

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

Circuit Sitting : BILASPUR

Original Application No.714/2001

Jabalpur, this the 17th day of December, 2003

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

Avinash Kumar Verma
s/o Vinod Kumar Verma
c/o Mahamaya Medical Agency
Dhamtari Distt. Dhamtari
(Chhattisgarh State) ... Applicant

(By Advocate: Shri Arvind Shrivastava)

Versus

1. Union of India
Ministry of Railways
through its Secretary
Rail Bhawan
New Delhi.
2. Chief General Manager
Central Railway
C.S.T.
BOMBAY.
3. Senior Divisional Electrical
Engineer
T.R.O.
BHUSAVAL (Maharashtra).
4. Divisional Electrical Engineer
T.R.O.
Bhusaval (Maharashtra). ... Respondents

(By Advocate: Shri M.N.Banerjee)

O R D E R

By G. Shanthappa, Judicial Member:

The above OA is filed by the applicant
seeking the following reliefs:

"(i) Quash the order dated 3.1.2001
(Annexure A-1) and the order dated
3.9.2001 of the appellate authority
rejecting the appeal of the applicant
(Annexure A-8).

(ii) be further pleased to direct
the respondents to allow the applicant
to join at his original place rein-
stating him with full back wages with
all consequential benefits."

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2. The brief facts of the case are that the applicant was initially appointed as Assistant Driver and was posted at Mumbai for training and thereafter he was transferred as Goods Driver Bhusawal vide order dated 5.3.1993 (Annexure A-3). Subsequently, the applicant was transferred to Nandgaon as Senior Loco Instructor, Zonal Training Centre, Bhusawal. The applicant has joined at Nandgaon, however, his wife has been suffering from serious gynocological ailment he had to stay at Bhusawal where she was undergoing treatment and the applicant was compelled to take leave for her treatment and thereafter he applied for leave without pay on the ground of sickness of his wife. Accordingly, he has submitted his leave application on 23.4.1999 with medical certificate of his wife to the Divisional Electrical Engineer, TRO, Bhusawal and he has proceeded on leave with the assumption that his leave will be sanctioned in due course of time. The applicant did not receive any intimation regarding sanction or rejection of his leave. The applicant reported back on duty on 29.7.1999 and since he had been leave ~~for~~ for more than 45 days he was sent for medical examination and he was found fit and he was allowed to resume duty from 8.8.1999. Since there is a dereliction of duty of the applicant, a charge-sheet was issued on 8.9.1999 (A-6) on the ground that the applicant has remained absent from duty w.e.f. 28.4.1999 to 14.7.1999 unauthorisedly and thereby he has committed misconduct as enumerated in Railway Service (Conduct) Rules, 1966, and therefore, he is liable to be penalised for his misconduct. The applicant has submitted his reply to the chargesheet explaining the reasons for not attended to duty and also submission of the leave



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application on medical grounds. Subsequently, the inquiry officer was appointed and he recorded his findings in the inquiry report that the charges are proved and held the applicant as guilty of the misconduct. In the inquiry the applicant was given an opportunity to cross-examine the witnesses. The inquiry report (Annexure A-7) was also supplied to the applicant and on the basis of the inquiry report and reply to the inquiry report, the disciplinary authority has passed the impugned order of punishment of removal from service. The applicant preferred a statutory appeal to the Senior Divisional Electrical Engineer, TRO, Bhusawal (Annexure A-8). The appellate authority has also passed the order at Annexure A-9 without considering the factual things and also position of leave while passing the impugned order. The applicant has filed the present OA without filing revision petition before the Revisional Authority seeking the aforesaid reliefs on the ground that the inquiry officer, disciplinary authority and appellate authority have violated the principles of natural justice.

3. The case of the applicant is that he was not unauthorisedly absence, he had submitted his leave application along with the medical certificate, however, these facts are not considered by the inquiry officer, disciplinary authority as well as appellate authority. Hence, the entire proceedings are to be vitiated and the same are liable to be quashed and set-aside.

4. Per contra, the respondents have filed the reply ~~stating~~ that the applicant was absent to *ef.*

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his duty without prior sanction of the leave. In the inquiry, the inquiry officer, disciplinary authority and appellate authority have given adequate opportunities to the applicant as per rules and have passed a detailed and reasoned orders hence, the respondents have stated that there is no illegality or irregularities and there is no violation of principles of natural justice while passing the impugned orders.

5. The learned counsel for the respondents in his oral arguments submitted that the applicant has not exhausted his remedies available to him, that is filing of a revision petition before the revisional authority against the order of the appellate authority. Hence, the application is liable to be dismissed on the ground of non-exhaustion of the remedies available under the relevant rules.

6. The learned counsel for the applicant has relied on the Judgement of this Tribunal passed in CA No.191/1997 (Shri Gulab Singh Patel v. Union of India & Others), decided on 5.8.2003 to show that the applicant's case is fully covered by the aforesaid Judgement. However, the learned counsel for the respondents has stated that the aforesaid judgement is not applicable in the present case where the respondents' counsel had not taken the objection of filing revision petition even on oral submissions, the aforesaid CA might have decided, Whereas, in the present case, the respondents' counsel has taken the ground of non-exhaustion of the available remedies.



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7. Heard the learned counsel for the applicant and the learned counsel for the respondents and we have perused the pleadings on record. We proceed to decide the OA finally.

8. The admitted facts of the case are that the applicant has applied for leave on the ground of illness of his wife and he proceeded on leave under the impression that his medical leave would be sanctioned. In the departmental inquiry the applicant was given an opportunity to cross-examine the witnesses, etc. and subsequently a copy of the inquiry report was also submitted to the applicant and the disciplinary authority, after receiving the reply from the applicant against the inquiry report, has imposed a penalty of removal from service upon the applicant and the appellate authority has also confirmed the order of the disciplinary authority and passed the impugned order.

9. Admittedly, as stated by the respondents' counsel, the applicant has not preferred any revision petition before the revisional authority. If the applicant would have filed the revision petition, the revisional authority has got powers to modify the order of punishment. However, the applicant without availing the remedy of revision petition, has approached this Tribunal, thus the OA is not maintainable under Section 20(1) of the Administrative Tribunals Act, 1985.

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10. Accordingly, we are of the considered view, that the present OA can be disposed of with direction to the applicant to file a revision petition before the revisional authority, if so advised, within a period of one month from the date of receipt of a copy of this order. If such a revision petition is filed before the revisional authority, the revisional authority shall consider the same, and while considering, the revisional authority shall also look into the aforesaid observations of the Tribunal and disproportionate of punishment. The revisional authority also shall see the orders passed by the disciplinary and appellate authorities are speaking, reasoned and detailed or not, and pass a detailed, reasoned and speaking order within three months from the date of receipt of a copy of the revision petition from the applicant.

If the applicant ~~xxxxx~~ aggrieved by the order to be passed by the revisional authority, he is at liberty to approach this Tribunal in accordance with law.

11. The CA is accordingly disposed of in terms of the above directions. No costs.

G. Shanthaappa
(G. SHANTHAAPPA)
Judicial Member


(M. P. SINGH)
vice Chairman

/rao/

पृष्ठांकन गर्न वारेन्टा..... अवतार, दि.....
(1) अवतार, दि.....
(2) अवतार, दि.....
(3) अवतार, दि.....
..... अवतार A. Shiva Narayana
..... M.A. B. I. S. I.

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