

31/10/07.

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

31/10/07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 31st day of October, 2007

ORIGINAL APPLICATION NO. 452/2003

CORAM:

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

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

Hussain Mohd. Son of Shri Bashir Khan aged about 40 years, resident of Rangpur Road, Behind Lal Kothi, Kota Junction, Kota (Rajasthan). Lastly posted as Gangman at Gang No. 6 under the Office of PWI, Baran Division, Kota.

By Advocate: Mr. Himanshu Agnihotri

.....Applicant

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Sr. Divisional Engineer (HQ), West Central Railway, Kota Division, Kota.
4. Divisional Engineer (Track), West Central Railway, Kota Division, Kota.
5. Assistant Engineer (North), West Central Railway, Kota Division, Kota.

By Advocate: Ms. Dilshad Khan Proxy to Mr. S.S. Hassan

.....Respondents

ORDER (ORAL)

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

- “(i) to quash and set aside the order dated 28.06.2002 (Annex A/1), order dated 8.1.2002 (Annex A/2), Order dated 10.3.2001 (Annex. A/3), Inquiry Report dated 11.10.2002 (Annex. A/4).

5/2

- (ii) to direct the respondents to instate the applicant in service with all consequential benefits.
- (iii) Any other order or direction which this Hon'ble Tribunal deem just and proper in the facts and circumstances of the case may kindly be passed in favour of humble applicant including award of cost of this Original application."

2. Briefly stated, facts of the case are that the applicant was issued charge sheet vide letter No. E/308/1 SFS dated 24.09.1997. The charges against the applicant was that he remained unauthorized absent w.e.f. 23.03.1997 to 22.09.1997 without intimation to SSE/P. Way BAZ and AEN(N) KTT. The Inquiry Officer was appointed and ultimately the Inquiry officer submitted his report on dated 11.10.2000 thereby holding the charges proved against the applicant. Copy of the Inquiry report was given to the applicant. Ultimately, the applicant was inflicted penalty of removal from service, Vide order No. E/308/1/13 dated 10.3.2001 (Annexure A/3). An appeal filed against the order of the Disciplinary Authority was also dismissed by the Appellate Authority. Further, the Revision Petition was also rejected by the Revising Authority on 28.06.2002. It is these orders which are challenged in this OA. The impugned orders are sought to be quashed on the ground that absent from duty does not amount to any misconduct. It is further pleaded that in the present case, applicant's absent was on account of his serious illness for which he has sent proper intimation and application to the Department. According to the applicant, Inquiry officer has committed illegality as the applicant was asked to disclose his defence before the prosecution was completed. It is further stated that the Inquiry Officer asked him to show any proof of sending intimation of

162

leave to the PWI, Baran. Such a question could not have been asked by the Inquiry officer. It is against the principles of natural justice. It is further stated that the Inquiry Officer has committed an illegality in taking into consideration the extraneous matter while holding the charges as proved against the applicant. The applicant has placed reliance on letter No. E(DAR) 308/0 Vol. VIII dated 22.03.2001, issued by the Railway Board, wherein it has been stated that before issuing disciplinary action, they should issue notice to the employee within seven days in case he does not report for duty, only then disciplinary action should be initiated. Whereas in this case, the respondents have waited for six months to take disciplinary action against the applicant. It is on these the grounds the applicant has prayed that the orders of the Disciplinary Authority, Appellate Authority and Revising Authority be quashed.

3. The respondents have filed reply. In the reply, the respondents have taken the objection of limitation and stated that the present OA is barred by limitation in view of the provisions contained under Section 21 of the Administrative Tribunal's Act. On merit, the respondents have stated that the respondents have not received any communication regarding his leave by way of UPC as no such intimation is alleged to have been received by the P. Way Inspector Baran. It is stated that the office of the Assistant Engineer is hardly 400 meters from the Doctor under whom the applicant is alleged to have taken treatment and as such applicant ought to have apprised his factual position to the Assistant Engineer but he neither did so nor preferred to enter into any

