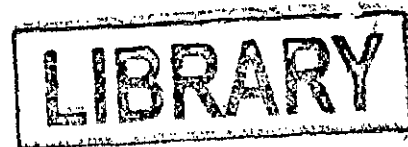


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



No.O A /350/193/2015

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Narayan Chandra Patra,
Son of Late Birendra Nath Patra,
Ex-Senior Commercial Clerk (Goods)
Under the Area Manager,
South Eastern Railway, Shalimar,
Residing at 11, Joy Shankar Lane, Uttarpara,
Hooghly – 712 258.

..... Applicant.

- Versus -

1. Union of India,
Service through the General Manager,
South Eastern Railway,
Garden Reach,
Kolkata – 700 043.
2. The Chief Commercial Manager,
South Eastern Railway,
14, Strand Road,
Kolkata – 700 001.
3. The Additional Divisional Railways Manager,
South Eastern Railway,
Kharagpur, Midnapur (West)
Pin – 713 301.
4. The Senior Divisional Commercial Manager,
South Eastern Railway,
Kharagpur, Midnapur (West)
Pin – 713 301.
5. The Area Manager,
South Eastern Railway,
Shalimar, Howrah,
Pin – 711 103.

..... Respondents.

For the applicant : Mr. G. Singh, counsel

For the respondents : Mr. B.L. Gangopadhyay, counsel

Heard on : 21.01.2019

Order on : 4.2.19.

ORDER

Bidisha Banerjee, Judicial Member

This O.A. has been preferred by the applicant in order to seek the following reliefs:-

- "i) An order directing that the charge memorandum being Memo No. G26/1251/D&A/Pt. 15 dated 19.02.2014 is illegal unlawful and should be quashed;
- ii) An order directing the impugned Memo No. G36/46/Long absence dated 04.10.2004 issued by the Sr. DCM/S.E Railway/Kgp and Office Memo No. G36/46/Long absence dated 20.11.2013 and Memo No. G26/1251/D&A/Pt 15 dated 19.02.2014 being annexure 'A-5, A-17 and A-18 be quashed and the respondent be restrained from giving any effect or further effect thereto;
- iii) Further order or direction may be given to the appellate authority that after hearing the applicant and taking into consideration all the medical certificate, those were received by the authorities the appeal be heard afresh de novo and the decision and in the event the decision of the appeal goes in favour of the applicant to reinstate the applicant in his post forthwith with all consequential benefit, that has accrued as if he is in service and the entire inter/ regime period be treated as spent on duty with all consequential benefits;
- iv) And to pass such other order or orders as Your Lordship may deem fit and proper."

2. The facts in a nutshell is that the applicant was proceeded against for unauthorised absence from 07.11.1993 to February, 2006 and was dismissed from service by the Sr. DCM/Kharagpur vide order dated 07.10.2004, which order reads as follows:-

"I have gone through the entire case in detail. The charges stand proved beyond any doubt. The CO has not offered any defence. He has not submitted any representation also.

Holding him guilty, I dismiss him from service with immediate effect.

This should be acknowledged.

Sd/-

(Vivek Srivastava)
Sr. Divl. Comml. Manager/KGP"

The applicant preferred an appeal against the order of his punishment, on 29.06.2009, which when not disposed of despite repeated representations, he was constrained to move this Tribunal in O.A.No.389/201. The O.A. was disposed of on 07.06.2011 with the following orders:-

"5. We dispose of this OA with a direction to the Appellate Authority to first consider as to whether sufficient cause has been shown to condone the delay in filing of appeal and in case delay is condoned, to consider the appeal on merit. We make it clear that we have expressed no opinion on the merits of the case. The exercise be completed within two months of the receipt of the order."

On 18.06.2011, the Chief Commercial Manager rejected the appeal on the ground that the delay of more than 4 years was not explained by the applicant. The applicant was compelled to move this Tribunal once again in O.A.No.1039/2011 which was dismissed as "withdrawn" on 09.12.2011 with liberty to supply documents to the Appellate Authority for reconsideration of the appeal. On 02.01.2012, the applicant approached the Chief Commercial Manager with all the medical certificates in support of his treatment from 07.11.1993 to February, 2006 and again from 15.03.2006 to 15.06.2009, along with fit certificate(Annexure A/11).

On 16.03.2012 the applicant was asked by the Chief Commercial Manager, S.E. Railway, Kolkata to submit appeal to the Additional Divisional Railway Manager(ADRM), S.E. Railway, Kharagpur Division, and pursuant thereto, the applicant on 03.09.2012 renewed his prayer before the Divisional Railway Manager[DRM(P)], S.E. Railway, Kharagpur for speedy disposal of his long

pending appeal addressed to the Chief Commercial Manager, S.E. Railway, Kolkata. He even sent a legal notice on 03.09.2012.

On 20.09.2012, the DPO requested the Area Manager, South Eastern Railway, Shalimar to examine his case and furnish the latest position of his appeal, who reiterated on 28.09.2012 that the appeal was wrongly preferred to Senior Divisional Personnel Officer, Kharagpur, instead it had to be preferred to the ADRM, Kharagpur. His appeal to the ADRM, Kharagpur Division, S.E. Railway on 07.09.2012 was finally disposed of after more than one year on 20.11.2013 with the following orders:-

"Reg: Appeal dtd. 07.09.2012

Ref: Punishment Notice No. G36/46/Long absence, dt. 07.10.2004.

Your appeal dtd. 07.09.2012 is time barred under Rule 20 of RS (D&A) Rules 1968 as the same has been submitted beyond the stipulated period of 45 days from the date of receipt of the punishment notice and you did not produce any supporting acceptable documents for condonation of delay.

