

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA.No./20/867/2016
Dated: 19/6/2018

BETWEEN:

P. Subba Rao,
S/o. Late Samuel, Hindu,
Aged about 57 years,
R/o. Bethalavaripallem,
Chinnaganjam Post & Mandal,
Prakasam Dist.

..... Applicant

AND

1. Union of India rep. by its
Additional Divisional Railway Manager,
South Central Railway,
Vijayawada Division, DRM Compound,
Vijayawada, Krishna District.
2. The Sr. Divisional Engineer /Central/ Vijayawada,
S.C. Railway, DRM Compound,
Vijayawada, Krishna District.
3. Assistant Divisional Engineer,
Bapatla, South Central Railway,
Bapatla, Guntur District.

..... Respondents

Counsel for the Applicant : Mr. J.M. Naidu, Advocate

Counsel for the Respondents : Mrs. KMJD. Shyama Sundari, SC for Rlys

CORAM

Hon'ble Mr. Justice R. Kantha Rao, Judicial Member
Hon'ble Mrs. Minnie Mathew, Admin Member

ORAL ORDER
{Per Hon'ble Mr. Justice R. Kantha Rao, Judicial Member}

Heard the learned counsel appearing for the applicant. There is no representation for the respondents at the time of hearing.

2. Respondents did not file reply in the MA for condonation of delay. Hence, right to file reply was forfeited and MA for condoning the delay was allowed. The respondents have not filed their reply in the main OA either despite several adjournments granted for this purpose. Hence right to file reply was forfeited on 19.03.2018.

3. The applicant was issued a major penalty charge sheet for absence on 63 different dates from 01.4.2008 to 31.03.2009 in different spells without appropriate sanction of leave or observing the Railway Medical Attendance Rules. After enquiry, the enquiry officer held the charge as proved. The disciplinary authority, after consideration of the enquiry officer's report observed that the applicant was absent for 63 days in different spells from 01.4.2008 to 31.03.2009 and was further absent for 69 days from 01.4.2009 to 31.12.2009 in different spells. He therefore, imposed a penalty of compulsory retirement with 100% pensionery benefits w.e.f. 10.04.2010. The applicant thereupon filed an appeal before the appellate authority on 24.04.2010. The appellate authority held that the applicant had been absent for 1287 days from 1980-1981 to 2008-2009 and that he had been earlier imposed a penalty of reduction of pay for 2 years for unauthorised absence for 244 days w.e.f. 01.10.2002. Subsequently he had also been imposed the

penalty of removal from service w.e.f. 25.12.2005. On his appeal, the

punishment was reduced to that of reduction to a lower stage for a period of 2 years. Holding that the applicant is guilty of habitual absenteeism, he, confirmed the penalty of compulsory retirement with 100% pensionary benefits w.e.f. 10.04.2010. The Revision Petition filed by the applicant was also rejected stating that the applicant had resorted to unauthorized absence for more than 1200 days spread over 28 years.

4. It is observed that the disciplinary authority the appellate authority and the Revising Authority have gone beyond the scope of the charge memo which was only in respect of unauthorised absence for a period of 63 days in different spells from 01.4.2008 to 31.03.2009. The disciplinary authority in his enquiry report has added another spell of absence of 69 days which was not there in the original charge memo. The appellate authority has further observed that his absence for 1287 days from 1980-1981 to 2008-2009 shows that he is prone to habitual absenteeism and failed to correct himself in spite of all penalties that were awarded. We note that there is no charge of habitual absenteeism against the applicant. The article of charge in the present OA relates only to unauthorised absence from 01.04.2008 to 31.03.2009. Thus, the respondent authorities have gone beyond the scope of the present charge memo while passing the impugned orders. Thus the orders passed warrant interference on this ground.

5. Further considering all the aspects, we are of the view that the punishment imposed on the applicant is disproportionate to the charge proved against him. Therefore, we are of the opinion that the punishment

is liable to be modified having regard to the gravity of the charge levelled against the applicant. The punishment order passed against the applicant i.e.

compulsory retirement from the service which is confirmed by the Appellate and Revisionary Authorities is hereby set aside. The 3rd respondent is, therefore, directed to impose appropriate minor penalty keeping in view the nature and gravity of the charge levelled against applicant within a period of three months from the date of receipt of a copy of the order.

6. The OA is allowed to the extent indicated above. No order as to costs.

(MINNIE MATHEW)
ADMN. MEMBER

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

Dated the 19th June, 2018
(Dictated in the Open Court)

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