

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
JABALPUR

Original Application No.461 of 1998

Jabalpur, this the 8<sup>th</sup> day of September, 2003

Hon'ble Shri D.C.Verma-Vice Chairman(Judicial)  
Hon'ble Shri Anand Kumar Bhatt-Administrative Member

Ch.Venkat Rao, S/o Sri Ch.Abbai,  
aged 49 years, last employed as  
Painter Grade-II under the Carriage  
Foreman, S.E.Railway, Bhilai,  
resident care of Sri M.R.Patnaik,  
Shantinagar, Opposit Mongal Bhawan,  
P.O.Bhilai-3.(Distt.Durg)M.P.

- APPLICANT

(By Advocate Shri V.Tripathi holding  
brief of Shri S.Paul).

Versus

1. Union of India represented through  
the General Manager, S.E.Railway,  
Garden Reach, Calcutta-43.
2. Senior Divisional Mechanical Engineer,  
South Eastern Railway, Bhilai, Distt.  
Durg. (M.P.).
3. Assistant Personnel Officer(Welfare)  
S.E.Railway, Bhilai, Distt.Durg.(M.P.).
4. Carriage Foreman, S.E.Railway, Bhilai,  
Distt.Durg (M.P.).

- RESPONDENTS

(By Advocate - Shri S.K.Jain)

O R D E R

By D.C.Verma, Vice Chairman(Judicial)-

The applicant has challenged the order of removal passed by the disciplinary authority and confirmed by the appellate authority. The applicant has also prayed that the respondents be directed to grant voluntary retirement to the applicant as applied for by him.

2. The facts in brief are that the applicant was appointed as Khalasi in 1966. He remained absent from 9.11.1993 due to, as claimed, a road accident. The applicant was served with a charge-sheet dated

Contd....2/-

10/13.3.1995 for absence from 9.11.1993 onwards.

On enquiry, the disciplinary authority passed the order of removal on 24.1.1997. The appeal was dismissed on 23.4.1997. Hence this O.A.

3. The submission of the learned counsel of the applicant is that the enquiry proceedings were all ex parte and even though the applicant had asked for change of enquiry officer on the ground of prejudice, the enquiry officer was not changed and the report of the enquiry officer was accepted by the disciplinary authority who passed the order of removal. Further submission is that the appellate order is not an order in the eye of law as it is sketchy and was passed without application of mind. The other submission is that the applicant had on 29.1.1994 sent an application for voluntary retirement with retrospective effect from 21.11.1993. The submission is that the applicant should be deemed to have retired with effect from 21.11.1993. Consequently, the order of removal passed after 1993 cannot stand in view of the decision of the Apex Court in the case of Union of India Vs. Sayed Muzaffar Mir, 1995 Supp (1) SCC 76.

4. The respondents have contested the claim of the applicant on various grounds. The submission of the learned counsel of the respondents is that the applications given by the applicant for voluntary retirement were of from the back date. The applicant was facing disciplinary enquiry. Hence, the same could not have been effected. It is also submitted that in spite of various notices the applicant avoided enquiry, took time to attend the same, still failed, consequently the enquiry officer

after recording the statements and perusing the records submitted the enquiry report. The disciplinary authority considered the enquiry report and the representation submitted by the applicant against it and thereafter passed the order of removal. The appeal against the removal was dismissed by the appellate authority.

5. Counsel for the parties have been heard at length. The main submission of the learned counsel for the applicant is that the applicant had given an application on 6.9.1994 (Annexure-A-1) for voluntary retirement and that should have been accepted by the respondents as the charge-sheet in the case was served to the applicant vide memo dated 10/13.3.1995 (Annexure A-6). The learned counsel of the applicant has placed reliance on the decision of the Apex Court in the case of Sayed Muzaffar Mir (supra) which has also been relied by this Tribunal in O.A.No.833 of 1997 in the case of Chintamani Verma Vs. Union of India & others decided on 3.10.2002.

