

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 259 of 2003

Jabalpur, this the 6th day of January, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. G. Shanthappa, Judicial Member

Omrakash Sharma S/o Shri Ramkishore Sharma
Aged about 47 yrs. Diesel Asstt. Satna, (MP)
Central Railway Satna
(Now remove from service)

APPLICANT

(By Advocate - Shri B.K. Pandit)

VERSUS

1. Union of India Through the Secretary
Railways Rail Bhawan New Delhi.
2. General Manager West/Central Railway
Jabalpur
3. Divisional Rail Manager Central Railway
Jabalpur
4. Sr. Divisional Mechanical Engineer Central
Railway Jabalpur
5. Addl Divisional Mechanical Engineer
Jabalpur/Discipline/Authority
6. Divisional Mechanical Engineer Central
Railway Jabalpur
7. Enquiry Officer of Charge Sheet dt. 5.12.2000
of S.F.5 issue to the applicant
8. Railway Doctor Sagar
9. Civil Surgeon/Staff Surgeon, Authorised
Medical Attendant Govt. District Ayurvedic
Hospital Satna M.P.

RESPONDENTS

(By Advocate - Shri H.B. Shrivastava)

O R D E R (ORAL)

By M.P. Singh, Vice Chairman -

The applicant by filing this Original Application
is claiming the following main reliefs :-

- "(i) to quash the chargesheet of SF5 dtd. 5.12.2000
vide Annexure-A-1.
- (ii) the findings of the inquiry report as recorded
by the inquiry officer vide his findings dtd.
5.11.2001 vide Annexure-A-3 be kindly quashed.

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- (iii) the removal order passed by the disciplinary authority, ADME Jabalpur imposing the penalty of removal from Railway service with immediate effect vide Annexure-A-7 dtd.01.03.2002 be kindly quashed.
- (iv) the order dtd.7.6.02 in appeal dtd.9.3.2002 passed by the appellate authority, Divisional Mechanical Engineer (O&C) Jabalpur may also kindly be quashed.
- (v) the order dtd.14.11.2002 passed by the Sr. Divisional Mechanical Engineer Jabalpur vide Annexure A-11 may kindly be quashed.
- (vi) the order dtd.9.10.02 a copy of which is filed as Annexure A-19 be also kindly quashed on account of it be illegal. In view of the reply dt.19.10.02 addressed to the DME Jabalpur a copy of which is filed as Annexure A-20 to this application.
- (vii) the applicant may kindly be given his salary since 1.3.2002 till the disposal of this original application with interest of 18% over it and other consequential financial benefits and promotional benefits as fell due may also be given to the applicant."

2. The brief facts of the case are that the applicant while he was working as Diesel Assistant was issued a charge-sheet on 5.12.2000 wherein it is alleged that the applicant addressed a letter to MR threatening self immolation on 5.3.2000; and criticised the Government policy and reported the matter to the press thereby abetted in publication of baseless news item in New Swadesh News Paper. The applicant denied the charges. Thereafter an enquiry officer was appointed to enquire into the charges. The enquiry officer has fixed the date of hearing on the following dates - 22.6.2001, 10.7.2001, 21.8.2001 and 3.9.2001. The applicant did not participate in the enquiry and sent the application that he is sick and, therefore, cannot participate in the enquiry. The enquiry officer completed the enquiry ex parte and held the charges proved. A copy of the enquiry report was served upon the applicant. The applicant submitted his representation. After considering the representation and the finding of the enquiry officer, the disciplinary authority imposed the penalty of removal from service on the applicant, vide impugned order dated 1.3.2002 (Annexure-A-7). Against the said order, the applicant submitted an appeal on 9.3.2002 which was rejected by the appellate

authority vide order dated 7.6.2002 (Annexure-A-9). Thereafter, the applicant preferred a revision-petition to the Sr.DME, Jabalpur which was also rejected, however, the revisional authority 'purely on humanitarian grounds' granted him compassionate allowance equal to 2/3rd of pension and gratuity both, which would have been admissible to him, if he had retired on compensation pension, under Rule 65 of the Railway Services (Pension) Rules, 1993, vide impugned order dated 14.11.2002 (Annexure-A-11). Hence this O.A.

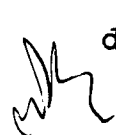
3. The respondents in their reply have stated that the applicant was provided full opportunity during the course of enquiry and there is no lacuna pointed out by the applicant calling for any interference by the Tribunal. The enquiry officer issued letters fixing up dates of enquiry. Although his A.R.E. appeared on some dates in the enquiry, the applicant did not attend the enquiry on any date pretending to be sick. The enquiry officer after giving several opportunities to the applicant to participate in the enquiry, lastly fixed enquiry on 3.9.2001. The applicant did not turn up on this date as well and as such ex-parte enquiry was conducted and prosecution witnesses examined. The respondents have also contended that for irresponsible behaviour of the applicant he was punished earlier vide order dated 4.7.2001 with 'reduction to a lower/ service/post of Diesel Cleaner in the grade of Rs.2550-3200 with the pay at initial/lowest stage of pay till such time he is found suitable for promotion', which has been challenged by him in a separate OA 774/2001 which is pending before the Tribunal.

4. We have heard the learned counsel for the parties and carefully perused the pleadings available on record. We find that the respondents have held the enquiry as per laid down procedure and the applicant has been given full opportunities during the course of enquiry but he did not participate in the enquiry on the pretext that he was ill.


We do not find from the application given by the applicant for medical sickness that he was seriously ill and could not participate in the enquiry because of that. He was also supplied a copy of the enquiry report and was thus given the opportunity to make his representation. Thus opportunity of hearing has been given and thus principles of natural justice have been observed by the respondents.

5. The learned counsel for the applicant lastly has contended that the penalty imposed on the applicant is disproportionate looking to the gravity of the charge levelled against the applicant. We find some force in this contention of the learned counsel. The Hon'ble Supreme Court in the case of B.C.Chaturvedi Vs. Union of India, JT 1995(8)SC 65 has held that if the punishment imposed by the disciplinary or the appellate authority shocks the conscience of the High Court/Tribunal it would appropriately mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In the instant case, we find that since there was no charge against the applicant regarding moral turpitude or misappropriation of Government funds, the penalty of removal imposed on the applicant is too harsh. In this view of the matter we are of the considered view that the matter should be referred back to the competent authority to reconsider the quantum of penalty imposed on the applicant.

6. In the result, the OA is partly allowed. The impugned orders dated 1.3.2002(Annexure-A-7), 7.6.2002(Annexure-A-12) and order dated 14.11.2002(Annexure-A-11) are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service within a period of one month from the date of communication of this order. The competent disciplinary authority will be at liberty to impose



any penalty on the applicant except removal and
dismissal from service. No costs.


(G. Shanthappa)
Judicial Member

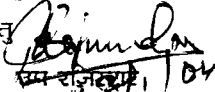

(M.P. Singh)
Vice Chairman

rkv.

पूरांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अने धित:-

- (1) सदिय, उच्च न्यायालय वार एडवोकेटजन, जबलपुर श्री B.K. pandit Adv. JBP.
- ✓ (2) आदेशक श्री/श्रीमती/कु.....को काउंसल श्री H.B. Shrivastava Adv. JBP.
- ✓ (3) प्रत्यर्थी श्री/श्रीमती/कु.....को काउंसल
- ✓ (4) वॉयपाल, केप्रा, जजलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु


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Recd.
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