

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 25<sup>th</sup> day of November, 2010

**ORIGINAL APPLICATION NO. 362/2007**

**CORAM**

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Hansraj son of Shri Parasram aged about 42 years, resident of Village & Post Panchala, Tehsil Aligarh, District Tonk (Rajasthan). At present employed on the post of Gangman in Western Central Railway, Kota Division, Shyam Garh.

.....Applicant

(By Advocate: Mr. Shiv Kumar)

**VERSUS**

1. Union of India through General Manager, Western Central Railway, Jabalpur (M.P.).
2. Senior Divisional Engineer (Co-ordination), Western Central Railway, Kota Division.
3. Divisional Engineer (South), Western Central Railway, Kota Division.
4. Assistant Divisional Engineer, Shyam Garh, Western Central Railway, Kota Division, Shyam Garh.

.....Respondents

(By Advocate: Mr. T.P. Sharma)

**ORDER**

The applicant has filed this OA for quashing the impugned charge sheet dated 19.01.2002 (Annexure A/1), order dated 06.02.2007 (Annexure A/2) passed by the Disciplinary Authority imposing the penalty of compulsory retirement, order dated 26.04.2007 (Annexure A/3) and order dated 28.06.2007 (Annexure A/4) whereby the appeal & revision of the applicant was respectively rejected.

2. Briefly stated facts of the case are that the applicant was initially appointed as Gangman in Western Central Railway, Kota Division with

effect from 22.06.1990. The applicant while working in the said capacity was served with a charge sheet for imposing major penalty dated 19.01.2002 whereby allegation against him was regarding unauthorized absence for the period with effect from 15.02.2001 to 12.12.2001 and also regarding his absence for the years 1999, 2000 and 2001 for the days mentioned in the charge sheet. Inquiry was conducted. The inquiry report was submitted to the Disciplinary Authority on 02.03.2006 but the Disciplinary Authority did not agree with the finding of the Inquiry Officer and the matter was remitted back to the Inquiry Officer to conduct fresh inquiry after giving opportunity to the applicant, the Inquiry Officer again reiterated the finding recorded by him in the earlier inquiry regarding the charges having been proved against the applicant and accordingly the order of compulsory retirement was imposed on the applicant, which order had been affirmed by the Appellate & Revising Authorities. It is on the basis of these facts; the applicant has filed this OA.

3. As can be seen from the grounds raised by the applicant in the OA, the fact that the applicant remained absent for the period in question is not disputed. It is pleaded that the applicant was absent from duty on account of the fact that he was sick and due to family circumstances & no means available with him, he could not inform the authorities about his absence. It is pleaded that the absence of the applicant cannot be said to be unauthorized. Further, the applicant has also stated that the orders passed by the Disciplinary Authority, Appellate Authority and Revising Authority are non speaking orders and also that the finding had been recorded by the Inquiry Officer without examining the witnesses.



4. The respondents have filed their reply. The respondents have justified their action on the basis of the finding given by the Inquiry officer and the finding recorded by the Disciplinary Authority, Appellate Authority and Revising Authority. It is further pleaded that the applicant had himself admitted the charge of his absence. Therefore the Disciplinary Authority had rightly come to the conclusion that the punishment of compulsory retirement is warranted in the facts & circumstances of this case.

5. The applicant has filed rejoinder thereby reiterating the submission made by him in the OA. It is stated that the applicant has never accepted the charges of remaining absent from duty.

6. We have heard the learned counsel for the parties and have gone through the material placed on record. The applicant has placed on record the finding of the Inquiry Officer at Annexure A/7, perusal of this report reveals that the inquiry was conducted by the Inquiry officer on 14 occasions wherein majority dates, the applicant did not attend the inquiry. When the applicant was present on 25.04.2005, the applicant in answer to Question No. 3 had admitted the charges leveled against him in the charge sheet. He had also stated that being illiterate and not aware of the Railway rules and on account of family problems, he could not give intimation regarding his absence to the authorities.

7. Thus in view of this categorical finding recorded by the Inquiry officer in his Inquiry report and the fact that even in the case as

projected by the applicant in this OA, it is evident that the applicant did not give any intimation to the authorities regarding his absence for the period in question. Under these circumstances, it cannot be said that the charge against the applicant has not been proved. The contention raised by the learned counsel for the applicant that the absence of the applicant cannot be said to be unauthorized as he was sick cannot be accepted in as much as the applicant has neither submitted any certificate from the Railway Doctor before the Inquiry Officer or before the Disciplinary Authority/Appellate Authority/Revising Authority nor had he annexed such document in this OA. Thus the vague contention of the applicant that he could not attend the duty for the aforesaid period because he was sick cannot be accepted. Further vague contention of the learned counsel for the applicant that inquiry was not conducted properly cannot be accepted and the matter is not required to be remitted back to the Inquiry Officer for conducting fresh inquiry as the applicant had himself admitted that he remained absent for the period, which is the subject matter of the charge sheet and no intimation was given to the authorities and also that the applicant has not submitted any proof regarding his illness to the authorities.

