

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

Jaipur, the 30<sup>th</sup> day of May 2005

**ORIGINAL APPLICATION NO. 51/2003**

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)  
HON'BLE MR. A.K. BHANDARI, MEMBER (ADMINISTRATIVE)

Durga Prasad Sharma son of Shri Kalyan Bux Sharma aged about 60 years, resident of Jamwa Ramgarh C/o Shri Maha Laxmi welcome House, Jamwa Ramgarh (Jaipur). Last employed on the post of Assistant Teacher, Railway Primary School Achnera.

.....Applicant

By Advocate: Mr. C.B. Sharma

versus

- 1 Union of India through General Manager, North Western Zone, North Western Railway, Jaipur.
- 2 Divisional Railway Manager, North western Railway, Jaipur division, Jaipur.
- 3 Additional Divisional Railway Manager, North Western Railway, Jaipur Division, Jaipur.
- 4 President, Railway Schools & Sr. Divisional Personnel officer, North Western Railway, Jaipur Division, Jaipur.

....Respondents.

By Advocate : Mr. V.S. Gurjar

ORDER

PER HON'BLE MR. A.K. BHANDARI

Applicant has filed this OA to seek the following

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reliefs:-

- (i) That the respondents may be directed to produce entire record relating to the case and after perusing the same order of revising authority dated 21.4.2003 (Annexure A/13) with the appellate order dated 3.6.2002 (Annexure A/1) and order dated 9.1.2002 (Annexure A/2) by which applicant has been dismissed from service alongwith charge sheet dated 29.9.1998 (Annexure A/6) with the enquiry proceedings be quashed and set aside with all consequential benefits.
- (ii) That the respondents be further directed to treat the period from 1.7.1998 to 7.4.2000 as sanctioned leave and w.e.f. 8.4.2000 to till the passing of dismissal order as duty for all purpose including pay and allowances.
- (iii) That any other direction or order may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the cost of this application may be awarded."

2 The brief facts of the case as <sup>submitted</sup> ~~admitted~~ by the ~~parties~~ <sup>applicant</sup> are that the applicant while posted as Assistant Teacher at Achnera was served with a charge sheet dated 29.09.1998 (Annexure A/6) containing three allegations namely; he was allotted Railway Quarter No. L/31 but instead of living in it, he had sublet the same which had to be got vacated by the department with the help of RPF on 6.7.1998 and that he remained absent from duty w.e.f. 1.7.98 and that by these acts, he violated provisions of service conduct Rules, 1966. It is further stated that on his transfer from Bandi-kui to Achnera where he was allotted the above quarter, he could not perform his duties because of ill-health due to which he had to remain on leave. Due to the illegal occupation of the above quarter by one Shri

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Harnam Singh, whose antecedents were criminal, he could not occupy the said quarter. This was another reason for his prolonged absence from Achnera. That on 1.7.1998, he wrote a letter addressed to the President of India (Annexure A/4) informing him that his life was in danger due to Shri Harnam Singh and that his quarter be got vacated and that he be transferred to Jaipur because of his ill-health. The action of vacating the quarter was taken by the Administration after this letter on 7.7.1998, Panchnama etc. were prepared (Annexure A/5).

3 However, without consideration of above facts, Respondent No. 4 issued above charge sheet and appointed Shri Subhash Rawat, Assistant Personnel Officer as Presenting Officer who directed the applicant to participate in the inquiry. In the meantime, he obtained Fitness Certificate from the Railway Doctor and tried to report on duty on 8.4.2000 but the respondents did not allow him to join his duties for which he requested Respondents nos. 2 & 4 vide his letter dated 10.10.2000 (Annexure A/7). In this letter, he also requested for voluntary retirement in the year 1999.

