Ann.A/2). It is alleged that this order was passed without following the procedure prescribed under Rule-9 of the Railway Servants (Discipline and Appeal) Rules, 1968, (for short, the Rules, 1968), according to which before imposing any penalty an inquiry should be conducted and an opportunity should be given to the charged officer to be heard. However, in this case, neither the charge-sheet was supplied to him nor was he informed about the inquiry. He is also not aware when it was completed. It is further stated that for the period of absence of 83 days in 1997 deduction from salary has already been made by treating this as leave without pay. Therefore, there is no justification for reconsidering this period in the impugned order. Besides, this period was not one continuous one but consisted of different days for which applications for leave were submitted, telegrams were sent to inform the concerned authorities. A bunch of postal receipts of telegrams has been annexed as Ann.A/3. Regarding absence of 326 days in the year 1998, it is stated that applicant proceeded to his native village on 1.1.98, it being a Restricted Holiday, remained on Casual Leave on 2.1.98 and 3 & 4.1.98 were Saturday & Sunday, as such general holidays. On 4.1.98 some anti social elements attacked and injured the applicant and his family members over a property dispute necessitating indoor treatment in General Hospital, in proof of which treatment slips have been annexed as Ann.A/4. For this incident FIR was lodged, on the basis of which case was challaned in Judicial Court and the same is still pending as Government v. Kailash & Ors. bearing No.JF 85/98. However, on 5.1.98 the applicant alongwith his family members appeared before respondent authorities and informed regarding the incident and expressed inability to join duty due to injuries and requested to consider him on sick leave. Thereafter, the tension between the parties in the village remained high and due to danger to life frequent visits to Police Station had to be made and under these compelling circumstances it was not possible for him to resume duty.

Copies of letters to SHO, Police Station Renwal-Kishangarh, District Jaipur, are annexed as Ann.A/5, 6 & 7. It is stated that the salary of the applicant for the period from January to March, 1998 was released even though salary for April, 1998 was stopped (Ann.A/8 & A/9) which goes to prove that the period for which salary was paid was treated by respondents as sick leave. Applicant resumed duty on 1.10.98 and submitted joining report alongwith medical certificate and was allowed to join duty (Ann.A/10 & A/11). Therefore, allegation that he remained absent for 326 days in 1998 is factually incorrect and malacious. It is however pertinent to mention that even after resuming duty, his salary was not released before he submitted a representation and he was paid a lump sum amount in January, 1999, again in April, 1999 and thereafter not a single penny was paid from April,1999 to 11.5.2000 (the date till he remained in service). That from 1.10.98 onwards he was not allowed to sign attendance register and that charge of absence of 21 days in January, 1999 is based on that even though he was continuously coming to the office. It is averred that respondent No.3 without taking note of 13 years of satisfactory service has passed order of removal from service without recording good and sufficient reason vide order dated 5.5.2000. That no opportunity was offerred to him to hear him, which is violative of rules and provisions of the Consitution.

3. Feeling aggrieved by the order of removal dated 5.5.2000 applicant made a representation to respondent No.3 on 12.9.2000 explaining the circumstances because of which he remained on leave and requested him to review the order of removal (Ann.A/12). But when no action was taken, he preferred an appeal dated 19.11.2000 (Ann.A/13) agaisnt the impugned order dated 5.5.2000 before respondent No.1 under Rule 18 of the Rules, 1968 and on not getting any reply wrote reminder on 3.7.2001 (Ann.A/14). But of no avail. He also issued notice for demand of justice and when no heed was paid, he preferred an OA bearing No.133/2003 before this Tribunal, which was decided on 21.4.2003, in which the Tribunal without going into merit

directed the respondents to dispose of applicant's appeal within three months (Ann.A/16). It is then alleged that the appellate authority without giving his finding on merit of the case dismissed the appeal on technical grounds vide order dated 21.7.2003 (Ann.A/1), the impugned order. That the appellate authority did not consider the punishment order of removal from service in relation to the gravity of charges, he did not consider the reasons due to which applicant remained absent and whether this act of the applicant amounted to misconduct. Therefore, this order is arbitrary. Further ground of violation of principles of natural justice has been taken because at no stage he has been offered opportunity to vent his case. The circumstances of brutal attack, security scenerio, pre-occupation with medical treatment, court proceedings were legitimate grounds of his absence, which should have been considered. That applicant has not been served charge-sheet, was not given opportunity of being heard in reply to it and also opportunity under Rule-311 (2) of the Constitution was denied to him. The applicant has denied the allegation by the respondents that he refused to receive the charge-sheet sent to him by post by stating that the same was returned back on account of his non-availability at the given address. That the appellate authority sat over his appeal and did not act inspite of repeated reminders, shows his attitude towards principles of natural justice. He has also not taken into account 13 years of satisfactory service due to which the punishment is disproportionate to the charges levelled against him. Therefore, this OA.

