

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 29th day October, 2010

ORIGINAL APPLICATION No.265/2008

CORAM:

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

Dinesh Chand Chaturvedi
s/o late Shri Vishvesh Chand Chaturvedi,
r/o 200/12, Bajaj Khana, Kota,
Ex-guard under Station Manager,
Kota, West Central Railway.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India
through General Manager,
West Central Railway,
Jabalpur Zone,
Jabalpur.
2. Chief Operating Manager,
West Central Railway,
Jabalpur (MP).
3. Divisional Railway Manager,
West Central Railway,
Opposite Railway Station,
Kota.
4. Sr. Divisional Operating Manager,
D.R.M. Office,
Kota.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

62

ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant while working as Guard under the Station Manager, Kota in the year 2001 was issued a chargesheet dated 10.7.2002 (Ann.A/4). The charges against the applicant were that on 25.1.2001 and 11.4.2001 he procured pass in favour of his family including one son aged about 22 years without submitting any proof of regular student of recognized school or college and also on 11.6.2001 he further procured another pass in favour of the family thereby also submitting certificate dated 12.6.2001 wherein it was disclosed that his son namely Shri Kuldeep Chaturvedi was regular student for the session 2000-2001. In order to substantiate the charges, one of the documents which was included in the list of documents appended with the chargesheet was letter dated 30.7.2001 written by the Principal, Government Commerce College, Kota whereby it was informed that Shri Kuldeep Chaturvedi son of the applicant was regular student of the college for the academic session 1999-2000 and not for the academic session 2000-2001. Since the allegation against the applicant was regarding obtaining passes in favour of his son to which he was not entitled by submitting wrong information of false certificate, the Enquiry Officer was appointed. Although at initial stage, the applicant participated in the enquiry proceedings but thereafter the applicant did not attend the proceedings, as such, ex-parte enquiry was held and the Enquiry Officer submitted his report thereby holding the charges

h

against the applicant as partly proved. The respondent No.4 did not agree with the Enquiry Officer, so far some of the charges were held not proved, as such, he recorded disagreement note. Thereafter respondent No.4 after recording disagreement note has sent the enquiry report and disagreement note to the applicant. The applicant did not file any objection to the findings record in the enquiry report/disagreement note, as such, vide impugned order dated 28.2.2003 (Ann.A/1) penalty of dismissal from service was awarded by the Disciplinary Authority. Thereafter the applicant filed appeal. The Appellate Authority also dismissed the appeal so filed by the applicant vide Ann.A/2. The applicant also resorted to the remedy of review and vide order dated 26.2.2004, penalty of dismissal was converted to that of removal. It is these orders which are under challenge before this Tribunal:

The plea taken by the applicant in the OA is that the Enquiry Officer has conducted the ex-parte enquiry without specific note for proceeding ex-parte and also that the appropriate authority should not have issued the passes in favour of the applicant's son which was admittedly over 21 years of age. Thus, irregularity, if any, has been committed at the level of administration for which the applicant cannot be held responsible, as the authority has issued passes without requisite certificate. Further contention raised by the applicant is that certificate given by him in respect of age of his son Shri Kuldeep Chaturvedi only mentions the date of birth and it does not mention that Shri Kuldeep Chaturvedi is regular student of Govt. Commerce College, Kota, as such, the charges against the

te

applicant that he has procured false certificate to the effect that applicant's son is prosecuting study as regular student in the college is without any substance.

-2. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have submitted that admittedly one son of the applicant was above 21 years of age at the time of seeking and issuance of railway passes, yet the applicant despite repeated request failed to submit any certificate of being a student of an educational institution. When he was insisted hard by the staff of the Station Superintendent office before issuance of third pass, he produced a wrong/unwarranted letter wherein it was disclosed that his son Kuldeep Chaturvedi was a regular student for the session 2000-2001. On enquiry, it was found that the same was not issued by the concerned institution. Thus, any allegation to the effect that the passes were issued without asking/looking to the proof is without any substance. It is further submitted that the certificate so produced by the applicant was sent for verification to the Principal, Government Commerce College, Kota which was replied by him vide letter dated 30.7.2001 (Ann.A/5). It is further stated that perusal of the same would disclose that the Principal had categorically stated that Shri Kuldeep Chaturvedi was not a student of the college for the session 2000-2001. So far conducting ex-parte proceedings is concerned, it is stated that the applicant failed to cooperate during the enquiry. He presented himself on 18.10.2002 to submit an application and requested for adjournment of the proceedings because of