44

correspondence even. It is further stated that the information regarding his medical sick was never sent by the applicant to the Railway medical authority whereas the office of the Chief Medical Superintendent, Kota was only at a distance of one to two Kilometers away from the residence of the applicant. Regarding the competency of the Inquiry officer to gather relevant facts during the course of inquiry, it is stated that the Inquiry Officer is competent to gather facts relating to the subject matter under inquiry either from delinquent employee or from the witnesses or from the documents available in that connection. Thus the contention of the applicant that the Inquiry officer put irrelevant questions to the applicant has been refuted. It is stated that the findings recorded by the Disciplinary Authority, Appellate Authority, Revising Authority is based on the Inquiry report and statement of the witnesses and delinquent employee himself, which proved the charges. It is further stated that the applicant is in the habit of remaining absent from duty. Beside this incident, which is subject matter of the present OA, three other cases are also pending against the applicant in regard to his willful absent from duty which are pending against him besides removal from service. It is also stated that the applicant is a Class IV employee and as appointment authority, the Assistant Divisional Engineer is a competent to impose punishment. The respondents have stated that the applicant must curse himself for absenting himself from duty without proper intimation. The respondents have further stated that three case which are pending against the applicant for his absence pertaining to the year 1996 when he remained absent for 121 days, in 1997 he remained absent

62

for 312 days and in 1998 he remained absent for 317 days. A copy of such record has been placed as Annexure R/1.

4. The applicant has filed rejoinder. The fact that the office of the Assistant Engineer (North), Kota was at a distance of 400 meters from the place of the doctor from whom the applicant was taking treatment not been denied. Further the applicant has also not refuted the stand of the respondents that he has not made any correspondence regarding medical sick to the Medical authorities whereas the office of the Chief Medical Officer was at a distance of two kilometers. The only grievance applicant has made in the rejoinder is to the effect that the penalty of punishment is disproportionate to the charges.

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

6. From the material placed on record, it is evident that the fact of remaining absent of the applicant w.e.f. 23.03.1997 to 22.09.1997 is not in dispute. The case as set up by the applicant during inquiry proceedings was that he has sent intimation to that effect to the railway authorities and for that purpose, the applicant has sent postal receipt, which is on ordinary paper. The respondents in the reply have categorically stated that the receipt, which is alleged to be sent to P Way Inspector Baran, has never been received. The reasons given by the applicant for his prolonged absence is that he was

49

receiving treatment from a private doctor. The Inquiry Officer in its report has given six reasons as to why the defence of the applicant cannot be accepted. The reasons given by the Inquiry officer were that (i) delinquent official has stated the reason for his absence was his serious illness but he has not taken any treatment from the Railway hospital. The applicant in his earlier statement stated that his address of residence was Rangpur Road but in his later statement, he has stated that place of residence is ten kilometers away from his residence and place of taking treatment at Mala Road, which is two kilometers away from the Railway Hospital. As such, there is contradiction in the statement of the delinquent employee. (ii) The receipt shown by the delinquent employee regarding intimation given to the Railway Authority by way of UPC is in ordinary paper whereas there should be a proper receipt of the Postal Authority (iii) Railway Authority has refuted the application of the application regarding non receipt of such intimation. (iv) The employee remained almost absent for the last three years. (v) the delinquent employee has accepted the loss caused due to his absence. (vi) the delinquent employee has not given any valid proof for remaining absence for such a long period.

7. The said order has been affirmed by the Disciplinary Authority and Appellate Authority. The point which requires our consideration is whether the charges against the applicant has been proved or not and also as to whether the penalty of removal from service is said to be excessive.

we

7A. We have given due consideration to the material placed on record. As already stated above, the factum of applicant having remaining absent w.e.f. 23.03.1997 to 22.09.1997 is not in dispute. The defence taken by the applicant is that he was ill and intimation regarding his illness was given to the authorities by sending letter to the Railway authority by way of UPC. This fact is denied by the respondents. According to us, the factum of sending intimation by way of UPC to the authority by the applicant even if admitted for argument sake is not of much consequence and cannot pardone the misconduct of the applicant if view^{ed} from the totality of the facts and circumstances of this case. It has come on record that the office of Assistant Engineer (North) Kota was at a distance of 400 Kilometers from the place where the applicant was taking treatment from a private doctor and the applicant has not enter into any correspondence with the Assistant Engineer (North), Kota, who was his appointment authority.. It has also not been refuted that the applicant has also not given any information regarding his medical sickness to the Railway Medical Authorities whereas the office of the Chief Medical Superintendent was only one to two kilometers from the residence of the applicant. In the past also, applicant was taking medical treatment from the Railway hospital when he was operated and follow up treatment was also taken by the applicant from the Railway hospital. However, during the period, which is the subject matter of charge, the applicant instead of taking treatment from the Railway hospital has taken treatment from the private doctor. From the facts as stated above, it cannot be said that the conclusion drawn by the Inquiry Officer regarding

