

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

O.A. No.1182 of /2012

Date of CAV:26.10.2017.

Date of Order : 16.11.2017.

Between :

G.Vara Prasad, s/o late Shri G.Mallaiah,
aged about 40 yrs, Occ:Shunter (Removed),
Dornakal, South Central Railway,
Secunderabad Division, r/o 1-35/3, Kothapally,
Jammi Kunta, Karimnagar District.

... Applicant

AND

1. The Union of India, rep., by the
General Manager, South Central Railway,
Rail Nilayam, Secunderabad.

2. The Chief Operations Manager,
South Central Railway,
Rail Nilayam, Secunderabad.

3. The Divisional Railway Manager,
South Central Railway, Secunderabad Division,
Secunderabad.

4. The Sr.Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Secunderabad.

5. The Sr.Divisional Electrical Engineer,
South Central Railway, Secunderabad Division,
Secunderabad.

... Respondents

Counsel for the Applicant

... Mr.M.V.Krishna Mohan

Counsel for the Respondents

... Mrs.K.M.J.D.Shyama Sundari, SC for Rlys.

CORAM:

THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)

THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicant submits that while working as Diesel Assistant in the Respondent Organization, he was medically decategorized on 13.1.2004 on account of mental depression. After decategorisation, he was sent on deputation to Ramagundam on 25.11.2006. However, from 25.11.2006, his health deteriorated due to which he could not attend his duties from 25.11.2006 to 2.3.2007. Thereupon, the respondents issued a charge memo dated 12.3.2007 alleging that he had remained unauthorizedly absent for a total period of 98 days from 25.11.2006 to 2.3.2007 and was still continuing to be absent. It was also alleged that the period of absence was neither covered by leave duly sanctioned by the competent authority nor supported by a medical certificate issued by the Railway Doctor.

2. The applicant contends that the said charge memo was not served on him till the inquiry was held on 17.05.2007 and that the charge memo was handed over to him only on the date of the inquiry. The Inquiry Officer without waiting for his explanation, conducted the regular inquiry and submitted his report on the very same day holding the charge as proved. The finding of the Inquiry Officer was that his absence was *“neither covered by leave by sanctioning authority nor covered by sick leave according to Medical Attendance Rules. The charged employee failed to submit any reason for his absence.”* Thus, the Inquiry Officer did not provide reasonable opportunity to defend himself in the inquiry and to disprove the charges levelled against him. It is also submitted that when he is sought to be deprived of his livelihood, the procedure laid down under the Rules are required to be strictly followed. Further, the findings of the Inquiry Officer are not supported by any evidence and are wholly perverse. The inquiry conducted against him is against the principles of natural justice and as such,

the same is vitiated. The applicant also submits that he submitted a representation on the Inquiry Officer's report to the disciplinary authority on 26.5.2007 bringing to his notice that he was suffering from psychological problem during the alleged period of unauthorised absence and requested to exonerate him from the charges levelled against him. The disciplinary authority without applying his mind as to whether the Inquiry Officer has followed the procedures required and whether the principles of natural justice were followed, simply accepted the findings of the Inquiry Officer and issued Annex.A-8 Memo dated 11.6.2007 imposing the penalty of compulsory retirement with full pensionary benefits. Thereupon, the applicant submitted an Appeal to the appellate authority on 27.7.2007. However, the appellate authority disposed of the Appeal confirming the penalty imposed by the disciplinary authority. The applicant also submitted a Revision Petition against the order dated 22.10.2007 to the Chief Operations Manager and prayed for modification of the punishment order and also requested to take him back to duty as he was absent only for a brief period of 98 days due to mental imbalance. However, the Reviewing Authority did not consider the Revision Petition filed by the applicant. The Respondent authorities, instead issued a corrigendum on 31.8.2009 modifying the penalty as compulsory retirement with full pension or gratuity or both as admissible.

