IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of August, 2009

OA No.479/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Tesuram s/o late Shri Mangal P. aged about 48 years, Ex. Fitter Ticket No. 5209, R.B.Section, Wheel Shop C &W, Workshop, Kota West Central Railway.

.. Applicant

(By Advocate: Shri S.C.Sethi)

Versus

1. The General Manager, West Central Railway, Jabalpur
2. The Works Manager, C&W Workshop, West Central Railway, Kota (Raj.)

.. Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER

Per M.L.Chauhan, M(J).

The applicant was charged for violation of Rule 3(i) (ii) (iii) of the Railway Servants Conduct Rules, 1966 for unauthorisedly remaining absent from duty and not following the medical rules and also that he remained absent from duty w.e.f. 20.3.2003 to

22.5.2003. Enquiry was held and the applicant was held guilty of the charges and accordingly he was removed from service by the Disciplinary Authority vide order dated 30.12.2003 which order was also confirmed by the Appellate Authority and r Revision Peitition filed by the applicant was also dismissed vide order dated 20.4.2005 (Ann.A/3). It is these orders, which are under challenge in this OA.

The grievance of the applicant is that he was compelled to remain absent for the aforesaid period because of illness of his wife for which material was also placed before the Enquiry Officer, as such, the applicant was not willfully absent from duty. That apart, it has been contended that even if the applicant has remained absent for the aforesaid period, the penalty of removal is very harsh and would deprive the applicant of all his retirement benefits. It is further stated that keeping in view the absence of about two months, it was not incumbent upon the respondents to issue chargesheet for major penalty whereas in the facts and circumstances of this case, only a minor chargesheet ought to have been issued by the authorities as per the direction issued by the GM(E) CCG letter No.E(DAR) 308/O Vol.VIII dated June, 2001. The applicant has further stated that it is a case of double jeopardy as the Enquiry Officer as well as the authorities concerned have taken into consideration the past misconduct also for which the applicant has been suitably punished in the past. The learned counsel for the applicant argued that the charges are vague as the applicant was charged for his absence for the period w.e.f. 20.3.2003 to 22.5.2003 whereas the Inquiry Officer has relied upon the evidence and

putting in leading questions to the witnesses to the effect that the applicant has been punished in the past on 11 occasions. For that purpose the attention of the Bench was invited to Ann.A/5, the enquiry report. It is on the basis of these facts, the applicant has filed this OA thereby praying that the impugned order Ann.A/1 to Ann.A/3 may be quashed and set-aside and the applicant may be reinstated in service with all consequential benefits.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that the applicant has been held guilty of charges of habitual absence. It is further stated that the applicant is duty bound to inform his superiors before being absent from duty unless he is unable to do so for the reasons beyond his control. There was no such reason with the applicant as is clear from his defence. The applicant has been punished after holding enquiry and giving him ample opportunity as per rules. It is further stated that the applicant had not improved despite of punishments imposed upon him in the past. Therefore, there was no option before the authorities to impose penalty of removal and the punishment being commensurate with the misconduct.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

5. First of all, the learned counsel for the applicant while drawing our attention to the charge memo argued that charges are vague. The only charge against the applicant was that he remained absent from duty w.e.f. 20.3.2003 to 22.5.2003. It is stated

that there is nothing in the charge memo regarding his past misconduct, as such, neither the Enquiry Officer could have relied upon such evidence nor the authorities concerned were bound to take such past conduct into consideration while imposing penalty of removal from service.

6. We have given due consideration to the submissions made by the learned counsel for the applicant. No doubt, it is true that in the article of charges there is no reference of the past conduct but the charge memo is accompanied with the statement of facts in which past conduct of the applicant has been mentioned. Thus, the contention of the learned counsel for the applicant that charge was not specific, definite, clear and vague and enquiry stood vitiated cannot be accepted.

