

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET


ORDERS OF THE TRIBUNAL

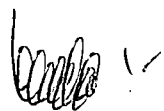
30.10.2007

OA 236/2005

Mr.C.B.Sharma, counsel for applicant.
Ms.Dilshad Khan, proxy counsel for
Mr.S.S.Hasan, counsel for respondents.

Admit, subject to just exceptions. It is a
2005 matter. Let the same be listed for hearing
in due course.



(U.P. SHUKLA)
MEMBER (A)

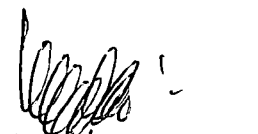

(M.L. CHAUHAN)
MEMBER (J)

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29/6/2009 Mr.C.B.Sharma, counsel for applicant
Mr.S.S.HASAN, counsel for respdts.

Heard learned counsel for the parties.
For the reasons dictated separately, the
order of removal is modified to that of
compulsory retirement and the OA stands
disposed of.


(B.L. KHATRI)
M (A)


(M.L. CHAUHAN)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 29th day of June, 2009

ORIGINAL APPLICATION No.236/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L.KHATRI, ADMINISTRATIVE MEMBER

Kishan Lal B
s/o Shri Balu Ram,
aged about 57 years,
r/o Near Balaji Mandir,
In front of Nathu Lal Ki Bavdi,
Goverdhanpura, Kota, Kota,
Last employed Assistant Driver (AC)
and on reversion Fireman-II,
Western Railway, now West Central
Railway, Kota Division,
Kota.

..Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. The Union of India through
General Manager,
West Central Zone,
West Central Railway,
Jabalpur.
2. Chief Operating Manager,
Office of General Manager,
West Central Railway,
Jabalpur.
3. Additional Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.



4. Senior Divisional Electrical Engineer (TRO),
West Central Railway,
Kota Division,
Kota.

.. Respondents

(By Advocate: Mr. S.S.Hasan)

O R D E R (ORAL)


The applicant while working as Assistant Driver was issued a charge memo dated 12.2.99 (Ann.A4). The allegation on the applicant was that during the period 1995-99 he remained absent from duty for 214 days in broken period which has been mention in the charge memo. Enquiry was held and vide impugned order dated 14.7.2000 (Ann.A/3) the disciplinary authority imposed the penalty of removal from service. The appeal filed against the said order was also dismissed by the appellate authority vide order dated 13.3.2001 (Ann.A/2) and the revision petition filed by the applicant was also decided by the revising authority vide order dated 23.3.2005 (Ann.A/1). It is these orders which are under challenge in this OA and the applicant has prayed for quashing these orders, as according to the applicant, no opportunity was given to the applicant to defend his case before the enquiry officer and the enquiry was conducted ex-part. It is on the basis of these facts the applicant has filed this OA.

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3. In the reply, the respondents have not disputed the aforesaid facts. It is stated that the applicant was working on the post of Assistant Driver on ad-hoc basis and as he had not passed the selection test for the post of Assistant Driver, he was to be reverted to the post of Firement-II but due to closing of the Steam side, the applicant has become surplus on the post of Firement-II scale Rs. 2750-4400 and he was absorbed on the alternative post of Cook scale Rs. 3050-4590. However, the applicant neither joined his duties on the post of Fireman-II nor on the post of Cook and instead remained absent from duties for 214 days in broken period. Therefore, a chargesheet under SF-5 has been issued to the applicant for major penalty for his remaining unauthorisedly absent for 214 days. It is further stated that the applicant has not produced any medical certificate for his illness. Regarding non-grant of opportunity to the applicant during inquiry proceedings, it has been stated that the applicant was informed by the Enquiry Officer vide letter dated 21.5.99 to appear and attend the enquiry on 28.5.99 and nominate his defence counsel but the applicant has refused to receive the said letter dated 21.5.99. Subsequently, the Enquiry Officer has sent another letter dated 29.9.99 through Registered Post and the applicant did not turn up. Thereafter the applicant sent a representation on 7.10.99 wherein he had alleged that he is under treatment of private

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Doctor but he had not produced any medical certificate of any Private or Government Doctor. Subsequently, the enquiry was fixed on 25.10.99 and the information to that effect was sent to the applicant through Registered Post vide letters dated 13.10.99 and 25.10.99 but this time also the applicant did not turn up. It is further stated that the applicant neither informed the Enquiry Officer regarding any change of his address nor he attended the enquiry on any date fixed by the Enquiry Officer. Therefore, the Enquiry Officer conducted the enquiry ex-parte in accordance with Rule 9(23) of the DAR. It is further stated that after conclusion of enquiry, enquiry report was sent to the Disciplinary Authority and copy of the findings of the Enquiry Officer was also sent to the applicant through Registered Post vide letter dated 20.1.2000 but the said letter has been returned undelivered with the remarks that "addressee is not living on the address". Subsequently, the Disciplinary Authority has imposed the punishment upon the applicant and the applicant has been removed from service vide letter dated 14.7.2000. Thus, according to the respondents the applicant has been given full opportunity to defend his case, as such, he cannot complain of violation of principles of natural justice. The respondents have also justified action of the Appellate as well as the Revising Authority while passing the impugned orders.