4 Inquiry proceedings against the applicant were started but he was not allowed to join his duties at Achnera for which he again requested on 15.6.2001 (Annexure A/8) but of no avail. He then filed an OA in this Bench of the Tribunal bearing No. 472/2001 claiming the following

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reliefs:-

- (i) That entire record relating to the case be called for and after perusing the same, respondents may be directed to allow the applicant to perform his duties as teacher at Achnera with all consequential benefits.
- (ii) That the respondents be further directed to treat the applicant on duty w.e.f. 8.4.2000 and to pay, and allowances from 8.4.2000 till date.
- (iii) Any other order/direction or relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (iv) That the cost of this application may be awarded."

When the above OA was still under consideration, the above departmental inquiry was completed on ex-parte basis and the Inquiry officer having proved all charges against the applicant, Respondent No. 4 after supplying copy of the inquiry report to the applicant on 3.10.2001 (Annexure A/10) issued punishment order dated 9.1.2002 (Annexure A/2) by which the applicant has been dismissed from service. Aggrieved by this order, the applicant preferred an appeal before Respondent No. 3 by his representation dated 20.3.2002 (Annexure A/11) but the same was rejected vide order dated 3.6.2002 (Annexure A/1). It is further stated that applicant served the respondent department without any complaint and allegation of absence without obtaining leave is ill founded as he was not allowed to resume his duties which he tried inspite of illness. In fact he had remained on sick leave for which he had submitted applications from time to time before the authorities concerned and also

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submitted required medical certificates and reported on duty prior to initiation of the inquiry proceedings but he was not allowed to join duties. It was in these circumstances that he approached the Tribunal in above OA. Further, he had to withdraw the OA because in the meantime, he had been dismissed from service and he wanted to file a duly constituted fresh OA. The Appellate Authority did not consider these facts dispassionately though they were mentioned in the appeal and rejected the same without taking into consideration his past good conduct. Aggrieved by the rejection of his appeal, the applicant preferred a Revision Petition before the Headquarter at Mumbai vide letter dated 15.7.2002 (Annexure A/12) but the Revising Authority without due consideration of all facts and circumstances rejected the Review Petition vide order dated 21.4.2003 (Annexure A/13).

4 The applicant has taken the ground of illegality on part of respondents because he had not committed any misconduct. He had informed the authorities about his illness and submitted medical certificates and fitness certificate at the time of joining on 8.4.2000 but he was not allowed to join duties. Therefore the issuance of charge sheet for major penalty for the alleged absence without leave is illegal. The Inquiry Proceedings were also illegal because during only two sittings of inquiry i.e. on 23.4.2001 and 7.5.2001 the documents submitted by the prosecution were got testified by only two witnesses. These

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witnesses narrated facts regarding action taken by the Administration with the help of Railway Protection Force in connection with vacation of quarter from unauthorised person Shri Harnam Singh, and the Inquiry Officer proved the charges on the basis of this scanty evidence alone. The Inquiry officer did not call other witnesses like persons who have signed the Panchnama for further evidence etc. Further that neither the Inquiry Officer nor the Disciplinary Authority considered the fact that applicant could not resumed duty because he was not allowed to join and for the same reason he could not participate in the inquiry. That he had informed the respondents from time to time but he was not taken back on duty and in these circumstances, he had to approach the Tribunal but in the meantime, he was dismissed from service in above ex-parte inquiry. On this ground also, the punishment order deserves to be quashed. Further that the punishment of dismissal is far disproportionate to the gravity of the charges. Since his life and liberty is adversely affected, the Tribunal has ample power to set aside the punishment order. The applicant has also to retire on 30.4.2003 on completing the age of superannuation. The Appellate and Revising authority's orders are bad in the eyes of law because both the authorities have not seen the matter in proper perspective and have blindly <sup>to followed</sup> drawn the line <sup>is drawn</sup> ~~followed~~ by the Inquiry officer without any consideration of the facts mentioned in the memos of Appeal and Revision. Therefore, their orders also deserves to be quashed.

