

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 15.10.2014

OA No. 241/2011 with MA No.400/2013


Mr. C.B.Sharma, Counsel for the applicant.

Mr. M.K.Meena, Counsel for the Respondents.

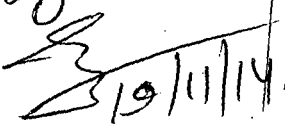
Heard the learned counsel for parties.

Order Reserved.


(DR.MURTAZA ALI)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/

19/11/14
order
pronounced
today in
the open court
by S.B.

19/11/14.
C.O.

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO. 241/2011
WITH MA No.400/2013**

Order reserved on : 15.10.2014

Date of Order: 19.11.2014

CORAM

**HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE DR.MURTAZA ALI, JUDICIAL MEMBER**

LEELA Son of Shri Har Sahai, aged about 51 years, resident of Village and Post Sudarshanpura, Near Biwai Station, District Dausa and removed from services from the post of LRGK (Leave Reserve Gate Keeper), Gang No.17, Station Biwai under Section Engineer (PWI), North Central Railway, Bandikui.

.....Applicant

(By Advocate Mr.C.B.Sharma)

VERSUS

1. Union of India through General Manager, North Central Zone, North Central Railway, Allahabad (U.P.).
2. Divisional Railway Manager(P), North Central Railway, Agra Division, Agra (U.P.).
3. Divisional Engineer-II, North Central Railway, Idgah, Agra (U.P.).
4. Assistant Divisional Engineer (Line), North Central Railway, Idgah, Agra (U.P.).
5. Section Engineer (Public Way), North Central Railway, Bandikui.

.....Respondents

(By Advocate Mr. M.K.Meena)

Anil Kumar

ORDER

(PER HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER)

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

8. (i) That respondents be directed to produce entire record relating to the case and after perusing the same appellate order dated 27.4.2011 (Annexure A/1) with the punishment order dated 20.8.2009 (Annexure A/3) with the ex-parte proceedings be quashed and set aside with all consequential benefits.

(ii) That respondent be further directed to reinstate the applicant in service on the post of Gangman in the pay band of Rs.5200-20200 with grade pay Rs.1800/- with all consequential benefits by quashing charge memo dated 8.7.2008 (Annexure A/4).

(iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the cost of this application may be awarded.

2. The brief facts of the case as stated by the learned counsel for the applicant are that the applicant initially joined the respondents Railway in the year 1992 and granted temporary status in the year 1993 and further services regularized as Gangman in the year 1996 and since then continuously worked with the respondents with the entire satisfaction till removal from services.

3. That in the month of October, 2007, applicant was not feeling well and could not join his duties and for that purpose applicant apprised the Zamadar as well as

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respondent No.5 from time to time. That the respondent No.5 reported the matter to the respondent No.4 and the respondent No.4 served a charge memo dated 8.7.2008 on the allegations that applicant remained absent from 24.10.2007 to 4.7.2008 without any information and violated provisions of Rule 3 of Railway Conduct Rule, 1966 (Annexure A/4).

4. He further submitted that as per knowledge of the applicant, applicant never directed to face departmental proceedings and respondents conducted ex-party enquiry and applicant also not allowed to join his duties whenever he made attempt. That the respondent No.4 also called for the applicant at Biwai Station and Mandawar Station and directed the applicant to join his duties and applicant apprised the respondent No.4 that he interested to join his duties and also made attempt to join the duties after attaining fit certificate from Railway Doctor on 3.8.2009. As the applicant not allowed the fit certificate for more than 3 to 4 months, the respondent No.5 was adamant not to take on duty without certificate.

5. That when the applicant making sincere efforts for joining his duties since 3-4 months, the respondent No.4 passed order dated 20.8.2009 for removal from services and the same also not made available to the applicant and pasted on the house of the applicant in absence of the applicant.

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Respondent No.4 removed the applicant from services on the basis of ex parte enquiry and prior to that directed the applicant to join his duties. When applicant obtained fit certificate, he was removed from services.

6. The applicant in pursuance to the direction of the Hon'ble Tribunal preferred an appeal before the respondent No.3 on 12.10.2010 stating therein that the applicant could not join his duties due to the illness and after recovery not allowed to join in the absence of fit certificate and when he submitted the fit certificate he was not allowed to join his duties in the garb of the removal order. The appellate authority rejected the appeal vide order dated 27.4.2011 (Annexure A/1).

7. The learned counsel for the applicant submitted that the applicant is low paid employee and working with the respondents for more than 17 years and on the basis of the absence, punishment of removal from services is not at all justified. Besides, the charge memo itself is not as per rules. The enquiry took place exparte under such circumstances the punishment of removal from services cannot be said just and proper. The applicant is illiterate and he has no knowledge of rules and procedure, therefore, the charge memo dated 8.7.2008 (Annexure A/4), the penalty order dated 20.8.2009 (Annexure A/3) and the appellate order dated 27.4.2011 (Annexure A/1) be quashed and set aside.

