

CENTRAL ADMINISTRATIVE TRIBUNAL. JABALPUR BENCH,

CIRCUIT CAMP AT BILASPUR

Original Application No. 812 of 2002

Jabalpur, this the 5<sup>th</sup> day of October, 2004

Hon'ble Mr. M.P.Singh, Vice Chairman  
Hon'ble Mr. Madan Mohan, Judicial Member

Appa Rao Mule  
S/o BR Mule  
Aged about 59 years  
R/o Karimpure, Kabrasthan Naka  
Gurunanak Chowk, Torba,  
Bilaspur (Chhattisgarh)

APPLICANT

(By Advocate- Shri S.Paul)

VERSUS

1. Union of India,  
Through the General Manager  
South Eastern Railway,  
Garden Reach,  
Kolkata.
2. The Divisional Railway Manager,  
Bilaspur Division,  
South Eastern Railway,  
Bilaspur.
3. The Sr. Divisional Operating Manager,  
South Eastern Railway,  
Bilaspur.
4. The Divisional Operating Manager,  
South Eastern Railway,  
Bilaspur.

RESPONDENTS

(By Advocate - Shri M.N. Banerjee on behalf of Smt.I.Nair)

O R D E R

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the following main reliefs :-

- "(ii) Set aside the order dated 25.1.2001 (Annexure-A-1) and the order dated 14.8.2001 Annexure-A-2.
- (iii) Direct the respondents to reinstate the applicant with all consequential benefits.
- (iv) Upon holding that the Rule 64 of Railway Services (Pension) Rules, 1993 ultra virus/unconstitutional and struck down the same, consequently command the respondents to provide all consequential benefits to the applicant as if Rule 64 does not exist in the eyes of law.

2. The brief facts of the case are that the applicant was working as Cabin Master under the respondents. He was served with a charge sheet on 27.3.2000 (Annexure-A-3) on



the ground of unauthorised absence from the service for the period from 18.11.1999 to 2.3.2000 and onwards. The applicant was sick during the aforesaid period. An enquiry officer was appointed to investigate the charges levelled against him. After completion of the departmental enquiry, the enquiry officer has submitted his report. The enquiry officer's report has been supplied to the applicant and the disciplinary authority has passed its order dated 21.5.2001 by which the applicant was removed from service. According to the applicant, the disciplinary authority did not consider the defence of the applicant. Feeling aggrieved with the aforesaid order the applicant has preferred an appeal dated 18.6.2001(Annexure-A-5) to the appellate authority. The appellate authority has considered the appeal of the applicant and the punishment of removal was converted into compulsory retirement with grant of 2/3rd pension vide order dated 14.8.2001(Annexure-A-2). Against the order dated 14.8.2001 the applicant has preferred a review petition to the respondent no.3 on 9.5.2002/28.6.2002(Annexure-A-6) against the reduction in pension. The Sr. Divisional Operating Manager has refused to entertain the said review application by order dated 5.9.2002(Annexure-A-7). The appellate authority has not mentioned as to under which provision of law he has reduced the applicant's pension while imposing the punishment of compulsory retirement. Aggrieved by this, he has filed this OA.

3. Heard the learned counsel for the parties.


4. The learned counsel for the applicant has argued that the appellate authority has not mentioned any reason in its order as to why his 2/3rd part of his pension is order to be cut . The learned counsel for the applicant has further stated that the applicant was absent during 18.11.99 to 2.3.2000 and onwards. However, he has informed to the Inquiry Officer that during the alleged period of unauthorised absence he was sick. He has also stated that due to his long absence



from the duty, he has not caused any loss to the department. The learned counsel for the applicant further argued that the punishment of compulsory retirement is very harsh and the respondents be directed to award any punishment other than compulsory retirement, removal from service and dismissal from service.

5. It is argued on behalf of the respondents that the applicant remained absent from 18.11.99 to 2.3.2000 and onwards. This is very long period and the applicant has not submitted any medical certificate in support of his alleged absent. The learned counsel for the respondents further submitted that the version of the applicant that he was sick during the aforesaid period is false and baseless and cannot be accepted and the department has suffered great loss by such type of long absence of the applicant from duty. The applicant is ordered to be compulsorily retired by the impugned order of the appellate authority dated 14.8.2001 (Annexure-A-2) and imposed the punishment of 2/3rd cut in pension. Therefore, the action of the respondents is legal and justified. Therefore, the OA is liable to be dismissed.

6. After hearing the learned counsel for the parties and carefully perusing the records, we find that the applicant ~~has~~ was not denied the fact that he was absent from 18.11.99 to 2.3.2000 onwards and he has not filed any medical certificate in support of the alleged absent during the aforesaid period. The disciplinary authority has passed its order dated 25.1.2001 by which the applicant was removed from service. But, the appellate authority has considered the appeal of the applicant and the punishment order of removal from service was converted to compulsory retirement from the date of removal from service i.e. 21.5.2001 with grant of 2/3rd pension. Due to long absence of the applicant during his service period, the department has apparently suffered great loss. We have perused the impugned order dated 14.8.2001 which



is a reasoned, detailed and speaking order. As per the judgment of the Hon'ble Supreme Court in the case of Man Singh Vs. Union of India & Ors., 2003(3) ATJ 189 wherein it has been held "(A)..... Absence from duty-Dissmissal-Charge of unauthorised and wilful absence from duty against the appellant-Charge proved in enquiry-He had already absented himself unauthorisedly on 21 different occasion from the date of his enlistment-Dissmissed from service- Tribunal and High Court confirmed the punishment-Whether subsequent regularisation of unauthorised absence from duty by granting have without pay for the purpose of maintaining correct record of service can have the effect of invalidating termination--Held no.

(B)..... Absence from Duty--Dissmissal--when charge against the delinquent is of habitual absence for long period on several occasions unauthorisedly-- No infirmity in the order of dismissal passed by the disciplinary authority."

7. In view of the aforesaid discussion and law quoted above, and we do not find any merit in this OA/ Accordingly, the OA is dismissed. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पलितिमि अकोरित -

(1) सखिल, उच्च न्यायालय, जबलपुर

(2) आवेक ओ/ओ सी/रु..... जजमेंट S. Paul

(3) प्रत्यक्षी ओ/प्रतिनि/रु..... जजमेंट mn Banerji

(4) संवर्धन, संवर्धन, जबलपुर न्यायालय

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

SKM

Issued  
On 7.10.09  
BS