IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 12th day of November, 2008

ORIGINAL APPLICATION No.186/2007

CORAM:

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

Isslamuddin
s/o Shabuddin, aged about 47,
r/o C/o Babu Kala Abbasi,
Badi Chopar,
Kanto Ka Kuhara, Jaipur,
last employed on the post of
Riveter, Ajmer, in carriage workshop,
Northern Western Railway,
Ajmer, Rajasthan.

.. Applicant

(By Advocate: Shri Shiv Kumar)

Versus

1. Union of India through General Manager, Northern Western Railway, Jaipur.

2. Assistant Works Manager (R), Carriage Workshop, Ajmer, Northern Western Railway, Ajmer.

3. Assistant Personnel Officer (Personnel), Northern Western Railway, Ajmer.

4. Chief Works Manager (Estt.), Northern Western Railway, Ajmer.

5. Deputy Chief Mechanical Engineer (Carriage Estt.), Northern Western Railway, Ajmer.

... Respondents

(By Advocate: Shri S.C.Purohit)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

> i) That the impugned order dated 3.7.2003 (Annexure A-1) dismissal from service, impugned order dated 2.2.2005 (A-2) rejection of appeal, impugned inquiry report dated nil forwarded vide order dated 27-5-2003 (A-3) and impugned charge sheet dated 25.7.95 may please be declared illegal, arbitrary and the same may please be quashed and with all consequential benefits.
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> ii) Any other order/direction may please be passed in favour of the applicant who may be deemed fit just and proper under facts and circumstances of the case.
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> iii) The cost of original application may please be awarded."

2. Briefly stated, facts of the case are that the applicant while working as Riveter was served a chargesheet dated 25.7.95 for his unauthorized absence from 16.4.1994 to 1.12.1994 which resulted into removal of the applicant from service vide order dated 3.7.2003 (Ann.A1). The applicant preferred appeal which was also dismissed vide order dated 2.2.2005 (Ann.A2). It is further alleged that thereafter the applicant filed revision petition dated 8.5.2005 (Ann.A5) which is still pending. It is on the basis of these facts that the applicant has filed this OA thereby praying for the aforesaid relief.

Alongwith the OA, the applicant has also moved a Misc. Application No.140/2007 for condonation of delay. The reasons for not filing the OA within the

time prescribed, as can be seen from this Misc. Application, are that the appellate order was received by him on 26.2.2005 against which revision petition was filed on 8.4.2005 and the applicant was hoping that revision petition will be decided in his favour and he was also assured by the authorities for the same. Another averment made in the Misc. Application is regarding financial problem in filing the OA. It is on the basis of these averments, the applicant has sought condonation of delay. However, in para 5 of the Misc. Application, it has been stated that the chargesheet for unauthorized absence for the period w.e.f. 6.4.1994 to 1.12.1994 was regularized as leave without pay. Thus, according to the applicant, once the period of absence has been regularized there remains no misconduct, as such, the impugned orders are void ab initio and no limitation applies to void orders or action.

3. Notice of the OA as well as MA was given to the respondents. The respondents have filed reply. The respondents in para 8 of the reply have categorically stated that no revision petition dated 8.4.2005 was received in the respondents' office. It is further stated that since no revision petition was received by the respondents, therefore, the question of disposal of revision petition does not arise. Thus, it is stated to be not correct and denied that the applicant

was having hope that his revision petition will be decided in his favour and he was assured by the authorities for the same. According to the respondents, the whole story has been cooked up for the purpose of condonation of delay. The respondents have also stated that the applicant was served chargesheet for unauthorized absence for the aforesaid period as it is a case of absence from duty without information for long period. The respondents have also categorically stated that the said period of absence has not been regularized as leave without pay and there is no question of regularization. Thus, according to the respondents, the orders passed by the authorities are legal.

4. We have heard the learned counsel for the parties. Since the respondents have taken objection regarding limitation and there is statutory provision contained in the Administrative Tribunals Act to the effect that validity of the order has to be challenged within a period of one year, we propose to dispose of the Misc. Application for condonation of delay at the first instant being preliminary issue.