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5 The respondents have submitted detailed reply including the reply to the Amended OA, permission for which was granted vide order dated 19.12.2003. Denying any illegality, the respondents have stated that their action is perfectly legal and valid and in consonance with the service law jurisprudence. That the charges regarding sub-letting of Govt. Quarter to a private person and absence from duty were found true and fully substantiated. The competent authority after taking into consideration all the facts and circumstances passed the punishment order. The applicant has also not placed even an iota of evidence to prove his allegation of arbitrariness and unjustified action. The question of quantum of punishment is primarily for the disciplinary authority to decide and the powers of the Tribunals and the courts are limited in this regard. The respondents have also raised preliminary objection regarding mis joinder of causes because in this OA multiple prayer of quashing of dismissal of order and issuance of order to treat the period of unauthorised absence as on duty for the purpose of pay and allowances have been sought. The objection of limitation has also been raised because the claim for pay & allowances pertaining to the period w.e.f. 01.07.1998 to 07.04.2000 is barred by limitation u/s 21 of the Administrative Tribunal's Act because the OA has been filed on 31.1.2003.

6 Replying to the facts, it is stated that the Railway

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Quarter No. L/31 allotted to the applicant was sub-let by him to a private person in violation of rules. The applicant allegedly wrote a letter to his Excellency the Hon'ble President of India but did not inform the administration to take action against person (Shri Harnam Singh) for the alleged unauthorised occupation of his quarter. However, quarter was got vacated by the Railway Adminsitration on 06.07.1998. In these circumstances, the charge sheet was issued with one of the charges concerning to illegal subletting of Govt. Quarter. Regarding absence, it is stated that the applicant has claimed that he reported on duty on 8.4.2000 <sup>✓ with 1K</sup> fitness certificate from the Railway Hospital but he was not allowed to join his duties, but this claim runs contrary to what has been stated by him <sup>✓</sup> letter dated 15.7.2002 (Annexure A/12). In this, he has stated that he was admitted in the SMS Govt. Hospital vide Admission Slip No. 44595 w.e.f. 30.6.1998 on account of decay and fracture of his ribs and fracture of nasal bone and was under treatment for a long period and therefore, he could not appear and participate in the inquiry proceedings conducted in reference to sub-letting of the railway quarter allotted to him. The applicant has further stated that on 4.7.2002, he was discharged after having been found medically fit by the doctors of Surgical Unit -7. Copy of the discharge ticket was also enclosed with above letter dated 15.7.2002 (Annexure A/12). Thus the statement of the applicant to the effect that he came on 8.4.2000 to resume his duties alongwith a fitness certificate is

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contrary to the statement made in the Memo of Revision Petition dated 15.7.2002 (Annexure A/12). It is also noteworthy that the contents of this letter were neither disclosed to the Inquiry Officer/Disciplinary Authority nor detailed out in the Memo of appeal. Further, when the applicant remained indoor patient w.e.f. 30.6.1998 to 04.7.2002, how could he appeared on 10.10.2000 to resume his duties with fitness certificate. The applicant's letters dated 10.10.2002 and 15.6.2002 (Annexure A/7 and Annexure A/8) are also contrary to the stand taken by him in his letter dated 15.7.2002. Due to these contradictory pleadings the grounds taken by the applicant appear too inconclusive. In a nutshell, there is nothing irregular in the charge sheet, the Inquiry officer rightly initiated the ex-parte proceedings and the Disciplinary Authority after careful consideration of all facts and circumstances awarded the punishment of dismissal. Since the order of the Appellate and Revision Authority are detailed and cover all points raised in respective representations, they cannot be assailed as violative of any rules and procedure. The punishment of dismissal is also justified and proportionate to the gravity of the charges, and in such a case, the Tribunal would not interfere because its powers are limited, and it can interfere only if there is violation of rules and procedure, malafide of respondents or it is a case of no evidence but these circumstances are non-existent in this case.