by

charges having been proved and the punishment imposed by the railway authorities is without basis. Admittedly, 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 provides 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 instructions 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 admittedly, the defence of the applicant that he could not join duty for a period of six months on account of his sickness cannot be accepted. It was incumbent upon the applicant to make proper application and thereby enclosing a certificate of his undergoing treatment under medical advice. In the instant case, contention of the learned counsel for the applicant that no intimation regarding rejection of leave was received from the railway authority and as such, his absence cannot be treated as unauthorized absence cannot be accepted. Further contention that the inquiry has not been held properly and the

applicant was asked to disclose his defence before the prosecution was completed and also that the Inquiry officer during the inquiry proceedings also recorded his past absence during the year 1996, 1997 and 1998 is of no consequence. The applicant remained absent for about six months i.e. w.e.f. 23.03.1997 to 22.09.1997 due to serious illness. The applicant has not placed any medical certificate to show that he was suffering from disease during the aforesaid period. In such a situation in our opinion, when there is no order in favour of the applicant whereby the so-called leave, which has been applied by the applicant during the aforesaid period, was sanctioned proves that the absence of the applicant during the aforesaid period was unauthorized. The applicant has also himself not refuted that during the course of inquiry he was not given full opportunity by the Inquiry Officer and he could have brought on record material in the form of medical certificate, as to why he has not taken treatment from Railway hospital when in the past he was taking such treatment, nature of disease he was suffering etc. by adducing evidence especially when according to provisions contained in Leave rules as mentioned in earlier part of judgement burden was on the applicant to justify his absence when the leave was not sanctioned in his favour. According to us, remaining absent without sanctioned leave is misconduct. Thus the contention raised by the applicant that in the facts & circumstances of the present case, inquiry was not properly conducted is of no consequence and would not make any difference in the facts & circumstances of this case. Absence from office for prolonged period has been viewed by the Apex Court very seriously. In the case of State of

Rajasthan & Another vs. Mohd. Ayub Naz 2006 SCC (L&S) 175. It will be useful to quote Para Nos. 9 & 10 of the said judgement, where the Apex Court has 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 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 retrial 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 Service Rules is proved against him and, therefore, he may be removed from service.

10. This Court in Om Kumar v. 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 the 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 of removal was not called for. "

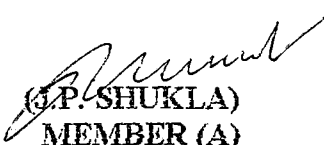
8. Further the Apex Court in the case *State of Punjab vs. Bakhshish Singh*, 1997(6) SCC 381 held that -

"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 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 the 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."

9. Thus viewing the matter from the law laid down by the Apex Court in the case of *Mohd. Ayub Naz (sputa)* where the Apex Court set aside the judgement of the Hon'ble High Court whereby the penalty of removal from service was converted into compulsory retirement was set aside and it was held that the willful absence from duty without intimation to the Government is a serious misconduct and order of removal from service is a proper punishment to be awarded, there is no infirmity with the impugned order. The similar view was also taken by the Apex Court in the case of *Om Kumar vs. Union of India*, 2001 SCC (L&S) 1103, which has been relied in the case of *State of Rajasthan & Another vs. Mohd. Ayub Naz (supra)* whereby it was observed that while considering quantum of punishment, role of administrative authority is primary and that of court is secondary. From the material placed on record, it is evident that the applicant is habitual absentee and three cases of his remaining absent are also pending for his absence since 1996, 1997 and 1998.

10. Thus from material placed on record, it is borne out that applicant is habitual of remaining absent and he is an unwilling workers and as such he is not entitled for any relief as prayed for. It cannot be said that the finding of Inquiry officer or 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.

11. With these observations, the OA is dismissed with no order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