As can be seen from the facts as stated above, the applicant was issued chargesheet for remaining absent from duty w.e.f. 16.4.1994 to 1.12.1994 without any intimation. The respondents have also categorically stated in the reply to the OA as well as

in the reply to the MA that the aforesaid period of the applicant has not been regularized with leave of the kind due, as stated by the applicant. The learned counsel for the applicant for this purpose has placed reliance on the enquiry report to the effect that period of absence was regularized as 'Leave Without Pay'. We have perused the enquiry report Ann.A3. From internal page 3 of the enquiry report, it is evident that what the enquiry officer has recorded is that the Clerk has marked attendance of the applicant as L.W.P. for the period of his absence in the attendance register. This fact does not prove that the leave sanctioning authority has sanctioned the aforesaid period as 'Leave Without Pay'. Thus, the contention of the learned counsel for the applicant is wholly misconceived.

However, the main question which requires our consideration in this case is whether the applicant has made out a case for condonation of delay? At the outset, it may be stated that the applicant has not approached this Tribunal with clean hands and the OA is required to be dismissed on this score alone. It may be stated that the reason for not approaching this Tribunal within the time prescribed under Section 21 of the Administrative Tribunals Act, 1985 is that the applicant has made a revision petition before the appropriate authority on 8.4.2005 and he was waiting for the outcome of that revision petition. The

respondents in the reply to the Misc. Application as well in para 8 of the reply to the OA have categorically stated that the department has not received any revision petition, as such, the question of deciding the same does not arise.

5. The applicant has filed rejoinder. In para 8 of the rejoinder, the applicant has neither controverted the fact regarding non-receipt of revision petition by the department nor has annexed any documentary evidence to allege that in fact he has filed revision petition (Ann.A5) before the authorities. Rather, as can be seen from para 8 of the rejoinder, the applicant has reiterated that the respondents have not given any reply to the revision petition. At this stage, it will be useful to quote para 8 of the rejoinder, which thus reads:-

> "8. That contents of Para 8 are denied and it is submitted that the applicant has received the copy of dismissal order on 22.9.2004; the applicant in his appeal also mentioned even this fact. He has preferred an appeal against the same well within limitation i.e. within 45 days. The respondents have given no reply to the revision petition."

Thus, in view of the categorical statement made by the respondents that no revision petition has been received by the department and in the absence of any contemporary record placed by the applicant and also that factum of non-receipt of revision petition has not been specifically controverted by the applicant in

the rejoinder, we are of the view that the applicant has taken this concocted plea of filing revision petition before the authorities and waiting for the same and also that assurance was given by the authorities that such revision petition will be decided in his favour, for the purpose of condonation of delay and such an explanation cannot constitute sufficient cause for condonation of delay in terms of Section 21 of the Administrative Tribunals Act, 1985. Accordingly, the reason given by the applicant for condonation of delay is without substance and deserves outright rejection.

It may be stated that in this case appeal of the applicant was dismissed on 2.2.2005 and this OA was filed on 28.5.2007 i.e. after a lapse of two years and three months, whereas it should have been filed within a period of one year. Even the reason given by the applicant for condonation of delay cannot constitute sufficient cause, as already stated above. Thus, we are of the view that delay in filing the OA cannot be condoned.

6. Further, the ground taken by the applicant that once the period of absence from 16.4.1994 to 1.12.1994 has been regularized as 'Leave Without Pay, as such, the chargesheet could not have been issued, is without any basis. The applicant has not placed any document on record to establish that the aforesaid period was