3. The main grounds urged by the applicant are that there has been gross violation of procedure and principles of natural justice in the inquiry conducted as well as in the orders passed by the Disciplinary Authority and Reviewing Authority. By serving the charge memo on him only on the date of inquiry on 17.5.2007, he has been deprived of reasonable opportunity to submit his explanation to the charge memo. Thus, the entire inquiry proceedings are vitiated on this ground. It has also been argued that he

did not absent himself wilfully or deliberately and, therefore, the respondents have erred in holding him guilty. Further, the punishment imposed on the applicant is harsh and disproportionate particularly when the period of absence was only for 98 days. The applicant submits that he is clearly covered by the judgement of the Hon'ble Supreme Court in the case of Sh. Bhagwanlal Arya Vs Commissioner of Police, Delhi & Others {AIR 2004 SC 2131} where it has been held that a punishment which is not only excessive and disproportionate, can be set aside.

4. The applicant has also filed a Miscellaneous Application praying for condonation of delay of one year and six months. Although the respondents opposed the prayer, this Tribunal condoned the delay taking into consideration the reasons given as well as the facts of the case.

5. The respondents have filed a reply statement stating that the applicant was in a safety cadre post dealing with the safety of passenger traffic and freight traffic. He was earlier imposed with a penalty of Compulsory Retirement in the year 2004 vide order dated 05.08.2004 for remaining unauthorizedly absent from his duties w.e.f. 05.11.2002 to 10.03.2003 and continuing. However, the appellate authority took a lenient view and vide his order dated 11/14.02.2005 reduced the punishment to that of reduction to the lowest stage in the grade of Shunter for a period of 3 years on cumulative basis. As the applicant again started remaining unauthorizedly absent, he was proceeded against for imposition of a major penalty on 12.3.2007 on the ground that his absence from 25.11.2006 onwards was neither covered by leave nor by Railway Medical Certificate issued by the Railway Doctor. The applicant attended the inquiry on 17.05.2007 and admitted that he had remained absent from 25.11.2006 to

02.03.2007 and also further agreed that he has not produced any sick certificate issued by the Railway Board. Thus, the applicant has accepted the charges without any dispute. When the inquiry report was sent to him, he submitted his defence representation stating that he accepted the charges without any hesitation and that the applicant never raised any objections regarding the conduct of the inquiry. Even in the appeal submitted to the appellate authority on 27.7.2007, the applicant has never objected to the irregularities in the conduct of the inquiry. Thus, the orders passed by the disciplinary authority imposing the punishment of compulsory retirement with full pensionary benefits has been passed duly considering the representation of the applicant. The appellate authority and the revision authority have upheld the punishment imposed by the disciplinary authority, with the revision authority observing that the applicant had been given sufficient opportunities for improvement in the past.

6. It is also submitted by the respondents that after the orders of the revising authority, the applicant vide his Annex.R-7 letter dated 17.7.2008 requested to modify the punishment order. In his letter he submitted that when he submitted his claim for pension, he was given to understand that he did not have the requisite service for getting pension. He, therefore, prayed for modifying the punishment. The respondents pointed out that even in the said revision, the applicant has not raised any issues regarding the conduct of the inquiry. However in response to his letter, the disciplinary authority vide Annex.R-10 corrigendum dated 31.8.2009 modified the penalty as follows:

“Accordingly the penalty of compulsory retirement with full pension or gratuity or both is admissible is imposed on Shri G.Vara Prasad, Ex- Shunter (DKJ).”

7. The Respondents point out that the decision in Shri Bhagwanlal Arya's case has no applicability in the present case as in the said case, Shri Bhagwanlal Arya had sent applications for leave on medical grounds and submitted medical certificates from competent medical authorities in accordance with the Leave Rules whereas the applicant in the present case has neither applied for leave nor submitted any medical certificate. Further, Shri Bhagwanlal Arya was imposed with the punishment of removal from service whereas in the instant case a lesser punishment of compulsory retirement with all benefits as per Rules was imposed. Further, when an employee with less than 20 years of service is imposed with a punishment of compulsory retirement, he would not be eligible for medical facilities in the Railway Hospital. However, in the instant case, the applicant was extended this benefit also. They have also relied on the judgement of the Hon'ble Apex Court in the case of State of Haryana & Anr. Vs. Rattan Singh AIR 1977 SC 1512 in which the Apex Court has categorically held that in a domestic inquiry, the complicated principles and procedure laid down in the Code of Civil Procedure 1908 and the Indian Evidence Act, 1872 do not apply and that the only right of a delinquent employee is that he must be informed as to what are the charges levelled against him and he must be given full opportunity to defend himself on the said charges. They also submit that Courts / Tribunals should not normally interfere with the punishment imposed by a disciplinary authority except in cases where such punishment is grossly or shockingly disproportionate. They also submit that since the domestic inquiry has been conducted properly and the principles of natural justice have been strictly followed and since there has been no denial of reasonable opportunity and the findings are based on evidence, the case does not warrant interference by this Tribunal.

8. Heard the learned counsel on both sides and perused the records.

9. The learned counsel for the applicant argued that the respondents have medically decategorized the applicant on the ground of mental depression and Psychosis and this aspect should have been borne in mind while passing orders in the disciplinary inquiry. He also relied on the judgement of the Hon'ble Supreme Court in Chairman-cum-Managing Director, Coal India Limited Vs Mukul Kumar Choudhuri in which the doctrine of proportionality has been enunciated and the Civil Appeal was allowed as the punishment was unduly harsh and grossly in excess of the charges. In the present case also, the extreme punishment of compulsory retirement has been imposed on the applicant even though the unauthorised absence was only for a period of 98 days. He also placed reliance on the judgment of Hon'ble Supreme Court in K.R. Parmar Vs UOI in which it has been held that the disciplinary authority had failed to disprove that the absence from duty was wilful and that no such finding had been given by the Inquiry Officer or the Appellate Authority. In the present case also, there was no wilful absence and the applicant could not attend to his duties in view of his severe ill-health as has been explained by him in his representation against the Inquiry Officer's report.

10. From the material before us, it is seen that the applicant was medically decategorized and made fit for Cee-1 category, vide the proceedings of the Senior Medical Superintendent, S.C.Railway dated 13.01.2004. He was earlier imposed with a penalty of compulsory retirement in 2004 for remaining unauthorizedly absent from duty from 05.11.2002 to 10.03.2003. However, taking a lenient view, the appellate authority, vide his order dated 11/14.02.2005 reduced the punishment to that of

reduction to the lower stage in the grade of Shunter for a period of 3 years with cumulative effect. However, as the applicant was again unauthorizedly absent for a period of 98 days from 25.11.2006 to 02.03.2007, he was issued a charge memo on 12.03.2007. An inquiry was conducted against him. The applicant contends that he has received the charge sheet only on the date of inquiry on 17.05.2007 and that he was deprived of an opportunity for giving his written statement of defence. However, it is seen that the applicant has never raised any objection regarding this even during the course of the inquiry before the inquiry officer nor in his representation submitted to the disciplinary authority after receiving the report of the inquiry officer. In fact, in the Annexure.A-VII representation dated 26.05.2007 submitted to the Assistant Divisional Electrical Engineer, he has accepted "the charges without any hesitation". However, he hastened to add that as he was suffering from backache and was taking treatment at Gandhi Hospital, Secunderabad, and as he was not psychologically balanced, he could not apply for leave nor get medical certificate from the Railway authorities. He, therefore, prayed that the period may be treated as LWP and prayed for exoneration from the charges. However, the disciplinary authority after considering his representation against the inquiry officer's report and after noting that he has accepted the charges framed against him, has observed that unauthorized absenteeism amongst the running staff affects the discipline of the cadre and that such absenteeism causes burden on the other staff and that there is no purpose in continuing such staff on the rolls. On these grounds, he imposed the penalty of compulsory retirement with full pensionary benefits with immediate effect. Thereupon, the applicant submitted Annexure.A-IX appeal dated 27.07.2007 before the Additional Divisional Railway Manager (ADRM), reiterating that he was suffering from backache and was taking treatment and that he was certified by the Railway doctor as suffering from mental

depression and Psychosis. However, the appellate authority, vide Annexure.A-X order dated 22.10.2007 rejected the appeal stating that the applicant was given sufficient opportunity in the past for improvement and that he did not see any reason to modify the penalty imposed by the disciplinary authority. Further, when the applicant was informed that no pension could be granted as he did not possess the requisite service, and prayed for modification of the punishment order, the respondents have again issued a corrigendum authorising pension or gratuity or both as admissible.

11. Thus, it is evident that the applicant has never raised any objections about the procedures adopted by the inquiry officer at the time of the inquiry. Even though he submitted a representation to the disciplinary authority against the Inquiry Officer's report, he never pointed out the non-compliance of the prescribed procedures by the Inquiry Officer. The Annexure.A-IX appeal submitted to the Appellate Authority and Annexure.A-XII representation to the Reviewing Authority are silent on the flaws which have vitiated the inquiry. Therefore, the contention of the applicant at this juncture about the procedural flaws that have occurred in the disciplinary proceedings is untenable.

12. The second ground that has been taken is that the punishment of compulsory retirement is harsh and disproportionate since the period of absence is only 98 days. The applicant has relied on the orders in Civil Appeal Nos.5762-5763/2009 in *Chairman cum Managing Director, Coal India Limited & Another v. Mukul Kumar Choudhuri & Others* to buttress his claim that the punishment order is grossly disproportionate to the charge against the applicant. As regards this contention, it is seen that the applicant had in the year 2004 also remained unauthorizedly absent and

was then imposed with a punishment of compulsory retirement. However, taking a lenient view, the appellate authority had then reduced the punishment to that of reduction to the lower stage in the grade of Shunter.

13. From the aforesaid facts, it is clear that the applicant had been given an opportunity to improve his performance, but that, he continued to be absent without applying for leave on the ground that he was taking treatment for backache at Gandhi Hospital, Secunderabad. Viewed against this background, there can be no ground for holding that the punishment is harsh or disproportionate, particularly when there is nothing on record to indicate that the applicant had produced even a medical certificate from the Gandhi Hospital, Secunderabad, where he was reportedly taking treatment. In view of the fact that this is repeated misconduct and the punishment imposed is only compulsory retirement, which would entitle him, in the normal course, to some benefits like admissible gratuity, we are of the view that the judgment in Mukul Kumar Choudhuri's case is of no help to the applicant. It is also pertinent to observe that the applicant himself had accepted the punishment and only prayed for modification of the penalty order so that he would become eligible for pensionary benefits.

14. In *Krushnakant B.Parmar v. Union of India* in Civil Appeal No.2106/2012, the Hon'ble Apex Court had held that *"if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct"*. In the present case, the applicant himself has without any hesitation accepted the charges and has

only pleaded for mercy as he could not apply for leave or submit a medical certificate from the authorities concerned. In this view of the matter, this judgment also is not applicable to the present case.

15. Having regard to the totality of the facts and circumstances, we hold that the punishment of compulsory retirement imposed on the applicant cannot be regarded as grossly or shockingly disproportionate to the charge against him. In fact, based on his representation that he did not have the requisite service for getting pension after his compulsory retirement, the respondents have vide the impugned Annexure.A-I orders dated 31.08.2009 modified the penalty of compulsory retirement "With full pension or gratuity or both as admissible", based on which, the respondents have made settlement to him vide Annexure.R-VIII order. We are also in agreement with the respondents that the applicant after having accepted the charges and the penalty and also received the benefits to which he was entitled to, vide Annexure.R-VIII orders, he is not entitled to the relief sought for in this OA.

16. Having regard to the foregoing discussions, the OA fails and is dismissed with no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated: this the 16th day of November, 2017

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