4. The respondents have filed a detailed reply. In that version, it is denied that the service record of the applicant is unblemished and they have cited three instances in which warning and minor punishments were awarded vide Ann.R/1 to R/4. The communication dated 26.9.96 was a suspension order due to wilful absence from duty. He received a charge-sheet for unauthorised absence of 28.11.97/29.1.98 (Ann.R/5) and penalty was imposed vide order dated 29.1.98. Giving detail of the instant

charge-sheet, it is stated that as per extant rules charge-sheet should be served on the charged officer either in person or through registered post or through controlliing officer against acknowledgement for the same. However, if charged officer is on leave or is absconding, the charge-sheet has to be sent by registered post at his permanent address on record. If, however, the charge-sheet is returned undelivered, it can be deemed as good as served. In the present case, the charged officer evaded service of charge-sheet on various occasions. Firstly, when the same was served by Shri J.P.Jat on 19.3.99, the applicant refused to receive the same in presence of S/Shri Ram Narain Meena and A.K.Saluja, who are working in the same department (Ann.R/6). Therefore, the charge-sheet had to be sent by registered post to his permanent address. However, the same was returned undelivered (Ann.R/7). Further, the applicant was present in the office on 28.5.99 when he was called by the then Accounts Officer Shri V.D.Sharma, who was also inquiry officer in this case, in his chamber, and asked him to take the charge-sheet and the notice of appointment of inquiry officer but applicant refused to take the above ducments. The report in this regard is cited as Ann.R/8. This act of the applicant was witnessed by S/Shri N.M.Bambi, Sr.Section Officer, Shri Vijay Sinha, Sr.Section Officer, and M.L.Saini, CA. In compliance of extant rules, these documents were sent to the applicant by registered post (Ann.R/9) at his permanent address. In this it was also stated that he may seek appointment of defence assistant within 10 days. However, this mail was returned undelivered with endoresement by Postman; "refused to accept". In light of these facts, it is factually incorrect to say that applicant was not given opportunity of hearing as per principles of natural justice. He can also not state that he was never called to appear before inquiry officer due to which there has been violation of natural justice. He did not participate in the oral inqiry on his own will. The above facts only prove that sufficient opportunity was given to him to defend his case but he failed to do so. The allegation that he informed the administration about his absence is also denied. Regarding payment of salary, it is

stated that the amount which was deducted from the salary of the applicant was due to over payment of salary which was stopped and administration had ordered recovery also because he was nevery treated as on sick leave. One of the payments mentioned by the applicant is not salary but difference of pay for the days on which applicant was present in office on account of revised pay under Fifth Pay Commission. The averment that he submitted sick leave application is also denied because he never followed the procedure laid down under rules due to which it is meaningless to say that he proceeded for medical treatment and his absence cannot be treated as wilful. There are clearcut rules in the Railways for obtaining medical leave. It is also evident from the fact that he has not attached any copy of application addressed to concerned authorities. Information submitted to local Police is irrelevant in this case. It is evident that the applicant never cooperated with the administration. His service record also clearly reveals that he was habitually negligent in respect to his duties. Thus, misconduct and wilful disobedience are proved which are sufficient reason for passing the order dated 5.5.2000. The disciplinary authority has passed this order after receiving inquiry report. It is also noteworthy that his application dated 12.9.2000 was received after the punishment order had been passed on 5.5.2000 and in this no request for reconsideration of punishment was made. The orders of the Tribunal dated 21.4.2003 were expeditiously complied with treating applicant's letter dated 19.11.2000 as an appeal against punishment order and the same was conveyed to him vide order dated 21.7.2003 (Ann.A/1). The grounds taken by the applicant are also vehemently denied because orders on appeal is well reasoned and not dismissal of appeal only on technical grounds. The punishment order has been passed as per rules and there is no illegality, arbitrariness or violation of principles of natural justice involved in it. The alleged periods of absence are proved because the applicant never submitted leave application due to which said period had to be treated as unauthorised absence. In conducting the inquiry, the prescribed rules have been followed due to which violation of Articles 14

and 16 are denied. It is clear from the facts that concerned authorities tried to serve charge-sheet on the applicant but when he refused, the same had to be sent by registered post but the same was returned with remark; "refused to accept". Therefore, the ground of denial of reasonable opportunity is denied. The punishment can also not be considered disproportionate to the charges because of repeated misconduct of absence without leave.

5. The applicant has submitted a rejoinder in which the averments made in the application are reiterated, denying contentions of the respondents the reply and the only new ground taken is that the inquiry report was not given to the applicant, and that the same has not been revealed by the respondents throgh their reply which as per law is a grave infirmity attracting interference by the Tribunal.