7. The law on the point has been settled by the Hon'ble Apex Court in the case of State of Andhra Pradesh and Ors. vs. S.Sree Rama Rao, AIR 1963 SC 1723 which is squarely applicable in the facts and circumstances of this case. That was a case where the chargesheet was accompanied with the statement of facts and the allegation in the chargesheet was not specific but same was made crystal clear from the statement of charges. The Apex Court held that in such a situation both constitute the same document, it cannot be held that charge was not specific, definite and clear and enquiry stood vitiated.

That apart, the matter on this point is no longer res-integra. The Apex Court in the case of Govt. of A.P. & Ors. vs. Mohd. Taher Ali, 2007 (8) SCC 656 has held that there can be no hard and fast

rule that merely because the earlier misconduct has not been mentioned in the chargsheet, it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often necessary only to reinforce the opinion of the said authority. Thus, the Apex Court held that in a given case past conduct can be taken into consideration by the punishing authority to reinforce the opinion of the said authority while awarding the punishment.

As already stated above, the present case is on strong footing as in the instant case, past conduct of the applicant find mentioned in the statement of charges which was accompanied with the chargesheet, as such, the contention of the applicant cannot be accepted.

8. The next question which requires our consideration is whether the punishment imposed upon the applicant is harsh and disproportionae to the gravity of the misconduct committed by the applicant and whether it was a case for which the applicant was to be proceeded for minor penalty and not for major penalty. We have given due consideration to the submissions on this aspect also. From the allegations leveled in the chargesheet, it is evident that the applicant is habitual absentee. In the past, the applicant has been repeatedly punished for his actual absence on 11 occasions. Thus the contention of the learned counsel for the respondents that the applicant has not improved despite the punishment imposed upon him in the past and there was no option for the respondents but to issue chargesheet for major penalty and to award punishment of removal from service cannot be out rightly rejected.

On the contrary, the learned counsel for the applicant while drawing our attention to the decision of Patna High Court in the case of Ashok Kumar Das vs. State of Bihar, 2007 (56) AIC 436 has argued that the order of removal is like a death sentence imposed upon the applicant and more so when he has served the organization for a very long time. On account of removal from service, there would be an end of his regular source of income which sustained him or his family but would also deprive him of all his retiral benefits which got accumulated by virtue of long period of service, as such, it is a case where the authority concerned should have given compulsory retirement to the applicant even if the charges against the applicant stood proved. The learned counsel for the applicant while drawing our attention to Ann.A6 to A.22 argued that wife of the applicant was T.B. patient and suffering from 1999 to 2003 onwards. As such, it was under these circumstances, the applicant remained absent.

9. We have given due consideration to the submissions made by the learned counsel for the applicant, we are of the view that it is a case which requires to be remitted to the authority concerned on the quantum of punishment viz. whether in the facts and circumstances of the case, the punishment of compulsory retirement will not serve the purpose rather than removal from service. We are remitting this case as from the material placed on record, it is evident that the applicant is not guilty of morale turpitude, corruption or violence. The applicant is guilty of remaining absent from duty which in a given case may be construed that the

applicant is unwilling worker 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. This aspect of the matter appears to have not considered by the Disciplinary Authority while imposing punishment of removal from service.

The contention of the learned counsel for the applicant that it is a case of double jeopardy cannot be accepted as the applicant is being punished for fresh charge for absent from duty w.e.f. 20.3.2003 to 22.5.2003 although the punishing authority has also

taken into consideration the past conduct only for the purpose of reinforcing order of removal from service. Thus, it is not a case of double jeopardy.

10. Thus, in view of what has been stated above, we are of the view that it is a case which requires to be remitted to the Disciplinary Authority to reconsider the matter again on the quantum of punishment. Ordered accordingly. Such a decision shall be taken by the Disciplinary Authority by passing a reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order.

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

(B.L.KHATRI)
Admv. Member

(M.L.CHAUHAN)
Judl. Member

R/