6. We have given our considered thought to the submissions made by the learned counsel of the applicant. We noticed that the applicant gave at least four applications for voluntary retirement - Annexure-A-1 dated 6.9.1994 is to deem the applicant to have voluntarily retired with effect from 21.11.1993 after waiving the notice period; Annexure-A-8 is the application dated 23.1.1996 in the form of a reminder to treat the applicant to have voluntarily retired on 6.9.1994; Annexure-A-10 dated 5.3.1996 is also to treat the applicant to have voluntarily retired with effect from 6.9.1994; and Annexure-A-11 dated 9.3.1996 is also to deem the applicant to have retired voluntarily with effect from 6.12.1994. Thus, the applicant has by

all the above applications prayed for treating him as retired from a previous date. In none of the applications it has been mentioned that these applications are being given under F.R.56 or under the Pension Rules on completion of 20 years or 30 years of service. However, as per provisions contained in the aforesaid rules, the period of notice should start from the date the notice is given. The notice period cannot be of a period which has already expired. As mentioned earlier in all his applications either the applicant has prayed to waive the period of notice or to treat the applicant as retired after expiry of the notice period which fell previous to the date of notice. Consequently, none of the applications for voluntary retirement come within the provisions.

7. Reliance has been placed on the decision of this Bench in OA 833/1997 (supra) where the applicant had given a notice for voluntary retirement on 13.1.1997. The three months notice period expired prior to the imposition of penalty order dated 2/3.4.1997. Further, only a minor penalty was imposed. The Tribunal, accordingly, held that punishment order dated 2.4.1997 has no effect in view of the notice of retirement and retirement of the applicant with effect from the date of expiry of the notice period.

8. In the case of Sayed Muzaffar Mir (supra) the notice period was to expire after the date of notice and it was not a case where the notice was given to treat the earlier period as period of notice. Thus, the applicant cannot get any benefit from the decision of Sayed Muzaffar Mir (supra).

9. The learned counsel of the applicant

Contd.....5/-



submitted that the enquiry proceedings against the applicant was ex parte and the applicant was not given proper opportunity to defend his case. Further submission is that the applicant had made an application for change of enquiry officer but the enquiry officer was not changed. The order of the appellate authority has also been challenged on the ground that it is without application of mind and cryptic.


10. Counsel for the parties have been heard. For convenience, we reproduce the order passed by the appellate authority. It is as below-

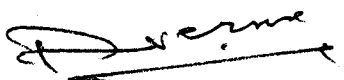
"The offence deserves no lesser punishment. punishment upheld".

11. Apparently the above order passed by the appellate authority is without observing the requirements of Rule 22(2) of Railway Servants(Discipline & Appeal) Rules, 1968 and is without application of mind. Rule 22(2) (ibid) says that in the case of an appeal against an order imposing any of the penalties, the appellate authority shall consider whether the procedure laid down in these rules have been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. It also requires the appellate authority to observe whether the finding of the disciplinary authority are warranted by the evidence on the record, and the penalty imposed is adequate, inadequate or severe. It is only thereafter the appellate authority has to pass the order. In the case, in hand, there is nothing to show that the appellate authority has examined the procedure followed by the disciplinary authority. Apparently the order of the appellate authority is cryptic and totally non-speaking. Consequently, on this ground alone the OA is to be partly allowed.

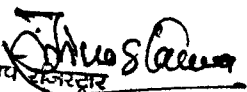
12. As we propose to allow the OA by quashing the appellate order, we do not propose to express any opinion as regard to the validity or invalidity of the enquiry proceedings or the order passed by the disciplinary authority. Initially, it is for the appellate authority to examine the same and pass an appropriate order. Consequently, we refrain ourselves from expressing any view on the submissions made in respect of the above points.

13. In view of the discussions made above, the OA is partly allowed. The appellate order dated 23.4.1997(Annexure-A-16) is quashed. The matter is remanded back to the appellate authority to pass a speaking order as required by the provisions contained in Rule 22 (ibid) within a period of two months from the date of receipt of a copy of this order. The decision so taken by the appellate authority shall be communicated to the applicant who would be at liberty, in case of grievance, to approach the Tribunal after exhausting his departmental remedy. Costs easy.

  
(Anand Kumar Bhatt).  
Administrative Member

  
(D.C. Verma)  
Vice Chairman(Judicial)

rkv.

पृष्ठकम सं जो/ब्या.....जबलपुर, दि.....  
प्रतिनिधि अवशिष्ट:-  
(1) श्री. ... के कार्यालय, जबलपुर  
(2) ... के कार्यालय  
(3) ... के कार्यालय  
(4) ... के कार्यालय  
सूचना एवं संपर्क कार्यालय हेतु  
  
उप-निर्देशक  
12.9.03

*Forwarded on 9/12/03*

*S. Paul, A.C. S. K. Jain, A.C.*