6. Parties were heard at length. Learned counsel for the applicant averred that the inquiry report was not supplied to the applicant and that by this action the disciplinary authority violated the principles of natural justice as also provisions of Articles 14, 21 and 311(2) of the Constitution of India. He conceded that this point was not raised in the memo of appeal and prayed for sympathy from the Tribunal in this regard because this document was not prepared properly as this and many other points should have been included in it and on querry of the Bench as to why this point was not raised in the OA he drew attention to the rejoinder in which this point has been raised and again asked for sympathetic consideration. He also cited decision of the Supreme Court in the case; Managing Director, ECIL, Hyderabad, etc. v. B.Karunakar, etc., reported at AIR 1994 SC 1074, that the delinquent is entitled to copy of inquiry report before disciplinary authority takes decision regarding guilt or innocence. That refusal to furnish copy amounts to denial of reasonable opportunity. He further argued that the disciplinary authority before awarding punishment failed to take serious note of the fact that the

charge-sheet had never been served upon the applicant and that the appellate authority under Rule 22(2) of the Rules, 1968 was duty bound to take notice of this fact. For this plea, he cited decision of the Supreme Court in the case; R.P.Bhatt v. Union of India & Ors., reported at (1986) 2 SCC 651. Further, he also averred that the punishment of removal from service is far disproportionate to the simple charge of wilful absence from duty.

7. Learned counsel for the respondents, on the contrary, pleaded that as per CAT Rules the applicant is barred from raising fresh pleadings in the rejoinder. Besides, it is an established principle of law that the points not raised before the respondents in reply to the charge-sheet, in course of inquiry and in appeal cannot be raised even in OA. In this case, non-supply of inquiry report has not been raised even in the OA and accepting this plea at the stage of rejoinder and during arguments would amount to clear violation of rules and procedure. He also vehemently pleaded that the applicant has at no stage of the proceedings shown how this action of the respondents has caused prejudice to his cause and the learned counsel cannot be permitted to raise the same at the final stage of arguments. He further argued that the administration have scrupulously followed the procedure but it was due to lack of cooperation of the applicant that charge-sheet had to be sent to him by post, which was also declined by him at his permanent and the last known addresses. That there is enough verbal and documentary evidence on record to prove that applicant refused to receive the charge-sheet in office as also that he declined to accept the communication asking him to accept/deny charges and nominate defence assistant. In these circumstances, the respondents were left with no option but to start exparte inquiry. Regarding quantum of punishment he argued that going by the large number of warnings and earlier minor punishments awarded to the applicant for disobedience and misconduct, action of the respondents in issuing this charge-sheet for major punishment was perfectly valid, which also sums up two very long

period of absence and one short but of the same misconduct of wilful absence due to which work of the administration was suffering. In view of these facts, the punishment of removal is fully justified.

8. We have given very careful consideration to all the pleadings and arguments advanced by the contending parties and come to decision that we have no scope to interfere in this matter. It is clear that the applicant is a habitual absentee. He has been warned and punished for disobedience and wilful absence earlier also. This charge-sheet was issued for three prolonged absences for which neither prior permission nor subsequent application for adjustment against leave/sick leave was given. Applicant has also not submitted any proof of having represented to the respondents about his difficulties arising from criminal cases and law and order problems in his village, being the reason for his absence from duty. The letters in this regard appended by him are addressed to the Police and not to the administration. The respondents have stoutly denied applicant personally meeting and requesting his seniors about these problems. We also notice that due to his injuries he was entitled to medical leave but there are clearcut departmental rules for this which he has not followed. In the absence of observance of said procedure, his absence could not be considered for sick/medical leave either. As far as abidence of procedure regarding departmental inquiry is concerned, the same has been followed maticulously but when he refused to accept the charge-sheet, pesonally and by post, and even the letter dated 28.5.99 from the Accounts Officer, who was also the inquiry officer, regarding acceptance/denial of charges and nomination of defence assistant, the same had to be sent by registered post but this was received back undelivered due to refusal by the applicant to accept. In these circumstances, administration was left with no option but to initiate exparte inquiry. Regarding non supply of inquiry report, the law is very clear. Even in the case of Managing Director, ECIL, Hyderabad (supra), cited by the learned counsel for the applicant, it has been made clear that without showing the prejudice

caused to the applicant, this plea cannot be taken. It is desirable to quote the relevant portion of the judgement;

> "The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limites. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

In view of this principle in the instant case, direction to the respondents to supply copy of inquiry report to the applicant and proceed with the inquiry afresh from that stage could not be given, because of the non-cooperating attitude of the applicant, previously shown by him in the matter of refusal to accept the charge-sheet etc. If however he had a real grievance in the matter, he could have raised the same in his appeal, which he has failed to do and repeated request of the counsel to consider the matter sympathetically cannot be considered. Due to these reasons, we do not find any violation of Articles 14 and 21 of the Constitution of India. Regarding argument about non-compliance of Rule 22(2) of the Rules, 1968, we feel that it is an after thought because if the applicant had a real grievance he would have preferred a revision which is permissible under extant rules. Thus, he cannot be permitted to raise all these contentions at this late stage. In any case, a plain reading of the order of the appellate authority dated 21.7.2003 (Ann.A/1) leaves little doubt that he has considered all the points raised in applicant's letter dated 19.11.2000. The same was replied within time, in compliance of this Bench's order dated 21.4.2003, and due to the habit of applicant of remaining absent without leave, the quantum of punishment by all accounts is appropriate and this punishsment order passed as per laid down rules and procedure deserves no interference by us.

9. Due to these reasons, the OA is dismissed with no order as to costs.

(A.K.BHANDARI)
MEMBER (A)

(M.L.CHAUHAN)
MEMBER (J)