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8. On the other hand, the learned counsel for the respondents submitted that the applicant was granted permanent status in 1996 while he was working in Western Railway. After the creation of new zone the applicant was transferred to North Central Railway on his own request.

9. The learned counsel submitted that the applicant was issued a charge memo for his unauthorized absence from 24.10.2007 to 4.7.2008. He did not appear before the Enquiry Officer, therefore, the competent authority removed him from the services vide order dated 20.6.2009 (Annexure A/3). That the date of order of the disciplinary authority for removal of the applicant from services is 20.6.2009 and not 20.8.2009 as mentioned by the applicant in the OA.

10. That the appellate authority also considered the appeal of the applicant and the same has been rejected by a reasoned and speaking order dated 27.4.2011 (Annexure A/1). The learned counsel for the respondents submitted that many chances were given to the applicant to present himself before the competent authority but he failed to do so, therefore, the punishment of removal was imposed on the applicant after adopting the due process of law and rules.

11. The respondents have denied that the applicant's services were always satisfactory. On the other hand, they have stated that the applicant is in the habit of remaining

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absent from duty from time to time and, therefore, the punishment order was rightly passed.

12. The learned counsel for the respondents also submitted that ignorance of law, as pleaded by the applicant, is not an excuse in the eye of law.

13. The learned counsel also submitted that there is no infirmity or illegality in the charge memo issued to the applicant on 8.7.2008 (Annexure A/4). Therefore, the OA has no merit and it should be dismissed with costs.

14. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant during the arguments submitted that he is only pressing for the reduction in the punishment of removal on the ground that the order of removal from service is excessively disproportionate to the misconduct on the applicant. The applicant is around 52 years of age and thus he has about 10 years to remain in service. Besides, the applicant is a low paid employee. He has 17 years of regular service and, therefore, the punishment of removal from services is excessively harsh. Moreover, the applicant is a illiterate person and he has no knowledge of rules and procedure, therefore, the order of penalty of removal from service dated 20.6.2009 (Annexure A/3) may be modified and awarded any other punishment commensurate with misconduct of the applicant.

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15. On the other hand, the learned counsel for the respondents agreed that the charge memo was issued to the applicant according to the rule and, therefore, there is no infirmity or illegality in the charge memo dated 8.7.2008.

16. The learned counsel for the respondents further argued that the penalty order dated 20.6.2009(Annexure A/3) is also according to rules. The applicant did not cooperate with the competent authority. That the applicant's services were never satisfactory. That the applicant has been in the habit of being absent from duty and, therefore, the order of removal from services is just and fair. In the circumstances, he denied that the order of removal is harsh or excessively disproportionate to the misconduct. Mere attaining the age of 52 years does not entitle him to remain absent from duty from time to time. His appeal was also duly considered by the appellate authority and the same has been rejected by him with a reasoned and speaking order.

17. It is not disputed that the applicant remained absent from duty from 24.10.2007 to 4.7.2008, therefore, he was issued a charge memo on 8.7.2008 (Annexure A/4). We have carefully perused the charge memo dated 8.7.2008 (Annexure A/4) and we do not find any infirmity or illegality in this charge memo.

18. We have also carefully perused the order passed by the disciplinary authority dated 20.6.2009(Annexure A/3). We

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find that the orders issued by the disciplinary authority are speaking and reasoned orders and there is no illegality or infirmity in the order. From the perusal of the order it is clear that the applicant did not cooperate with the competent authority and, therefore, the order was passed *exparte*.

19. The order passed by the appellate authority dated 27.4.2011 (Annexure A/1) is also reasoned and speaking order.

20. With regard to the submission of the learned counsel for the applicant that the punishment awarded to the applicant is disproportionate and excessively harsh looking to the nature of misconduct on the part of the applicant, we are of the opinion that the punishment order does not require any interference by this Tribunal. The respondents in the reply and even during the arguments have said that the applicant has been a habitual absentee from duties. Moreover, during the disciplinary proceedings he did not cooperate with the competent authority. He has been absent from the duty from 24.10.2007 to 4.7.2008 i.e. for more than 8 months. Therefore, we are not convinced with the plea of the learned counsel for the applicant that the order of punishment of removal from service is excessively harsh or disproportionate to the nature of misconduct. Thus we are of

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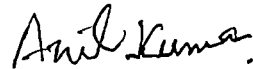
the opinion that the applicant has failed to make out any case for interference by this Tribunal in the present OA.

21. Consequently, the OA is dismissed being devoid of merit with no order as to costs.

22. The M.A. No.400/2013 filed by the respondents for deletion of the name of respondent No.1 from the array of respondents is also disposed of accordingly.



(DR.MURTAZA ALI)
JUDICIAL MEMBER



(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/