4. The applicant has not filed rejoinder.

5. We have heard the learned counsel for the parties and gone through the material placed on record. From perusal of the material placed on record and the orders passed by the authorities, it is evident that the applicant was given ample opportunity to attend the enquiry and to defend his case but the applicant failed to do so, as such, grievance of the applicant that he was not given due opportunity by the Enquiry Officer and also by the authorities cannot be accepted. It is settled law that violation of principles of natural justice can be complained of only if a person is ready and willing to avail that opportunity. In case the person is not willing to avail the opportunity as given by the authority concerned including the Enquiry Officer, he cannot be heard to say that there is violation of principles of natural justice. As can be seen from the facts, as stated above, and also the order passed by the Revising Authority, the applicant was given as many as five opportunities to attend the enquiry proceedings and to defend his case. Thus, contention of the applicant that he has not been given opportunity by the authority concerned cannot be accepted.

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6. The applicant has also raised a ground before the Revising Authority that the punishment awarded to him in this case is not commensurate with the gravity of the charges. However, the Revising Authority vide its order dated 23.3.2005 (Ann.A/1) has not given any reason to reduce the existing penalty of removal from service and has passed only a cryptic order that punishment cannot be reduced taking overall view of the DAR case. The learned counsel for the applicant argued that the applicant was appointed as Cleaner with the respondents in 1982 and he was removed from service vide order dated 14.7.2000 after rendering about 18 years of service, as such, penalty of removal from service on the ground that the applicant remained absent for about 214 days unauthorisedly was not warranted in the facts and circumstances of this case.

We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the applicant has made out a case for imposing a lesser penalty than removal from service. From the facts as stated above, it is clear that the applicant is guilty of absent from duty and it is not a case of the nature where the applicant was guilty of dishonesty or moral turpitude. Remaining absent from duty can at the most be presumed that the applicant is not willing to work but that does not mean that his entire service rendered should be forfeited for pensionary purposes solely on the

ground that the person has remained absent from duty for some period. It may be stated that the respondents have framed rules called Railway Services (Pension) Rules, 1993 in exercise of powers conferred by proviso to Article 309. Rule 65 of these rules deals with compassionate allowance which even permits the competent authority to sanction compassionate allowance in favour of dismissed or removed railway servant not exceeding two-third of the pension or gratuity or both which would have been admissible to railway servant if he had retired on compensantion pension. Thus, the legislature has recognised the right of a railway servant to receive pension or gratuity in case of employee who has been dismissed or removed from service provided they are not guilty of dishonesty or moral turpitude and the guiding principles for grant of compassionate allowance is that removal/dismissal of service causes undue hardship to the individual and for that purpose misconduct committed by the employee and the kind of service rendered by the employee has to be taken into consideration. If the matter is viewed in the light of the provisions contained in Rule 65 of the Railway Services (Pension) Rules, vis-à-vis the nature of misconduct committed by the applicant and the service rendered by the applicant, we are of the view that it is a case which requires lesser penalty than removal from service which has debarred the applicant for

pensionary benefits. For the sake of repetition, it may be stated that if one has regard to the order passed by the Revising Authority, the Revising Authority has not given any reason that lesser penalty could not have been awarded in the facts and circumstances of the case, as such, the order passed by the Revising Authority is cryptic and no order in the eyes of law.

7. Normally, we would have remitted the case to the Revising Authority to pass reasoned and speaking order regarding quantum of punishment in terms of law laid down by the Apex Court in the case of Chairman, Disciplinary Authority, Rani Lakshmi Bai Shetriya Gramin Bank vs. Jagdish Sharan Varshney and others, 2009 (1) SCC (L&S) 806 which stipulates that even while affirming the order of the lower authority, the Appellate Authority is required to give some reasons though briefly, but keeping in view the fact that when the OA was filed by the applicant on 12.5.2005 he was about 57 years of age and by this time he has already attained the age of superannuation. Thus, we are of the view that in the facts and circumstances of the case the only punishment which can be awarded to the applicant so as to entitle him for pensionary benefits is that the order of removal should be substituted to that of compulsory retirement as the penalty of ~~removal~~ imposed by the authority is highly

disproportionate to the gravity of misconduct committed by the applicant which has resulted into forfeiture of past service of 18 years and also pensionary benefits. Accordingly, the order passed by the authorities below shall stand modified to the extent that penalty of removal from service shall stand substituted to that of compulsory retirement.

8. At this stage, it will be useful to quote another decision of the Apex Court in the case of Depot Manager, Andhra Pradesh State Road Transport Corporation and Another vs. V. Surender, (2009) 1 SCC (L&S) 135 which was also a case of unauthorized absence from duty and in order to cover up that absence the respondent before the Apex court submitted a sickness certificate. However, ultimately, he was removed from service. The order of removal from service was quashed by the Labour Court on the ground that it was harsh and disproportionate and order of removal could not be sustained. The award of the Labour Court was challenged before the High Court. However, the High Court affirmed the order of the Labour Court but directed the appellants not to pay 25% of the back wages. The matter was carried to the Apex Court and the Apex Court modified the award of the Labour court and order of the High Court by holding that the respondent is not entitled to any back wages from the Corporation and it was further

directed that in case the respondent is not reinstated pursuant to the award of the Labour Court or order of the High Court he shall be reinstated within two months from the date of receipt of copy of the order. The ratio as laid down by the Apex Court is also applicable in the facts and circumstances of the case.

9. Accordingly, the applicant shall be deemed to have been compulsorily retired from service of the railways w.e.f. 14.7.2000. The respondents are directed to work out the pensionary benefits of the applicant based on this order and pay the same within a period of four months from the date of receipt of a copy of this order.

10. With these observations, the OA stands disposed of with no order as to costs.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

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