

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH
CIRCUIT AT INDORE

O.A. NO.70/2003

Indore, this the 14th August, 2003.

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

HON'BLE SHRI R. K. UPADHYAYA, MEMBER (A)

Sukhram S/O Badiya,
C/O Bachhu Bhai S.,
Electric Cleaner,
House No.719/A,
Tekra Colony, Ratlam.

... Applicant

(None present)

-versus-

1. Union of India through
General Manager,
Western Railway,
Churchgate, Mumbai.

2. Chief Medical Supdt.,
Western Railway, Dahod.

... Respondents

(By Shri Y. I. Mehta, Sr. Advocate with Shri
Anand Pathak, Advocate)

O R D E R (ORAL)

HON'BLE SHRI SHANKER RAJU, MEMBER (J) :

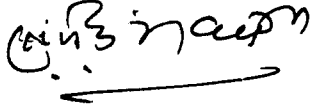
None appeared for the applicant when the matter was taken up. The O.A. is accordingly disposed of in terms of the provisions of Rule 15 of the C.A.T. (Procedure) Rules, 1987. Shri Y.I.Mehta, learned Sr. Advocate appearing with Shri Anand Pathak, has been heard on behalf of the respondents.

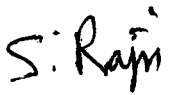
2. Impugned herein is the order of removal from service which has been affirmed in appeal as well as in revision. Applicant who had remained absent for 203 days was held guilty and punished with removal from service. Appeal preferred by the applicant has been rejected. In the appellate order, extraneous material, i.e., 192 days' absence ~~was~~ ^{was} taken into consideration

during the enquiry, which did not form part of the chargesheet issued to the applicant. Moreover, the proportionality of punishment has also not been gone into by the appellate authority or by the revisional authority.

3. In the light of the settled position of law and in view of the decision of the Apex Court in the case of Om Kumar vs. Union of India, 2002 (2) SCC 386, we are satisfied that as mandated by Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968, it is incumbent upon the appellate authority to examine the proportionality of punishment. As the same has not been gone into, the appellate order which has been founded on extraneous material, cannot be sustained in the eyes of law.

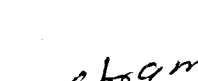

4. Accordingly, the OA is partly allowed. The appellate as well as the revisional orders are quashed and set aside. The matter is remanded to the appellate authority to pass a ~~xx~~ fresh reasoned and speaking order in view of our observations, within a period of three months from the date of receipt of this order. Other contentions put forth are left open. No costs.

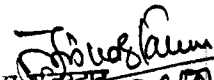

(R. K. Upadhyaya)
Member (A)


(Shanker Raju)
Member (J)

/as/

पृष्ठान्त सं ओ/न्या..... जयपुर, दि.....
संविधान ३०
(1) सचिव, उच्च न्यायालय, जयपुर
(2) अध्यक्ष, उच्च न्यायालय, जयपुर
(3) न्यायाधीश, उच्च न्यायालय, जयपुर
(4) न्यायाधीश, उच्च न्यायालय, जयपुर
सूचना एवं आचार्यक कक्षा में है

 Sukhram
 A. Pathak

 J. V. Sharma
26/8/03

Issued
28.8.03
B3