regularized as 'Leave Without Pay' by the competent authority. The reliance placed by the applicant on the observations made by the Enquiry Officer in the enquiry report is wholly misconceived. What the Enquiry Officer has recorded is that in the attendance register concerned Clerk has marked the attendance of the applicant for the aforesaid period as L.W.P. This fact itself does not prove that the competent authority has sanctioned the 'Leave Without Pay' in favour of the applicant. Marking in the attendance by the Clerk is nothing to do with the regularization of absence which order has to be passed by the competent authority. Thus, the contention raised by the applicant is without any basis. Even if for arguments sake, it is assumed that the aforesaid period of absence was regularized by the competent authority under the leave rules by treating the same as 'Leave Without Pay', that does not absolve the applicant from the misconduct of remaining absent for the aforesaid period. Granting 'Leave Without Pay' is governed by different statutory rules which deals how the period of absence has to be treated but the same has nothing to do with the misconduct i.e. absence from duty without permission for which the applicant has been chargesheeted.

6. The learned counsel for the applicant further argued that the chargesheet issued against the

applicant is void ab initio and without jurisdiction, as such, any order passed pursuant to the said chargesheet is a nullity and provisions of limitation are not attracted in such circumstances. For that purpose, the learned counsel for the applicant has placed reliance on the decision of the Constitution Bench of the Hon'ble Apex Court in the case of State of Madhya Pradesh vs. Syed Qamarali, 1967 SLR 228. We fail to understand how this judgment is attracted in the facts and circumstances of this case. That was a case where the respondent therein was acquitted by the criminal court. Subsequently, the applicant was proceeded departmentally for the same set of allegation. The case of the respondent therein before the Hon'ble Apex Court was that on the face of order of acquittal, the charge framed in the departmental enquiry could not at all be framed and that the order of dismissal was void and inoperative. The Apex Court while considering the case as per Para 214 of the Police Regulations which prohibits imposition of punishment departmentally when the offence for which he was tried constitute sole ground of punishment and held that in view of such specific provision, it was not permissible for the department to issue a chargesheet and impose punishment on the respondent therein. The applicant was not acquitted by the Trial Court on technical ground but on merits. It was under these circumstances, the Apex Court held that issuance

of chargesheet and penalty of dismissal imposed by the authorities pursuant to such chargesheet in departmental enquiry is void ab initio. It may be stated here that this is not a case of such nature. The applicant has failed to show any evidence that issuance of the chargesheet for his unauthorized absence is without jurisdiction and order of punishment imposed by the disciplinary and appellate authority pursuant to such chargesheet is void-ab-initio. However during the course of arguments, the learned counsel for the applicant made assertions without there being any pleading to the effect that chargesheet was not issued by the disciplinary authority, as such, chargesheet is without any jurisdiction and any action taken pursuant to such chargesheet is nullity. We are of the view that such a contention raised by the applicant deserved out right rejection for more than one reason. Firstly, the applicant has not pleaded this case before the departmental authorities, as such, the applicant cannot be permitted to raise such contention at this stage. Further, even before this Tribunal the applicant has not pleaded this fact either in the OA or in Misc. Application that the chargesheet has not been issued by the competent authority, as such, order of punishment imposed by the disciplinary authority and appellate authority including the chargesheet is void-ab-initio and period of limitation is not

attracted in such cases. Thus, the oral contentions raised by the applicant cannot be allowed.

7. That apart, the contention raised by the applicant that it is only the disciplinary authority who can initiate departmental proceedings is without merit. At this stage, it will be useful to quota Rule 8 of the Railway Servants (Discipline and Appeal) Rules 1968, which thus reads:-

> "8. **Authority to institute proceedings**
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> (1) The president or any other authority empowered by him, by general or special order, may-
> (a) institute disciplinary proceedings against any Railway servant;
> (b) direct a disciplinary authority to institute disciplinary proceedings against any Railway servant on whom that disciplinary authority is competent to impose, under these rules, any of the penalties specified in Rule 6.
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> (2) A disciplinary authority competent under these rules to impose any of the penalties specified in Clauses (i) to (iv) of Rule 6 may; subject to the provisions of Clause © of sub-rule (1) of Rule 2, institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in Clauses (v) to (ix) of Rule 6, notwithstanding that such disciplinary authority is not competent under these rules, to impose any of the latter penalties."