8. The next contention raised by the learned counsel for the applicant that punishment of compulsory retirement is harsh cannot be accepted. The Revising Authority has also taken into consideration the past record of the applicant in order to see whether the punishment of compulsory retirement is excessive. It has been recorded that the applicant was engaged on 22.06.1990 and for a period with effect from 22.06.1990 to February, 2007 i.e. total period of 16 ½ years, the

applicant remained absent for a period of about 13 years, 3 months and 28 days. Thus in view these facts, it cannot be said that the punishment of compulsory retirement imposed upon the applicant is harsh. The facts remains that the applicant is habitual absentee which constitute grave mis-conduct. As such, we are of the view that the punishment of compulsory retirement under these circumstances cannot be said to excessive. Suffice it to say that the reference made by the Revisional Authority regarding past conduct was justified and was a part of charge sheet and could have been taken into account in order to reinforce the order of compulsory retirement from service and to give additional weight to the decision already arrived at by the Disciplinary Authority. Such a view was permissible in view of the law laid down by the Apex Court in the case of **India Marine Service (P) Ltd. vs. Workmen**, AIR 1963 SC 528 whereby the Apex court while considering the similar issue in Para No. 6 has held as under:-

"6.....It is true that the last sentence suggests that the past record of Bose has also been taken into consideration. But it does not follow from this that that was the effective reason for dismissing him. The Managing Director having arrived at the conclusion that Bose's services must be terminated in the interest of discipline, he added one sentence to give additional weight to the decision already arrived at. Upon this view it would follow that the Tribunal was not competent to go behind the finding of the Managing Director and consider for itself the evidence adduced before him. The order of the Tribunal quashing the dismissal of Bose and directing his reinstatement is, therefore, set aside as being contrary to law."

9. A similar view was also taken by the Apex court in the case of **Union of India & Others vs. Bishamber Das Dogra**, 2010 (1) SCC (L&S) 212. That was a case where respondent before the High court has deserted the Line for the period from 06.3.1986 to 16.3.1986 and

was imposed punishment of removal from service. While passing the punishment order, the Disciplinary Authority also took into consideration the past conduct of the respondent. The learned Single Judge quashed the order of punishment on the ground that copy of the enquiry report was not furnished and the respondent employee was not given opportunity to file objection to the same. It was further observed that his past conduct could not have been taken into consideration while imposing punishment. However, the appeal filed before the Division Bench was also dismissed. The matter was carried to the Apex Court. The Apex Court framed two questions for consideration- i) whether the delinquent employee is not supposed to establish de facto prejudice in case the enquiry report is not supplied to him before awarding punishment and ii) whether the order of punishment would be vitiated if the disciplinary authority takes into consideration the past conduct of the delinquent employee for the purpose of punishment. Regarding point no. i), the Hon'ble Apex court held that the delinquent employee has to show a prejudice in case enquiry report is not supplied to him. Regarding second point, it is held that in the case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment, if the facts of the case so require. At this stage, it will be useful to quote Para 30 of the judgment, which thus reads:-

"30. In view of the above, it is evident that it is desirable that the delinquent employee may be informed by the disciplinary authority that his past conduct would be taken into consideration while imposing the punishment. But in case of misconduct of grave nature or indiscipline, even in the absence of statutory rules, the authority may take into consideration the

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indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment if the facts of the case so require." (emphasis ours).

10. The ratio laid down by the Apex Court in the case of **Bishamber Das Dogra** (supra) is squarely applicable in the facts and circumstances of this case more particularly when the past misconduct of the applicant was also part of the charge sheet. Further the penalty of compulsory retirement from service cannot be said to be harsh in view of the law laid down by the Apex Court in the case **State of Rajasthan & Another vs. Mohd. Ayub Naz**, 2006 SCC (L&S) 175 and another decision of the Apex Court in the case of **L&T Komatsu Ltd. vs. N. Udaykumar**, 2008 (1) SCC (L&S) 164, whereby the Apex court has held that habitual absenteeism amounts to gross violation of discipline and the judgment of the Labour Court and the High court whereby they have interfered with the punishment of termination awarded by the Disciplinary Authority were set aside whereby the applicant was reinstated and absence of duty for 105 days was held harsh and the workman was ordered to be reinstated in service with continuity of service but without back wages.

11. For the foregoing reasons, we find no merit in this OA, which is accordingly dismissed with no order as to costs.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*(M.L. CHAUHAN)*  
(M.L. CHAUHAN)  
MEMBER (J)

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