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**Central Administrative Tribunal  
Jabalpur Bench**

**OA No.995/05**

Jabalpur, this the 30<sup>th</sup> day of August 2006.

**CORAM**

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Mr.A.K.Gaur, Judicial Member

Kanchhedi

S/o Fagu

R/o Village adegaonkala

The.Gadarwara

Distt. Narasinghpur (MP)

Applicant

(By advocate Shri Subodh Kathar)

Versus

1. Union of India through  
General Manager  
Central Railway  
Mumbai V.T.
2. Divisional Railway Manager  
West Central Railway  
Jabalpur.
3. Mandal Engineer (South)  
West Central Railway  
Jabalpur.
4. Assistant Engineer (East)  
Central Railway  
Katni (MP).

Respondents

(By advocate Smt.A.Ruprah on behalf of  
Shri N.S.Ruprah)

**ORDER**

**By A.K.Gaur, Judicial Member**

By filing this OA, the applicant has claimed the following reliefs:

- (i) Quash the impugned order of removal dated 5.9.2000 (A-3).
- (ii) Quash and set aside the impugned order of punishment communicated to the applicant vide letter dated 22.2.01 (A-5) and the order dated 14.7.05 (A-10).

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- (iii) Direct the respondents to reinstate the applicant in service with all consequential benefits.
- (iv) Direct the respondents to pay 50% of back wages to the applicant as the applicant was not gainfully employed anywhere.

2. The applicant has filed the present OA challenging the appellate order dated 22.2.01 (A-5) by which the punishment of compulsory retirement has been imposed on the applicant by the appellate authority taking a lenient view and modifying the removal order dated 18.9.2000 (A-3). The applicant has also challenged the order dated 14.7.05 (A-10) by which his mercy appeal has been dismissed.

3. The brief facts of the case are that the applicant was working as Gangman under the respondent Railways. He was posted at Unit No.18, Maihar. While working as such, the applicant was issued a charge sheet dated 3.2.99 for his unauthorized absence from duty. According to the applicant, he went on leave to home town where he fell ill and was under treatment of a private doctor for more than a year from 18.6.1997 to 31.12.98. The departmental proceedings subsequently resulted in the penalty of removal from service of the applicant. On appeal, the appellate authority modified the order of removal from service to compulsory retirement. While the mercy appeal filed by the applicant dated 26.2.01 was pending with the respondents, the applicant approached the Tribunal with an OA No.440/04. The Tribunal vide its order dated 16<sup>th</sup> July 2004 disposed of the OA No.440/04 directing the respondents to consider the revision petition filed by the applicant by passing a detailed, reasoned and speaking order. However, the respondents rejected the revision petition of the applicant vide impugned order A-10 which is under challenge in the present OA.

4. It has been contended on behalf of the applicant that the punishment of compulsory retirement meted out to the applicant was shockingly disproportionate to the gravity of the misconduct. The respondents ought to have considered the medical ground sympathetically. The action of the respondents was violative of Article 311 of the Constitution.

5. Respondents have contended in their reply that the applicant was in the habit of absenting himself unauthorizedly on different occasions. He had faced a regular departmental inquiry for unauthorized absence from 18.7.97 to 18.1.99 for one year and six months. The applicant was unauthorizedly absent (i) from 4.4.95 to 1.7.95 (more than three months) because of which his increment was stopped for three months; (ii) from 22.8.96 to 20.5.97 (about nine months) because of which his increment for one year was stopped and finally (iii) from 18.6.97 to 31.12.98 (one and half year) for which the applicant was given a major punishment charge sheet dated 3.2.99 by the AEN Central Railway (East), Katni. It has ~~been~~ further <sup>been</sup> contended by the respondents that the inquiry was conducted as per the Railway Service (Discipline & Appeal) Rules 1968 and the applicant was given full opportunity to defend his case. In view of the past bad record of the applicant, there was no other alternative but to remove the applicant from service. The appellate order of compulsory retirement was an act of an extremely lenient view taken by the appellate authority, contended by the respondents.

6. We have heard Shri Subodh Kather, learned counsel for the applicant and Smt.A.Ruprah, learned counsel holding brief of Shri N.S.Ruprah for the respondents.

7. The learned counsel for the respondents has cited JT 1999 (4) SCC 489 - Bank of India Vs. Degla Suryanama, in order to support the contention that if there is some evidence, the Tribunal shall not interfere with the findings recorded by the disciplinary authority. The counsel has also placed reliance on the decision of the Hon. Supreme Court reported in 2000 (1) SCC 416 - The High Court of Mumbai Vs. S.Patil and argued that the order of disciplinary authority is not liable to be interfered with by the Tribunal if there is some evidence. Unless the findings are perverse and based on no evidence, the Tribunal may not interfere with the same. The learned counsel for the respondents has further relied on a decision by the Supreme Court, reported in 2003 SCC (L&S) 271 and stated that absence from duty without proper intimation is enough, warranting removal from service. It is