From perusal of Rule 8(1)(a) it is clear that disciplinary proceedings against a railway servant can be initiated by any other authority empowered by the President by general or special order and it is not necessary that such disciplinary proceedings shall be instituted by disciplinary authority alone. However,

the disciplinary authority has also been conferred with the powers of initiating disciplinary proceedings under Rule 8(1)(b). Sub Rule (2) of Rule 8 clarifies that disciplinary authority can institute the disciplinary proceedings against any railway servant irrespective of the fact whether the disciplinary authority is not competent to impose major penalty in terms of Rule 6. Thus, the contention of the applicant is without any basis.

Suffice it to say that power of initiating disciplinary proceedings as contemplated in the Railway Servants (Discipline and Appeal) Rules is different from power to appoint or power to impose penalties. At this stage, it will be useful to quota decision of the Hon'ble Apex Court in the case of Director General, ESI and Another vs. T.Abdul Razak, 1996 SCC (L&S) 1061 where Rule 8 of the Railway Servants (Discipline and Appeal) Rules was paramateria to Rule 13(1) of the Employees' State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959. The Apex Court while considering the scope of Regulation 12 and Regulation 13 has held that legal position is well settled that it is not necessary that authority competent to impose penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be controlling authority who may be an officer subordinate to the appointing

authority. Thus, according to the Apex Court, the Regional Director being the officer-in-charge of the region was controlling authority in respect of the respondents, as such, he could institute disciplinary proceedings in respect of the respondents even in the absence of specific conferment of a power in that regard. For that purpose, the Apex Court has placed reliance upon the earlier decision rendered by the Apex Court in the case of State of M.P. vs. Shardul Singh, (1970) 1 SCC 108, P.V. Srinivasa Sastry vs. Comptroller and Auditor General, (1993) 1 SCC 419 and Inspector General of Police vs. Thavasiappan, (1996) 2 SCC 145. Thus, in view of the law laid down by the Apex Court, the contention of the applicant that it is only the disciplinary authority who could initiate disciplinary proceedings, as such, chargesheet and subsequent orders are void-ab-initio cannot be accepted.

Thus, we are of the view that the applicant has not made out any case for condonation of delay. Rather, from the material placed on record, it appears that the applicant has concocted a wrong story for condoning the delay, as such, even on this ground the applicant cannot be heard in this case.

7. The learned counsel for the applicant has also placed reliance on the Division Bench decision of the Andhra Pradesh High Court in the case of Rao

Rallapalli Suryanarayana vs. State of Andhra Pradesh, 1968, SLR 77 to contend that it is only the punishing authority who can initiate departmental proceedings. We fail to understand how the ratio of this judgment is applicable in the facts and circumstances of this case. As can be seen from para 4 of the judgement, it has been specifically observed that the punishing authority was Director of Agriculture and he has not authorized the District Agriculture Officer to initiate and conduct enquiry and further that there is no statutory rules empowering the Director of Agriculture to delegate the functioning of making an enquiry. A reference was also made to the decision of Sardul Singh vs. State of M.P. whereby it has been held that in the absence of any statutory provision expressly or impliedly permitting the delegation of disciplinary powers, the disciplinary authority, if it decides that disciplinary action should be taken against a civil servant, must itself frame the charge and hold an enquiry into them. As already stated above, in this case there is specific rule which authorize the President to delegate the power for initiation of departmental proceedings not only to the disciplinary authority but also to the other authority, as such, the reliance placed by the applicant to the decision of Rao Rallapalli (supra) is wholly misconceived. Further, this cannot be good law in view of the law laid down by the Apex Court in the

case of Director General ESI vs. T.Abdul Razak (supra).

8. For the foregoing reasons, the Misc. Application No.140/2007 for condonation of delay is dismissed. Since the Misc. Application for condonation of delay has been dismissed, the OA filed by the applicant also stands dismissed as barred by limitation. No costs.

(B.L.KHATRI)
Admv. Member

(M.L.CHAUHAN)
Judl.Member

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