However, in obedience to Hon'ble CAT/CAL's order dtd. 11.06.2013 in OA 462 of 2013 I have carefully gone through your appeal dtd. 07.09.2012, SF-05 No. G36/46/Long absence, dt. 10.11.1998, your representation dtd. 29.11.1999, Punishment Notice No. G36/46/Long absence, dtd. 07.10.2004 and other relevant documents.

It is observed that you were issued with a major penalty charge sheet (SF-5) on 10.11.1998 due to unauthorized absence from 07.11.1993 to 10.11.1998 and you had received the same also. Although you have had ample scope to defend your case, but you did not attend in the enquiry. On the other hand, during the proceedings you had neither submitted any representation nor had intimated your office about the reason of your inability to attend the enquiry. As a result the administration compelled to take decision on ex-parte basis and duly following the rules in vogue disciplinary authority, i.e. Sr. DCM/KGP imposed the punishment "Dismissed from Railway service" w.e.f. 07.10.2004 upon you.

Hence, I being the Appellate authority find no merit in your appeal and decided to keep the punishment imposed by DA stands good.

You are at liberty to prefer revision petition if any before the Revising Authority i.e CCM/SER/KOL within 45 days from the date of receipt of this order."

A revision petition was preferred by the applicant on 16.12.2013 to the Chief Commercial Manager, S.E. Railway, Kolkata which was rejected on 19.02.2014 with the following orders:-

"SPEAKING ORDER

I have carefully gone through revision petition filed by Shri Narayan Chandra Patra, Ex.CC(G)/SHM on the punishment notice dated 07.10.2004. In obedience of Hon'ble CAT's Order you have filed an appeal to the Appellate Authority on the punishment notice. Appellate Authority has rejected the appeal.

You have again filed an appeal to the revisionary authority. From the records, it appears that you have been issued major penalty chargesheet on 10.11.1998 for unauthorized absence from 07.11.1993 to 10.11.1998. You have been given scopes to defend your case but you did not attend the enquiry. No representation was given by you. As a result, administration was compelled to take ex parte decision. The Disciplinary Authority i.e. Sr. Divl. Comml. Manager, KGP imposed punishment of dismissal from service.

Hence, I, being the revisionary authority, find no merit on your revision petition and decide not to alter the punishment imposed by Disciplinary Authority. The punishment imposed by disciplinary authority stands good."

3. By drawing our attention to the aforesaid orders, as extracted and enumerated supra, Id. counsel for the applicant would strenuously urge that the reason for his absence was beyond his control as the applicant had almost lost his mental balance due to which he was not in a position to serve the respondents, but infliction of a punishment of dismissal from services for unauthorised absence was too harsh and shockingly disproportionate to the alleged absence as also in total non-consideration of RBE No.164/2008 which makes it imperative for the authorities to grant compassionate allowance to such railway servants who are discharged from service on the ground of unauthorised absence, in absence of

any charge in regard to any financial misdemeanour. Further, that despite submission of medical certificates, the authorities refused to recall their order.

4. At hearing, Id. counsel for the applicant would submit that he would be satisfied if the authorities were directed to consider his case in the light of such RBE No.164/2008.

Ld. counsel for the respondents would defend themselves by submitting that the applicant, having never asked for relief in terms of RBE No.164/2008, was not entitled to be considered as such.

5. We heard the Id. counsel for the parties and perused the materials available on record.

6. At the outset, we would fumigate our mind with the celebrated decisions of the Hon'ble Apex Court deprecating issuance of cryptic orders by the disciplinary authorities, the decisions being :-

(i) **Som Datt Datta vs. Union of India & Ors.** [(1969) 2SCR 177];

(ii) **Tarachand Khatri vs. Municipal Corporation, Delhi** [AIR 1977 SC 567]

(iii) **R.B. Bhatt vs. Union of India & Ors.** [AIR 1986 SC 1040]

(iv) **Cyril Lasrado vs. Juliana Maria Lasrado** (2004) 7 SCC 436

(v) **Rakesh Bhatnagar vs. Union of India & Ors.** (2014) 15 SCC 646

7. Ld. counsel for the applicant would cite several decisions of the Hon'ble Supreme Court in order to contend that the applicant deserved fair treatment in the proceedings and that the authorities having never furnished the enquiry report, prevented him from effectively putting up his defence against the same, which resulted in his dismissal.

8. We had asked for the proceedings file to find whether there was any procedural flaw. Ld. counsel for the respondents would submit on instruction

that departmental proceeding file was not traceable at this distant date, therefore, it could not be made available despite clear direction of this Tribunal. As such, this Tribunal is not in a position to adjudicate whether the enquiry proceedings were drawn up and concluded by affording full opportunity to the applicant to present his case and effectively put up his defence.

9. At that juncture, the Id. counsel for the applicant would renew his submission and agree that the applicant would be happy and satisfied if compassionate allowance was granted to him in terms of RBE No.164/2008, which would render conscionable justice to him.

10. Accordingly, we would dispose of this O.A. with consent of the Id. counsels, granting liberty to the applicant to prefer a comprehensive representation to the authority concerned in terms of RBE No.164/2008 within a period of two weeks from the date of receipt of a copy of this order. In the event such representation is preferred, the same shall be considered sympathetically in the light of RBE No.164/2008 with appropriate orders to accord such benefits to the present applicant, as he would be entitled to in law, within a further period of two months from the date of receipt of such representation.

However, no order is made as to costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member