pendency of court case. Accordingly, next date was fixed which was noted by the applicant himself. He, however, neither appeared on the next date nor sought any adjournment by disclosing any to that effect. Yet the matter was adjourned and the date was communicated to the applicant by letter dated 28.10.2002 stating that in case he fails to appear and continue his non-cooperation, ex-parte proceedings would be taken for which he would himself be responsible. The same was pasted on the notice board as well. When the same was tried to be served personally through Welfare Inspectors, he refused to take the notice by putting his remarks that the same would be taken on resumption of duties and thus did not appear in the enquiry. It is further stated that he did not submit any application for adjournment of the proceedings to the Enquiry Officer. In such, circumstances, ex-parte enquiry was conducted. The respondents have further stated that the fact that the applicant was taking treatment from private Doctor was not communicated to the Enquiry Officer and, in any case, a railway employee is under obligation as per rules to get a certificate to that effect from the railway doctor.

3... The applicant has filed rejoinder thereby reiterating the submissions made in the OA.

4. We have heard the learned counsel for the parties and gone through the material placed on record. From the facts as stated above, it is not in dispute that 3 passes were issued in favour of the family of the applicant including his son aged about 22 years on 25.1.2001, 11.4.2001 and 11.6.2001. In respect of two passes, the

applicant did not submit any certificate in favour of his son being regular student of a recognized college whereas in respect of pass issued on 11.6.2001, the applicant submitted a certificate dated 12.6.2001 in prescribed proforma Ann.A/5, relevant portion of which is in the following terms:--

“WESTERN RAILWAY
YEAR 2000-2001

Age certificate for school passes

This is to certify that Master/Miss Kuldeep Chaturvedi Son/daughter of Mr./Mrs. Dinesh Chand Chaturvedi, Date of birth 27.8.78, aged 22 years 09 months is a bona fide student of this college/school which is recognized by the Government Rajasthan. The college/school will be closed from..... on account.....vacation/holidays....

He/She is not in receipt of any stipend or scholarship other than scholarship on merit/means basis and is not engaged in research work.

Kota-Station
Dated 12.06.2004

Principal/Headmaster/Headmistress
.....College/school.

I certify that the above named is my son/daughter/brother/sister and is proceeding to..... hill to see his/her.....at..... returning to school/college.

.....

Signature of the Employee
Designation
Residential address.....”

5. Thus from the certificate as reproduced above, it is evident that the applicant has submitted a certificate in which it is recorded that son of the applicant whose age is 22 years 9 months was bona-fide student of the college for the academic session 2000-2001. The applicant has also placed on record a letter issued by the Principal of the college dated 30.7.2005 whereby it has been recorded that Shri Kuldeep Chaturvedi son of Shri Dinesh Chand Chaturvedi was

regular student of the institution for the year 1999-2000 and he was not regular student for the academic session 2000-2001. It is not in dispute that for grant of family pass in terms of the Railway Servants Pass Rules, 1986, Rule 2(d) defines 'family' inter-alia to include son or sons who have not attained the age of 21 years and are wholly dependent on the railway servant and also son or sons of the age 21 years and above who are bona-fide student of any recognized educational institution. Keeping this statutory provision in view, son of the applicant could have been granted railway pass only if he was a bona-fide student of recognized educational institution being above 21 years. In view of this statutory provision and the fact that son of the applicant was above 22 years of age and was not bona-fide student of any recognized academic institution for the session 2000-2001, the son of the applicant was not entitled for the pass facility of the railways. The contention raised by the applicant that out of 3 passes, two passes were issued without requisite certificate and, as such, the authorities are also responsible for issuance of the passes cannot absolve the applicant for his misconduct as it was not legally permissible for the applicant to submit application for seeking passes in favour of his son who was admittedly above 22 years of age. The applicant being beneficiary of this fraudulent act cannot be absolved from this misconduct solely on the ground that such action on the part of the applicant amounts to negligence and not misconduct, as contended by the learned counsel for the applicant.

6. That apart, in respect of the third pass issued on 11.6.2001 the applicant submitted false certificate to the effect that son of the applicant was prosecuting study in the recognized educational institution which certificate was found to be false in view of the letter written by the Principal of the College. These documents formed part of the listed documents appended with the chargesheet. The charges have been held proved by the Enquiry Officer. The contention raised by the applicant that enquiry was held ex-parte and no opportunity was given to the applicant cannot be accepted in view of the stand taken by the respondents in the reply.

