

Central Administrative Tribunal
Jabalpur Bench at Gwalior

OA No.371/2001

Gwalior, this the 29th day of October, 2003.

Hon'ble Mr. Shanker Raju, Member (J)

Hon'ble Mr. Sarveshwar Jha, Member (A)

K.K. Kamtaria

-Applicant

(By Advocate Sh. Vilas Tikhe)

-Versus-

Union of India & Others

-Respondents

(By Advocate Sh. H.D. Gupta)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):-

Through this OA applicant impugns imposition of penalty of reduction from the post of Senior Guard for a period of three years with cumulative effect.

2. Applicant on account of his sickness remained off duty for a period of 24 days from 7.12.96 to 31.12.96, for which he has informed the concerned authority through postal communication. He was proceeded against in a major penalty after placing him under suspension for remaining absent from duty. The disciplinary authority on the basis that applicant could have sent information about sickness by messenger or through family member imposed upon him a punishment of removal from service. On appeal by an order dated 13.8.99, taking a lenient view punishment was modified to that of compulsory retirement.

2. On filing revision by an order dated 28.4.2000 punishment of compulsory retirement was reduced to reduction to the post of Senior Goods Guard for a period of three years with cumulative effect.

3. Learned counsel for applicant contends that punishment of reduction is very severe and disproportionate to the charge. It is also contended that the medical certificate was not held to be incorrect as no second medical examination was conducted. The illness of applicant was found justified and as he has informed the department through his communication the punishment shocks the conscience and is liable to be set aside.

4. On the other hand, respondents' counsel vehemently opposed the OA and stated that absence from duty without permission is a grave misconduct for which already a lenient view has been taken by modifying the punishment to reduction in rank. On proportionality of punishment it is stated that the same is proportionate and has been imposed after following the due process of law.

5. We have carefully considered the rival contentions of the parties and perused the material on record. Nowhere in the disciplinary proceedings the medical record submitted by applicant was disputed. Applicant's communication informing respondents about his sickness is also not denied. However, it is stated that applicant could have sent information through messenger or family member. As the absence of applicant was on account of his severe illness which is covered by medical record the period of absence cannot be treated as wilful or unauthorized. Remaining absent on medical ground cannot be treated as wilful absence. In so far as permission is concerned, applicant has asked for the permission through his postal communication and it is not incumbent upon him to send information through messenger or family member.

6. In view of the following decisions it is held that when the punishment as compared to the misconduct shocks the

conscience the matter can always be remanded back to the competent authority for re-consideration.

1. Om Kumar v. Union of India, 2002 (2) SCC 306
2. B.C. Chaturvedi v. Union of India, JT 1995 (8) SC 65.
7. As absence of applicant cannot be treated as wilful imposition of punishment of reduction to lower post certainly is disproportionate to the misconduct alleged. It shocks our conscience.
8. In the result for the foregoing reasons OA is partly allowed. The punishment imposed upon applicant is quashed and set aside. He shall be entitled to all consequential benefits. However, the matter is remanded back to the revisional authority to impose an appropriate punishment in accordance with law, if so advised. No costs.


(Sarveshwar Jha) Member (A) 

S. Raju
(Shanker Raju)
Member (J)

प्रस्तावना सं लेखा..... जगद्वारा, दि

Success
on
G.I. 103