

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
(CIRCUIT CAMP AT INDORE)

Original Application No. 04 / 2001

Indore, this the 13th day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Smt. Kunda Mukadam,
Senior Clerk under
PRO-Indore.

---Applicant

(By Advocate: Shri A.N.Bhatt)

-versus-

Union of India & Others represented by:

1. General Manager,
Western Railway Churchgate,
Mumbai.
2. Divisional Railway Manager,
Western Railway, Ratlam.

...Respondents

(By Advocate: Shri Y.I.Mehta, Sr. Adv. with Sh. Ravi Jain)

ORDER (ORAL)

By M.P.Singh, Vice Chairman:

By filing this Original Application, the applicant has claimed the following main reliefs:

- i) To kindly quash and set aside the order No.E/308 SF5/DOM/11/95/68-04 of 22.3.2000 and modified order No. E/308/SF-5/DOM/11/95/68-04 dated 13.07.2000 passed by the respondents.
- ii) All the consequential benefits including due promotion since 1995 be paid to the applicant.
- iii) Arrears of increment, wages etc. may kindly be ordered to pay the applicant.

2. The brief facts of the case are that the applicant was working as Senior Clerk under respondent no. 2 at Ratlam and went on sick leave from 6.4.1993. She was taking medical treatment from the private doctor at Indore. She was issued with a

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chargesheet for unauthorised absence from duty. Till the date of issue of chargesheet i.e. 1.11.1995, the applicant neither reported for duty nor approached the Railway Medical Officer ^{of the} ~~for~~ Railway Hospital for her treatment. An enquiry was conducted by the respondents and the enquiry officer, after investigating into the charges, held the charges proved. The disciplinary authority vide its order dated 22.03.2000 imposed the penalty of reduction to the lower grade for three years without future effect. She filed an appeal challenging the order of the disciplinary authority and the appellate authority vide its order dated 1.6.2000 rejected the said appeal. Thereafter, the applicant filed a revision petition. The revisional authority vide its order dated 13.07.2000 modified the penalty to reduction in the same time scale Rs. 4500-7000 from Rs. 4750/- to Rs.4500/- by two stages without future effect for a period of three years. Aggrieved by the said order, the applicant has filed the present Original Application claiming the aforesaid reliefs.

3. Heard the learned counsel for both the parties and perused the pleadings and other material available on record.

4. Learned counsel for the applicant has submitted that the applicant was on sick leave and was getting treatment from a private doctor. An enquiry was held by the enquiry officer and she was not given an opportunity of hearing as the relied upon documents were not supplied to her as a result of which she could not prepare her defence effectively. He has also submitted that there were two enquiries held by the respondents which is against the rules. He has further submitted that in case of any doubt of the applicant's sickness, rules provide that a doctor is required to be sent to ^{her place to} examine the applicant as to whether she was suffering from the disease or not. He has also submitted that the applicant, being a lady, should have been given more sympathetic consideration. According to him, prosecution witness, who was the main witness, was not produced


by the respondents during the course of the enquiry held by them.

5. On the other hand, the learned counsel for the respondents has submitted that two enquiries were not held. It is submitted by him that when the enquiry was completed by the enquiry officer, the disciplinary authority found certain defects in that enquiry and he had, therefore, remanded back the enquiry to the enquiry officer to complete the enquiry which is permissible under the rules. He has also submitted that the charges against the applicant were proved. He has further submitted that as per rules, the applicant was required to go to the Railway Hospital/Railway doctor for her treatment as she was on unauthorised leave for such a long time. He has further submitted that since the applicant herself has mentioned vide her letter dated 25.5.1996 that she alongwith her defence assistant would inspect the documents relating to the charges and also the report of preliminary enquiry, there was no requirement of giving her the documents as stated by the learned counsel for the applicant. He has also submitted that the applicant while sending the medical certificate, ^{the} issued by/private doctor, did not give her address of Indore where she was residing during this period. Therefore, it was not possible for the respondents to contact her or to send letters to her.

6. We have given careful consideration to the rival contentions of the parties. It is not in dispute that the applicant was unauthorisedly absent from duty from 6.4.1993 till the date of issuance of the chargesheet/ i.e. 1.11.1995. It is also not in dispute that during the said period, the applicant never took the treatment from the Railway doctor or in the Railway hospital. She has also not sent any medical certificate issued from the railway doctor in support of her claim for grant of medical leave. The contention of the learned counsel for the applicant that there has been two enquiries is not correct and

is rejected as the findings of the enquiry officer was remanded back by the disciplinary authority with certain directions, which is permissible under the rules. Therefore, there was only one enquiry and the charges were found proved against the applicant. However, it is interesting to notice that the disciplinary authority has imposed the penalty of reduction reducing her to the bottom of next lower grade for three years without future effect mainly on the humanitarian ground and also on the ground that the applicant belongs to Maharashtrian family where it is not very common for girls to go out and do jobs and she belongs to a very conservative family. In fact, the disciplinary authority should not have taken these factors into account which are totally irrelevant but should have based his judgement on the basis of findings of the enquiry officer, the representation of the applicant and other relevant material, which was available on record. This judgement of the disciplinary authority has been adversely commented upon by the appellate authority. However, the revisional authority has further modified the penalty of reduction to the lower stage to reduction in the same time scale of Rs. 4500-7000/- from Rs. 4750/- to Rs. 4500/- without future effect for three years.. In this case, we find that the enquiry has been held by the respondents as per procedure laid down and she has been given an opportunity of hearing and, therefore, the principles of natural justice have been followed. Learned counsel for the applicant has failed to establish that any prejudice is caused to the applicant by not supplying the letters of Station Manager which had been demanded by the applicant after receipt of the chargesheet. It is well settled legal position that the Tribunal or Court cannot reappraise the evidence and also cannot go into the quantum of punishment.

7. For the above reasons, we do not find any ground to



interfere with the orders passed by the disciplinary authority, appellate authority and the revisional authority and the O.A. is bereft of merit. Therefore, the O.A. is accordingly dismissed.

No costs.

(Madan Mohan)
Member (J)

(M.P.Singh)
Vice Chairman

/na/

Final
21-4-09

पृष्ठांकन सं ओ/व्या..... जयपुर, दि.....
परिचालिका कांठसल
(1) सचिव, कांठसल
(2) अध्यक्ष, कांठसल
(3) प्रत्यक्षी श्री/..... कांठसल
(4) अध्यक्ष, कांठसल
सूचना एवं आवश्यक वर्ग/वर्ग के सदस्यों को सूचित

उप सचिव
for

ANT Shah
VI Mehta