7. Further, on the face of the statutory provisions as well as on the face of the certificate submitted by the applicant and also the clarification issued by the Principal of the College, the only conclusion which can be drawn is that the applicant is guilty of the charges and he has not shown any prejudice which has been caused to him on account of holding ex-parte enquiry. The Disciplinary Authority after considering the matter has imposed penalty of dismissal from service. Even the Appellate Authority did not interfere with the penalty so imposed by the Disciplinary Authority and while considering the quantum of punishment he has specifically recorded that during 22 years of service, the applicant remained on leave without pay for a period of 7 years and 4 months which casts doubt on his sincerity towards duty. Thus, maintained the punishment so awarded by the Disciplinary Authority. However, the Revisional Authority vide impugned order

dated 26.2.2004 (Ann.A/3) has modified the penalty of dismissal to that of removal from service.

8. The next question which requires our consideration is whether in exercise of power of judicial review it is permissible for us to interfere with the quantum of punishment so imposed or the punishment is disproportionate to the gravity of the charge, as no reasonable person placed in the position of the Disciplinary Authority could have imposed such punishment. The law on this point is no longer res-integra. In the case of Charanjit Lamba vs. Commanding Officer, Southern Command and Ors., Jt 2010 (6) SC 595, in para 15 observed as under:-

"15. That the punishment imposed upon a delinquent should commensurate to the nature and generally of the misconduct is not only a requirement of fairness, objectivity, and non-discriminatory treatment which even those form quality of a misdemeanour are entitled to claim but the same is recognized as being a part of Article 14 of the Constitution. It is also evident from the long time of decisions referred to above that the courts in India have recognized the doctrine of proportionality as one of the ground for judicial review. Having said that we need to remember that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a Writ Court of the Administrative Tribunal for that matter is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith. What is clear is that while judicially reviewing an order of punishment imposed upon a delinquent employee the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of the charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same."

9. The question then is whether this Tribunal should interfere with the quantum of punishment so imposed upon the applicant on the doctrine of proportionality. As can be seen from the material placed on record, it is evident that the applicant has put in 22 years of service. There cannot be any dispute that in case order of dismissal as modified to that of removal is allowed to sustain the applicant will not be entitled to pensionary benefits. From the appellate order Ann.A/2 it is evident that out of 22 years of service, the applicant remained on leave without pay for 7 years and 4 months, which show that the applicant is not a willing worker. Thus, keeping in view the gravity of the offence committed by the applicant, we are of the view that it is a case where punishment of dismissal as modified to that of removal is disproportionate to the gravity of the charge and no reasonable person placed in the position of Disciplinary Authority could have imposed such punishment and the order of removal could have been modified to that of compulsory retirement.

10. Further question, which requires our consideration is whether the case should be remitted to the Disciplinary Authority to pass any other order other than that of removal from service or this Tribunal should itself modify the penalty and pass appropriate order. At this stage, we wish to quote decision of the Apex Court in the case of Superintendent (Tech.I) Central Excise vs. Pratap Rai, (1978) 3 SCC 113, wherein the Apex Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the authority concerned is free to pass fresh order but, at the same

time, the Court declined to give such liberty to the administration on the ground that a period of 15 years had elapsed since the framing of charge.

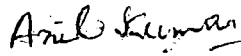
11. In Bhagwan Lal Arya vs. Commissioner of Police, 2004 SCC (L&S) 661, a somewhat similar approach was adopted by the Apex Court by recording the following observations in para-14, which thus reads:-

"14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment or removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

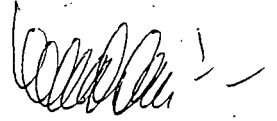
12. In view of the aforesaid judgment, we feel that ends of justice will be met by substituting the punishment of removal from service imposed upon the applicant to that of compulsory retirement. In the result, the OA is allowed. The punishment of dismissal/removal from service imposed upon the applicant is substituted to that of

compulsory retirement and the order of the Disciplinary Authority, Appellate Authority and Revisional Authority shall stand modified to that extent. Parties are left to bear their own costs.

12. In view of disposal of OA, no order is required to be passed in MA No.224/08, which shall stand disposed of accordingly.



(ANIL KUMAR)
Admv. Member



(M.L. CHAUHAN)
Judl. Member

R/