

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JA BALPUR

Original Application No. 380 of 2005

Jabalpur this the 2nd day of August, 2006.

**Hon'ble Dr.G.C.Srivastava,Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member**

Shri Arun Kumar Sharma, Ex. Ticket Collector, S.E.Rly.,
Gondia, resident of MIG Bungalow No.171,
Dhanwantinagar Near Medical College, Bheraghat Road,
Jabalpur (M.P.)

-Applicant

(By Advocate – Shri M.R.Chandra)

V E R S U S

The Union of India through:

1. The General Manager, South East Central Railway,
Bilaspur- 495004 (C.G.) (i.e. GM/BSP).
2. Shri A.K.Mishra, The Divl.Railway Manager,
Kingsway, Nagpur-440 001 (M.S.) (Appellate Authority
I.E. AA –DRM/NGP)

-Respondents

(By Advocate – Shri N.S.Ruprah)

O R D E R

By Dr.G.C.Srivastava,VC..-

Through this Original Application, the applicant has challenged the order of dismissal from service passed by the disciplinary authority on 29.6.1992 {annexure A/1(b)} and confirmed by the appellate authority vide order dated 28.12.2004 {annexure A/1(a)}.

2. The facts of the case are that the applicant was served with a charge sheet for major penalty proceedings on 8.9.1989 for unauthorized absence on and from 10.2.1989. The penalty of



dismissal from service was imposed on him by the disciplinary authority, on 29.6.1992 vide annexure A/1(b). The applicant approached Bombay Bench of this Tribunal in 2004 claiming that he had filed an appeal against the order of the disciplinary authority on 21.7.1992, which had not been decided until then. The Bombay Bench of this Tribunal vide its order dated 15.10.2004 {annexure A/2(c)} in OA No.2121/2004 directed the respondents to decide the appeal of the applicant within a period of two months. Accordingly, the appellate authority passed a detailed order dated 28.12.2004 {annexure A/1(a)} and dismissed the appeal. The applicant has come again to the Tribunal praying for relief in the form of quashing of the orders of the disciplinary authority and the appellate authority on the ground that the disciplinary proceedings were not carried out in accordance with rules. It has been alleged by the applicant that no inquiry report was furnished to him and the statements recorded by the inquiry officer are false and fabricated. The order of the disciplinary authority has also been assailed on the ground that the charge was taken as proved without recording any evidence and the findings are based on presumptions and conjectures.

3. The respondents in their reply denied the allegations and have submitted that the order of dismissal from service dated 29.6.1992 was fully justified. It has further been submitted that the OA is barred by limitation, as it challenges the order that was passed more than 12 years ago. The learned counsel for the respondents argued that the order passed by the Bombay Bench of this Tribunal in OA No.2121/2004 does not extend the period of limitation as it did not comment on the merits of the case nor on the point of limitation and merely asked the appellate authority to dispose of the appeal. The respondents also alleged that the appeal was in fact never filed and it was fabricated subsequently.

4. We have heard the arguments of the learned counsel of both the parties and have gone through the pleadings.

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5. A perusal of the order of the appellate authority {annexure A/1(a)} shows that the records of the disciplinary proceedings, which concluded in 1992, were no longer available, as more than 12 years had passed since then. The appeal was, therefore, decided on the basis of the documents filed by the applicant. The appellate authority commented that the appeal-petition appeared to have been manufactured later but still it was decided because of the directions of the Bombay Bench of this Tribunal.

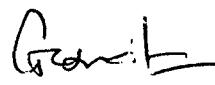
6. It is an admitted fact that the applicant had remained absent without permission from 10.2.1989 onwards until he appeared before the inquiry officer on 17.1.1991. As per the statement recorded by the inquiry officer, the applicant admitted vide annexure A-1(c) that he had to leave for Jabalpur on 10.2.1989, as he had received a message of his father's sickness. He further admitted that he had to go after leaving his leave application behind, as he was not granted leave. In justification of his continued absence, he stated that after he reached Jabalpur he intimated through a letter to the Head TC Gondia that he would not be able to come back early. After that he became busy in the treatment of his father and after his father's death on 12.9.1990, his mother fell ill and he himself suffered from mental disturbance. The applicant claims that his statement had not been recorded correctly but he has not adduced any evidence in support of this contention. In absence of records of the disciplinary proceedings, it is also not possible to ascertain whether the inquiry proceedings were conducted as per rules and whether the copy of the inquiry report was furnished to the applicant. The doubts expressed by the appellate authority and by the respondents in their reply regarding the genuineness of the appeal-petition are not without foundation, especially in view of the facts that the appeal-petition mentions the date of superannuation as the date on which the applicant would have attained the age of 60 years, while at that time the age of superannuation was 58 years and secondly, a copy of the appeal-

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petition is also simultaneously marked to the revisional authority under the presumption that it might be rejected by the appellate authority. Moreover, appeal is alleged to have been forwarded by one Shri B.B.Singh, stated to be the defence counsel, and not by the applicant himself.

7. At this point of time, as mentioned above, the records of the inquiry proceedings are not available and it is not possible to see whether every step that is required to be followed by the disciplinary authority has in fact been followed. It is, however, established beyond doubt that the applicant has been absenting himself without any permission or authority and the excuses advanced by him are too weak to be accepted. The charge for which disciplinary proceedings were drawn up against him had thus been proved beyond doubt. Since the applicant himself admitted the charge in unambiguous terms, no prejudice has been caused to the applicant even if the disciplinary authority omitted to follow some of the guidelines relating to conduct of the disciplinary proceedings. It is seen from the limited number of documents that are available on record that substantive steps required in the course of the disciplinary proceedings including issue of charge sheet and giving an opportunity to the charged official for hearing have all been complied with in the disciplinary proceedings. In view of this, we do not find that the disciplinary proceedings or the orders of the disciplinary authority and the appellate authority suffer from any legal infirmity. We have, therefore, no hesitation in holding that the OA is devoid of merits and is liable to be dismissed. It is accordingly dismissed. No order as to costs.


(A.K.Gaur)
Judicial Member


(Dr.G.C.Srivastava)
Vice Chairman

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