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7 Parties were heard at length during arguments. Learned counsel for the applicant reiterated his pleadings that charge of sub-letting of Govt. quarter was wrong because one person, Shri Harnam Singh, unauthorisedly and forcefully occupied the govt. quarter and was threatening him whenever he was approached for vacation. In such circumstances, he wrote a letter, addressed to the President of India and the authorities had to get the quarter vacated with the help of the RPF and the local Magistrate. Thus the allegation of sub-letting the quarter is not proved. The fact of admission of the applicant in the SMS Govt. Hospital Jaipur due to serious bone related illness was reiterated to justify the absence from duty due to medical reasons. Due to these reasons, the allegations of sub-letting of Govt. Quarter and remaining absent without leave are not proved. It was also argued that the punishment of dismissal from service is disproportionate to the gravity of the charges of subletting of Govt. quarter and the alleged absence without leave. Also that since the respondents have not paid any attention to the legitimate reasons submitted by the applicant, the Hon'ble Tribunal is well within its rights to interfere in the matter of quantum of punishment.

8 Per contra, the counsel for the respondents repeated the facts enumerated in the reply and has stated that the charge sheet was based on cogent facts, the same was communicated to the applicant, and he was informed to



accept or deny the charges, but he did not reply, nor appeared to participate in the regular hearing. Therefore, the Inquiry Officer had no option but to proceed ex-parte inquiry in the matter. The Disciplinary authority while agreeing with the report of the Inquiry Officer awarded the punishment. Since it was an inquiry for awarding major punishment, he was well within his rights to award punishment of dismissal from service. The Appellate and Revising Authorities have also passed detailed, speaking and well reasoned orders, and therefore, there is nothing illegal or arbitrary in the respondents' action. The fact and grounds enumerated in the present OA are self contradictory and confusing and in view of limited powers of Tribunals in matter of inquiries, the OA deserves to be dismissed. Regarding the ground of proportionality of punishment. The respondents have cited cases Damoh Panna Sagar Rural Regional Bank and Another vs. Munna Lal Jain 2004(SC1)-GJX-0122U-SC in which the issue has been examined at length and on the basis of this it cannot be stated that the disciplinary authority has awarded punishment disproportionate to the gravity of the charges.

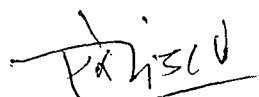
9 After careful consideration of all facts and pleadings, we are of the considered view that we have no scope for interference in the punishment order and the orders of the appellate and revising authorities. Since charge of absence is conclusively proved, we cannot issue direction to treat the period of absence as sanctioned leave. We agree with

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the respondents that by allowing Harnam Singh to share Govt. accommodation without permission amounted to misconduct, to which the applicant had admitted by implication in his letter dated 01.07.1998, addressed to the President of India. This violation of rules is further proved by the contents of the Panchname dated 06.07.1998 (Annexure A/5), contents of which prove that Harnam Singh, an unauthorised person was living in the Govt. Quarter allotted to the applicant. Likewise, the charge of absence is proved on the basis of record and statement of the Principal of the Railway School Achnera where the applicant was posted. Since all possible efforts to invite the participation of the applicant in the Departmental inquiry were made by the Inquiry officer before resorting to ex-parte inquiry, he was justified in following the procedure. We agree with the respondents that if he was not attending the inquiry due to the fear of above Harnam Singh, he should have approached the Police or brought facts of sense of insecurity to higher authorities' notice which he did not do. His contention that he was prevented by the Railway Doctor and Sr. Personnel officer from joining duties contradicts his own contention that he was hospitalised as indoor patient in the SMS Hospital during the same periods. Therefore, the same cannot be accepted. His contention that the punishment of dismissal from service is disproportionate to the gravity of charges is also not accepted because this contention has not been raised in his Memo of appeal or application to the revising authority,

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and as principles of administrative jurisprudence, our role in the determination of punishment is very limited and this question ~~cannot~~ be decided by the administrations. Therefore, the OA is dismissed with no order regarding costs.



(A.K. BHANDARI)

MEMBER (A)



(M.L. CHAUHAN)

MEMBER (J)

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