

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No.276 of 1999

Jabalpur, this the 14th day of August, 2003

Hon'ble Shri J.K.Kaushik-Judicial Member
Hon'ble Shri Anand Kumar Bhatt-Administrative Member

Ashok Dubey, aged about 30 years,
Son of Brindawan Dubey, Ex-TNC,
Itarsi Yard, Central Railway,
resident of New Ghari Adda,
near Ware house, Vidishal (M.P.).

- Applicant

(By Advocate - Shri L.S.Rajput)

Versus

1. Union of India, Through its Secretary
Ministry of Railway, New Delhi.

2. Senior Divisional Manager (Operation),
Central Railway, Bhopal (M.P.),
O/o DRM, Operating branch, Bhopal.

3. Divisional Operations Manager,
Bhopal (M.P.).

- Respondents

(By Advocate - Shri S.P.Sinha)

O R D E R

By Anand Kumar Bhatt, Administrative Member-

By this Original Application, applicant Ashok Dubey has challenged the order of removal from service dated 23.10.1998 (Annexure-A-5) and the appellate order dated 17.3.1999 (Annexure-A-7).

2. Brief facts of the case are that the applicant was appointed as Trains Clerk after duly recommended by the Railway Recruitment Board, Bhopal vide letter dated 29.7.1991 (Annexure-A-1(a)). Due to his absence unauthorisedly for a long time, a charge sheet was issued against him under the Railway Service Conduct Rules, 1966. The applicant was directed to appear before the enquiry officer on 15.5.1997 but the applicant did not attend. The enquiry was adjourned to 14.8.1997 and notice was issued to the applicant but again he did not appear. On

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three subsequent dates also the applicant was absent. Therefore, he was proceeded ex parte and the enquiry officer submitted his report to the disciplinary authority on 20.7.1998. The disciplinary authority passed the impugned order Annexure-A-5 removing the applicant from service with effect from 23.10.1998. The appellate authority vide his order dated 17.3.1999 (Annexure-A-7) upheld the order of the disciplinary authority.

3. The applicant's contention is that he was sick and he informed the concerning officers regarding his sickness every month, duly supported ^{by} ~~with~~ medical certificates. He also states that vide letter dated 12.5.1997 the applicant was sent for special medical examination by the Main Yard Master, Itarsi and pursuant to which the Railway Medical Officer, Itarsi sent back the applicant for duty. Looking to the circumstances, the order of removal is patently illegal and in any case it is too harsh.

4. The respondents in their reply have stated that the applicant remained absent from 12.5.1996 without any intimation of his whereabouts. Therefore, a charge sheet was issued on 2.1.1997 for his continuous and unauthorised absence. The applicant did not appear before the enquiry officer and, therefore, he was proceeded ex parte. The notices for appearing in the enquiry had been addressed to him correctly. The total unauthorised absence of the applicant was from 12.5.1996 to 23.10.98. So far as his being sent for special medical examination is concerned, this is without any proof and he did not produce any letter in this regard to the enquiry officer or the disciplinary authority. There were two charge sheets for the absence of duty from 12.5.1996 to the issue of charge sheet on 2.1.1997 and another for the subsequent period till 10.8.1998 and there is no

contradiction in this regard as alleged by the applicant. According to the respondents, the applicant himself had admitted that he was unauthorisedly absent from 12.5.1996.

5. We have perused the pleadings of both sides and have heard the counsel for both sides.

6. The period of absence of the applicant is from 12.5.1996 to 23.10.1998 which is about 27 ^{months} ~~years~~. However, the applicant has stated that he was on duty in the Itarsi Yard from 11.8.1998 to 20.9.1998 and during this period he was permitted to appear for the written examination of GDCE in which he appeared at Mumbai and successfully qualified in the test on 12.10.1998. After that he resumed his duty at Itarsi on 29.8.1998 and was on duty till 3.9.1998 and with effect from 4.9.1998 he was under treatment of a Railway Medical Officer. The reply of the respondents is not clear in this regard. It is also not very clear whether the applications sent by the applicant supported by medical certificates have been received by his controlling officer or any other officer or not.

7. Whatever be the case, we feel that the punishment levied on the applicant is disproportionate to the delinquency. This Bench itself had dealt with such a case in O.A.No.191 of 1997, Shri Gulab Singh Patel Vs. Union of India and others in which order was passed on 5.8.2003. The said order was based on the judgment of the Apex Court in the case of B.C.Chaturvedi Vs. Union of India, JT 1995 (8) SC 65 in which it was held that while exercising the power of judicial review, the Tribunal cannot normally substitute its own conclusion on penalty and impose some other penalty, but if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, it would appropriately mould the relief either

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directing the disciplinary/appellate authority to consider the penalty imposed or may itself in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof. In the said OA 191/1997, the case of Shamsher Bahadur Singh vs. State of Uttar Pradesh and others, 1993(2)SLJ 16 of Allahabad High Court has also been cited and also some previous similar judgments based on the above passed by the Tribunal.

8. In this case also we feel that although the applicant has been out of duty during 27 months from the total period of absence and reasons therefor are disputed, i.e. 12.5.1996 to 23.10.1998, a minor penalty could have served the purpose.

9. Accordingly, the Original Application is partly allowed. The order of punishment dated 23.10.1998 (Annexure-A-5) and the appellate order dated 17.3.1999 (Annexure-A-7) are quashed. The applicant shall be entitled to all consequential benefits except back wages for the period of absence and during the period the applicant was removed from service as a result of the punishment till the time he rejoined as a consequence of this order. However, the respondents will be at liberty to impose a minor penalty on the applicant after following the due process. This order shall be complied with by the respondents within a period of three months from the date of communication of this order. Costs easy.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

J.K.Kaushik
(J.K.Kaushik)
Judicial Member

rkv.

Issued
En. 9.8.03
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(1) राज्यपाल, राज्यपाली व उपराज्यपाली, उत्तर प्रदेश
(2) अधिकारी अधिकारी, उत्तर प्रदेश विधायक सभा
(3) प्रधार्यी विधायिका, उत्तर प्रदेश विधायक सभा
(4) विधायक, कांगड़ा, जलालपुर, उत्तर प्रदेश

L.S. Rayput, Adm
S. P. Singh, Adm

T. N. S. Rayput