

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2604/2012

Order Reserved on: 21.03.2016

Pronounced on:02.05.2014

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Narinder Singh,
S/o Shri Baldev,
Safaiwala,
Under Asstt. Health Officer,
Northern Railway, Opp. Novelty Cinema,
S.P. Road, Delhi.

-Applicant

(By Advocate Mrs. Meenu Mainee)

-Versus-

1. Union of India through:
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Chief Medical Supdt.,
Northern Railway,
Divisional Railway Hospital,
Opp. Novelty Cinema, SP Road,
Delhi.
3. Addl. Chief Medical Supdt.,
(Health & Family Welfare),
Northern Railway,
Divisional Railway Hospital,
Opp. Novelty Cinema, SP Road,
Delhi.

-Respondents

(By Advocate Shri Shailender Tiwary)

ORDER

Mr. K.N. Shrivastava, Member (A):

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant has prayed for quashing and setting aside Annexure A-1 and Annexure A-2 letters from the respondents.

2. The brief facts of the case are as under.

2.1 The applicant was appointed as a safaiwala on 31.07.1987 under the Northern Railway. A charge-sheet was issued to him on 28.02.2008, alleging that he had remained unauthorizedly absent from 21.09.2007 to 27.02.2008 without any information to his controlling officer and as such contravened the provisions of Railway Servants (conduct) Rules. Vide Annexure A-1 letter dated 26.08.2010 an office order for imposition of penalty under Rule 6 (8) of the Railway Servants (Discipline & Appeal) Rules, 1968 (for short, the 1968 Rules) was issued to the applicant asking him, *inter alia*, as to why punishment of removal from service should not be imposed upon applicant. Finally vide Annexure A-2 order dated 21.05.2011, after conducting enquiry in the matter, the Disciplinary Authority (DA) imposed the penalty of removal from service upon the applicant.

2.2 Aggrieved by the Annexure A-1 and Annexure A-2 order of the respondents, the instant OA has been filed.

3. Pursuant to the notices issued the respondents entered appearance and filed their reply. The applicant filed his rejoinder thereafter. With the completion of the pleadings, the case was taken up for final hearing on 21.03.2016. Mrs. Meenu Mainee, learned counsel for the applicant and Shri Shailender Tiwary, the learned counsel for the respondents argued the case.

4. The main contention of the learned counsel for the applicant was that the enquiry has not been conducted in a fair manner. She said that clause-4 of the impugned Annexure A-2 punishment order dated 21.05.2011 states that during the enquiry 'you have been provided one copy of enquiry report which was received by you and you have affixed your signature on each page'. She vehemently argued as to how a copy of the enquiry report could have been given to the applicant during the course of the enquiry. She further argued that the applicant had remained absent on account of illness of his wife who was having some mental problems as well as suffering from bout of epilepsy. She said that although the applicant had explained his circumstances to the Enquiry Officer (EO) but apparently the EO has

conducted the enquiry with a bias mind and did not accede to the pleas of the applicant. She concluded by saying that considering the poor background of the applicant, his personal circumstances and the fact that he is an illiterate person and also in view of the fact that the enquiry has not been conducted in a proper manner, the prayers made in the OA may be allowed and the impugned Annexure A-1 and Annexure A-2 orders of the respondents may be quashed and set aside.

5. Per contra, the learned counsel for the respondents submitted that during the course of the enquiry the applicant himself has admitted that he had remained unauthorizedly absent from 21.09.2007 to 27.02.2008 (Annexure A-4) albeit he has said that his absence was on account of the medical conditions of his wife. He further submitted that the disciplinary enquiry has been conducted against the applicant in the prescribed manner and principles of natural justice have been fully observed. The learned counsel further stated that the respondents were well within their powers to take disciplinary action against the applicant for the unauthorized absence. In this connection the learned counsel placed reliance on the judgments of the Hon'ble Apex Court in the case of **Delhi Transport Corporation v. Sardar Singh**, [(2004) 7 SCC 574]

and **Mithilesh v. Union of India**, [(2003) 3 SCC 309. He concluded his arguments by stating that the punishment order is quite proportionate to the offence of unauthorized absence committed by the applicant and as such does not warrant any judicial intervention.

6. Replying to the arguments of the learned counsel for the respondents, the learned counsel for the applicant stated that the unauthorized absence of the applicant from duty was not wilful and as such it cannot be held against him. She further said that the admission of the applicant that he was unauthorizedly absent (Annexure A-4) cannot be held against him for the simple reason that he had also stated in the same breath that his absence was on account of his wife's health conditions. In this regard, the learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Jagdish Prasad Saxena v. State of Madhya Bharat**, [AIR 1961 SC 1070] and **Sita Ram Bhan Patel v. Ram Chander**, [AIR 1977 SC 1712].

7. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the documents and pleadings annexed thereto as well judgments of Hon'ble Apex Court cited by them. Admittedly, the applicant had remained absent unauthorizedly from duty from

21.09.2007 to 27.02.2008 which he had also admitted in his statement at Annexure A-4. He, however, has clearly stated that his absence was on account of the health conditions of his wife. We find that the enquiry has been conducted in the prescribed manner and principles of natural justice have been followed for the conduct of the enquiry. However, we feel that the punishment of removal from service for an unauthorized absence of hardly over five months is highly disproportionate to the offence committed. The Hon'ble Supreme Court in the case of **Ranjit Thakur v. Union of India and Others**, [(1987) 4 SCC 611], has held as under:

“The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.”

8. In view of the principles laid down by the Hon'ble Supreme Court that the punishment awarded should be proportional to the offence committed, we are of the view that the impugned Annexure A-1 and Annexure A-2 orders are required to be interfered with.

9. In the conspectus, we quash and set aside the impugned Annexure A-1 and Annexure A-2 orders passed by the respondents. We also direct the respondents to award a lesser punishment to the applicant for the offence committed.

10. With the above direction the OA is disposed of.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice M.S. Sullar)
Member (J)

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