

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDBAD BENCH**

ORIGINAL APPLICATION NO 399 with MA 408 of 2013
Dated, this 5th day of October, 2018

**CORAM: HON'BLE MS ARCHANA NIGAM, MEMBER(A)
HON'BLE SHRI M C VERMA, MEMBER(J)**

Shri Hasmukhbhai S/o Shri Devajibhai aged 33 years, Ex. Cleaner
under C&W, Anand R/o Talav, Harijanwas Gorwagam, Vadodara.
... Applicant.

(By Advocate: Ms. S.S.Chaturvedi)

Versus

1. Union of India notice serve through General Manager, Western Railway, Churchgate, Mumbai – 400020.
2. Additional Divisional Railway Manager, D.R.M. Office, Western Railway, Pratapnagar, Vadodara 390 004.
3. Assistant Mechanical Engineer, Western Railway, Pratapnagar, Vadodara - 390 004.

... Respondents

(By Advocate Ms. Nisha Parikh)

O R D E R [Oral]

HON'BLE SHRI M C VERMA, MEMBER(J)

Applicant, in instant O.A. has assailed and has impugned action on the part of the respondents in removing him from service.

2. It is seen from the pleadings that an inquiry was initiated against the applicant for alleged unauthorised absence of 318 days and on the basis of the inquiry report Disciplinary Authority imposed penalty of removal from service. Applicant preferred an Appeal which was also dismissed and against that, Revision was preferred by applicant which was also dismissed by the Revisional Authority vide Annexs. A/1 dated 10.03.2011. Applicant has challenged the

order of punishment of removal from service, as was inflicted by the Disciplinary Authority and confirmed by the Appellate Authority and by Revisional Authority.

3. Notice of the O.A. was given to the respondents. Respondents have filed their detailed reply. The contention of respondents, as has been taken in the written statement is that there was unauthorised absence of total period of 318 days in two calendar years and considering seriousness of the act, departmental inquiry was initiated against the applicant and after full-fledged inquiry, he was found guilty for unauthorized absence. It has also been pleaded that applicant did not cooperate during inquiry and he did not attend the inquiry despite several reminders but charges were found established against the applicant and Disciplinary Authority imposed the penalty of removal from service.

4. Learned counsel for applicant, Ms. S.S. Chaturvedi has submitted that non-attending of duty by the applicant was due to compelling reasons, applicant was suffering from ailment and therefore, he could not report for duties. She also urged that the punishment inflicted is too harsh and that Appellate Authority and the Revisional Authority failed to see that non-appearance of the applicant was not deliberate but was because of reasons of ailment. She also pointed out that the order of Revisional Authority reflects that it was passed in mechanical way, it speaks that the Revision Petition was dismissed on grounds of delay as well on merits but it is silent as to how much was the delay nor it have discussion on merit and does not speaks how the Revision of applicant was not meritorious.

5. Have heard learned counsel for the parties and perused the record of the case. The impugned order passed by the Revisionary Authority is in Hindi and for sake of brevity, transcription of its relevant operative portion, in English, is quoted below :

"Sub : Analysis under Discipline & Appeal Rules.

Ref : This Office even letter No NIP dated 14th June, 2005.

Your Revision Petition dated 26th November, 2010 / 29th November, 2010.

That undersigned seriously considered your Revision Petition qua removal from service with immediate effect without compassionate allowance and took the decision as under :-

- a) Employee unauthorisedly remained absent.**
- b) Allegation has been confirmed in the inquiry report.**
- c) No representation given by the Ex employee on issue of punishment.**
- d) That presently Ex. Employee gave representation which is barred by time. That no representation or fact has been placed by which it can be said that he is innocent. Rather Ex-employee has accepted the allegation.**

Therefore, having treated the Ex.employee guilty, the punishment given to him is kept intact.

Please give acknowledgement of this letter."

6. From bare reading of the above said order it is evident that Revisionary Authority did not apply its judicious mind or at least the order passed does not reflect so. The order does not disclose also as to how much delay was there and whether applicant has explained about delay or not. It is also silent as to what are the evidence against the applicant.

7. During arguments, it transpired that applicant did not appear before the Enquiry Officer or the Disciplinary Authority and the explanation given by learned counsel for applicant is

that he was ill. Any how to avoid injustice to any one, Order dated 10/03/2011, Annexure A-1, of Revisionary Authority is set aside and the Revisionary Authority is directed to give opportunity to the applicant by fixing fresh date of hearing of Revision Petition, notice to the applicant, at least ten days in advance of date of hearing, be given and after hearing the applicant, Revisionary Authority shall pass a speaking order on Revision. This whole exercise of fresh hearing of Revision Petition and of passing Order thereon, shall be completed by the Revisionary Authority within three months w.e.f. date of receiving the copy of this order. The applicant is, therefore, directed to appear and pursue his case before Revisionary Authority on the date fixed by the Revisionary Authority and to explain his cause and the Revisionary Authority shall dispose of the Revision Petition as expeditiously as possible but within the time period given above.

8. With above directions, the O.A. and pending M.A. stand disposed of.

[M.C.Verma)
Member (J)

[Archana Nigam]
Member (A)

mehta

