

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 50/2007

Date of order: 20-1-2010

CORAM:

**HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER**

Chandra Mani Lobo S/o Shri Lobo, by caste Gujar, aged about 40 years, resident of Officer's Colony, Kota, presently removed from P.W.I. Bundi.

...Applicant,

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union of India through the General Manager, Western Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota.
3. Upper Divisional Railway Manager, West Central Railway, Kota.
4. Senior D.E.N. (N), West Central Railway, Kota.
5. A.E.N. (Central), West Central Railway, Kota.

... Respondents,

Mr. Anupam Agarwal, counsel for the respondents.

ORDER


(Per Hon'ble Dr. K.S. Sugathan, Administrative Member)

The applicant has challenged his removal from service by order dated 20th October, 2004. The said penalty was imposed by the respondents for the unauthorized absence from 02.02.2000 to

21.11.2002. The applicant was issued a charge-sheet on 27.11.2002 for the said unauthorized absence. During the subsequent oral enquiry, the charge was held to be proved by the Inquiry Officer. The appeal filed by the applicant against the penalty of removal was rejected by order dated 05.04.2006. The revision petition filed by the applicant was also rejected by order dated 14.07.2006. It is the contention of the applicant that he remained absent because of his illness as also his preoccupation with the treatment of his son who lost both his legs in a railway accident. It is further contended by the applicant that he went through a traumatic period because of the accident of his only son and that the illness of the applicant was within the knowledge of the respondents. The applicant has rendered more than 25 years of service in the Railway. The punishment of removal is a very harsh punishment.

2. The respondents have contested the prayers in the Original Application and stated that the applicant is making contradictory averments in his defence. On the one hand, he has stated that he himself was ill and on the other hand, he is taking the plea that his son's legs were amputated after train over ran the boy. During the enquiry, the witnesses have testified to his absence. The respondents had no knowledge about the treatment undergone by the applicant. The penalty order has been passed by following the required procedure as well as after proper application of mind.

3. We have heard learned counsel for the applicant Shri P.N. Jatti and learned counsel for the respondents Shri Anupam Agarwal. We have also perused the records carefully.



4. The grounds for judicial review in disciplinary matters are now well settled. From the case of **High Court of Judicature at Bombay vs. Shashikant S. Patil** - (2000) 1 SCC 416, these grounds can be enumerated as follows:

- (a). There is a violation of the principles of natural justice;
- (b) The proceedings have been held in violation of statutory regulations;
- (c). The decision is vitiated by consideration extraneous to the evidence and merits of the case;
- (d). The conclusion made by the authority is ex facie arbitrary or capricious that no reasonable person could have arrived at such conclusion.

We have examined the facts of the present case from the grounds cited above and we have come to the conclusion that the respondents have followed the prescribed procedure before imposing the penalty. We are, however, of the considered view that the quantum of penalty imposed on the applicant is highly disproportionate to the misconduct proved against the applicant. The respondents have not disputed the fact that the applicant's son met with the accident and lost both his legs. In his statement before the Inquiry Officer, the applicant has stated in response to a question about his defence as follows:

"Yes sir, I have been sick from 02.02.2000, after that on 24.03.2000 at Gudala station my 6½ years old son Ramu was over run by the train and both of his legs got amputated and the treatment of my son was going on in Railway Hospital Kota. Thereafter, on 07.06.2000, I was sent to J.R.H. Mumbai which can be verified from the papers of that hospital (enclosed)."


"I am lone person in the family to take care all the responsibilities, I was also keeping unwell and because of these reasons, I could not remain present for my work for

about two years. Thereafter, I reported for duty on 23.11.2002

During my absence, I did not get any salary. I have suffered huge financial loss which itself is a big punishment for me

Considering my poor financial condition as well as handicapped son, I may please be exonerated of the charges leveled against me."

5. It is seen from the record that in the penalty order dated 20.10.2004, the submissions made by the applicant about his financial condition as well as mental trauma have not been considered by the disciplinary authority. The said penalty order merely states that the applicant was issued a charge-sheet and enquiry was held in which he was found guilty of unauthorized absence, therefore, it is presumed that he is not interested in continuing in the railway service and consequently he is removed from service. In his appeal to the appellate authority the applicant submitted that "I am poor employee and only responsible for the maintenance of my family which includes a handicapped child and without any employment, it will be impossible for me to run the family. If you do not believe my words and prayer, I can come with my son along with all the relevant records before you. Kindly consider my deplorable conditions and be kind enough to take me back in service." The appellate order rejecting the appeal does not seem to have considered the helplessness and anguish of the employee. The appellate order re-states the grounds for dismissal in a mechanical fashion. In the same manner, the applicant had submitted a revision petition to the Sr. Divisional Railway Manager




pleading for mercy. But the revision petition was also rejected in a mechanical fashion by Annexure A/1 dated 14.07.2006.

6. It is well settled that punishment imposed by a disciplinary authority should not be normally interfered by the Tribunal except in exceptional cases and only after considering factors such as nature of charges, the past conduct and penalty imposed earlier. The following extract from the Hon'ble Supreme Court's judgment in the case of **Bhagwan Lal Arya vs. Commissioner of Police, Delhi and another**, reported in AIR 2004 SC 2131, is relevant in this regard:

"11. We are of the view that the punishment of dismissal/removal from service can be awarded only for the acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility of complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires of Rules 8 (a) and 10 of the Delhi Police (Punishment & Appeals Rules, 1980) and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of not only he but his entire family totally dependant on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside."

7. Considering the facts and circumstances of this case and the miserable condition in which the applicant has been placed, it is our view that the respondents ought to have considered the plea for mercy contained in his statement before the Inquiry Officer, in appeal before the Appellate Authority as well as revision petition instead of confining themselves to mechanically stating that the required procedure have been gone through. There is nothing on



record to show that the applicant has any previous history of unauthorized absence nor has any penalty been imposed on him in the past. He has served the Railways for more than 25 years. The nature of offence is such that a lesser punishment would serve the purpose. The mitigating circumstances of this case will call for a more sympathetic consideration than what has been accorded by the respondents in this case. The respondents' contentions that the applicant did not bring the information about his son's accident to their notice during the course of the enquiry cannot be sustained in view of the statements recorded by the Inquiry Officer which clearly gives information about accident to his son and the subsequent treatment.

8. For the reasons stated above, this Original Application stands partly allowed. The penalty order dated 20.10.2004, appellate order dated 05.04.2006 and revisional order dated 14.07.2006 are quashed and set aside. The matter is remanded to the respondents to reconsider the quantum of punishment imposed on the applicant in the light of our observations supra and communicate their decision to the applicant within a period of three months from the date of receipt of copy of this order. No order as to costs.



(DR. K.B. SURESH)
JUDICIAL MEMBER



(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER