

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No. 111/2015

Ahmedabad, this the 17th day of December, 2018

CORAM :

Hon'ble Ms. Archana Nigam, Member (A)

Hon'ble Sh. M.C. Verma, Member (J)

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Shri Chirag S/o Shri Harnarayan Vyas, Aged 40 years, residing at Harikrupa, Vyas Wada, Mehammadabad-387130. **...Applicant**

(By Advocate :Mr.M.S.Trivedi)

VERSUS

- 1- The General Manager, Western Railway, Churchgate, Mumbai – 400 020.
- 2- The Divisional Railway Manager, O/o DRM, Western Railway, Ahmedabad Division, Nr. Chamunda Bridge, Asarwa, Ahmedabad – 2.
- 3- The Additional Divisional Railway Manager, O/o DRM, Western Railway, Ahmedabad Division, Nr. Chamunda Bridge, Asarwa, Ahmedabad-2.
- 4- Senior Divisional Mechanical Engineer (CO), O/o Sr. DME (CO), Western Railway, Ahmedabad Division, Nr. Chamunda Bridge, Asarwa, Ahmedabad-2 **...Respondents**

(By Advocate :None)

O R D E R

Per M.C.Verma, Member (Judicial)

The facts, as has been set out in the O.A., in short are that for unauthorised absence, during the period from 03.08.2013 to 25.12.2013, applicant was chargesheeted and on denial of charges, inquiry was conducted and on the basis of report, punishment of removal from service vide order dated 01.09.2014 was imposed by Disciplinary Authority. That order of Disciplinary Authority was challenged by applicant in appeal, which was preferred on 09.10.2014. Applicant, on 16.10.2014 came to know through reply of respondents, given on Application under RTI Act, that his removal by the Disciplinary Authority was with 2/3rd pensionary

benefits. That having come to know that he has been given pensionary benefit, applicant on 31.12.2014 being satisfied by order of Disciplinary Authority preferred application having request for withdrawal of his appeal but, Appellate Authority failed to consider his request of withdrawal or of personal hearing, as was prayed for, and upholding his guilt and reducing the penalty of removal to that of reduction to one stage in the time scale for three years with future effect and treating the period from removal to date of reinstatement as not spent on duty, passed the order on appeal on 20.01.2015. That Order dated 20.01.2015 passed by Appellate Authority, the respondent No. 2 has been impugned in instant OA and prayer has been made to quash and set-aside the impugned order.

2. The pleading of the respondents set out in the reply, mutatis-mutandis is that the Appellate Authority disposed of the appeal on 29.12.2014 i.e. two days prior to the furnishing of the application and there is no infirmity in the order of Appellate Authority. It has also been pleaded that withdrawal of appeal is not permissible under the Rules.

3. Applicant reiterating his stand taken in OA and adding that withdrawal of appeal is permissible, has filed re-joinder.

4. Needless to say that on 27th August, 2018, after hearing the matter partly, record of Appeal was called for. The operative portion of Order dated 27/08/2018 reads as under :-

“During hearing it transpires that an enquiry for alleged absence from duty was conducted against the applicant, that Disciplinary Authority inflicted punishment of removal from service with 2/3rd pensionary benefits, and that applicant preferred the appeal. The contention of learned counsel for applicant is that during pendency of Departmental Appeal, petition for withdrawal of appeal was preferred by applicant but, the appeal was disposed of on merits and punishment was modified reducing penalty of removal to that of reduction

to one stage in time scale for three years with future effect. Whereas, the submission of learned counsel for respondents is that application for withdrawal of appeal was preferred after disposal of appeal by Appellate Authority.

There is no dispute that the petition for withdrawal of appeal was preferred on 31.12.2014, however, according to the learned counsel for respondents, the appeal was disposed of on 29.12.2014 and, applicant, on 20.01.2015 was simply communicated result. Learned counsel asserts that appeal was disposed of on 20.01.2015 and deliberately, to harass the applicant, no order on application for withdrawal was passed. In such confusing situation of fact, it would be appropriate to call for the records of departmental appeal. Counsel for the respondents therefore, is directed to make available the entire record of appeal on the next date.....”

5. Neither record of Appeal has been produced nor Counsel for respondents appeared for hearing. Heard the learned counsel for applicant only and he reiterated that Appellate Authority decided the Appeal on 29th December, 2014 and Application for withdrawal was given on 31.12.2014 i.e. 20 days prior to that. He referred the copy of order of Appellate Authority, Annexure-A/I bears date 20/01/2015. For want of non appearance of counsel for respondents, we remained deprived to hear arguments on behalf of the respondents.

6. The issue evolved from pleadings of the OA, reply filed by respondents and rejoinder filed by the applicant is, whether the Appellate Authority has disposed of the appeal prior to filing of the application for withdrawal or, application for withdrawal was preferred after passing of the Order by the appellate authority and whether the Appeal preferred can be withdrawn or not by the appellant? No doubt, the appellant is the person to take decision to prefer or not to prefer appeal and if, he is the deprived person for decision of filing or non-filing of appeal, hence, cursorily it cannot be said that he cannot take decision for withdrawal of appeal. However, what has been observed does not mean to say that the appellate Authority is bound to accept the withdrawal. What we meant

that if application for withdrawal of appeal is preferred by appellant, before pronouncement of order on appeal, at least, it is expected that some order on that application for withdrawal, needs to be passed.

7. Any how, without entering into the controversy of the factual aspect as to whether any application for withdrawal was preferred and if preferred, whether before or after disposal of appeal, we find that the Order of the Appellate Authority is suffering from some material infirmities which renders the decision/Order legally not sustainable.

8. Disciplinary Authority inflicted the punishment of "Removal from service with 2/3rd pensionary benefits", but what transpires from the Order of the Appellate Authority that he took decision considering the punishment inflicted by disciplinary authority, as of removal from service only. Nowhere, decision of Appellate Authority, indicates that Appellate Authority has taken note that the punishment of removal from service was with 2/3rd pensionary benefits to the applicant. When there is wrong assumption of material facts, the order or judgment based upon said wrong facts cannot be hold good. Undoubtedly, the Appellate Authority while passing the order was under wrong impression that the punishment inflicted is only of removal from service. Had the Appellate Authority was aware that it was not solitary removal from service but was removal from service with 2/3rd pensionary benefits, possibility of different punishment may be there.

9. The Order of the Appellate Authority also reveals that while inflicting the punishment, the motive of the Appellate Authority was to take lenient view but the punishment inflicted by Appellate Authority, in the facts and circumstances of the case of applicant, who has retired now,

has adversely affected him and has enhanced hardship of the applicant. We, without hesitation can say that the import of Order of the Appellate Authority is exactly not the same as was intended nor it is in consonance with the intent of the Appellate Authority. The order of Appellate Authority, thus, is liable to be set aside.

10- In view of our finding that Order of Appellate Authority is liable to be set-aside, it shall be futile exercise to enter into and to decide the issues regarding merit of the order of Disciplinary Authority, as applicant is satisfied with the order of punishment passed by the Disciplinary Authority. The order of the Appellate Authority, accordingly, is quashed and the O.A. thus is disposed of with the above direction. No order as to costs.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)