

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS: BILASPUR

Original Application No.203/00638/2012

Bilaspur, this Thursday, the 04th day of April, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Shiv Charan S/o Late Papaiya Aged about 52 years Ex
Senior Box Boy South Eastern Central Railway Bilaspur
Chhattisgarh resident of Akaltara, Post Akaltara District
Janjgir Champa Chhattisgarh 495552

-Applicant

(By Advocate- **Shri A.V. Shridhar**)

V e r s u s

1. Union of India- Through the Secretary Ministry of
Railways Rail Bhawan New Delhi 110001

2. The Senior Divisional Mechanical Engineer, Bilaspur
Cum Revisional Authority South Eastern Central Railway
Bilaspur District Bilaspur Chhattisgarh 495004

3. The Divisional Mechanical Engineer Bilaspur cum
Appellate authority South East Central Railway Bilaspur
District Bilaspur, Chhattisgarh 495004

4. The Additional Divisional Mechanical Engineer
Bilaspur Cum Disciplinary Authority South East Central
Railway Bilaspur District Bilaspur Chhattisgarh 495004

- Respondents

(By Advocate-**Shri Sandeep Shrivastava**)

(Date of reserving the order:01.04.2019)

ORDER**By Navin Tandon, AM:-**

The applicant is aggrieved by the imposition of penalty of removal from service.

2. The applicant has made the following submissions:-

2.1 He was appointed as Box Boy in the year 1977 and thereafter was promoted to the post of Senior Box Boy in the year 2002.

2.2 He was issued with a major penalty charge sheet for unauthorized absence from duty for the period from 17.06.2011 to 21.09.2011 and onwards. After conducting the departmental enquiry, he was removed from service.

2.3 The order of punishment passed by the disciplinary authority was upheld by the appellate authority and the revisionary authority.

2.4 He submits that he was suffering from severe pain in his right leg and as soon as he became fit he submitted his medical certificate and marked his presence but the same was not considered by the respondent-department.

3. The applicant has prayed for the following reliefs:-

“8.a that the Hon’ble Tribunal may kindly be pleased to call the entire records pertaining to the case of the applicant.

8.b That the Hon’ble Tribunal may kindly be pleased to set aside the order Annexure A/1 issued by respondent No.2 dated 7.3.2012 and further be pleased to direct the respondents to reinstate the applicant with arrears of back wages including all consequential benefits, in the ends of justice.

8.c Any other relief which the Hon’ble Tribunal deems fit and proper may be awarded.”

4. The respondents have submitted as under:-

4.1 The applicant was appointed in Railway service on 04.09.2002 in Group ‘D’ category and posted as Commission Bearer/Vendor. Since then he has

performed only 3 years, 1 month and 18 days service and remaining period of duty he was absented.

4.2 He was issued a major penalty charge sheet for unauthorized absence from his duty from 17.06.2011 to 21.09.2011 and onwards.

4.3 After following all the procedures regarding service of charge sheet, holding of enquiry etc., he was issued with a major penalty of 'removal from service without any compassionate allowance with immediate effect' on 26.12.2011 (Annexure A/2).

4.4 The applicant has submitted only an application regarding pain in right leg without enclosing any medical certificate (Annexure R/4).

5. Heard the arguments of both the learned counsel for the parties and perused the pleadings available on file.

6. Learned counsel for the applicant in his argument has submitted that rights of the charged official (CO) was not

informed to him during the enquiry. Further it is also to be proven that the unauthorized absence was willful. In this regard, learned counsel for the applicant submits that it has been held by the Hon'ble Supreme Court that the department should prove that it is the case of willful unauthorized absence for imposing a penalty on the employee. Further the punishment is disproportionate to the charges leveled against the applicant.

7. Learned counsel for the respondents submits that the applicant during the enquiry has not brought out any fact regarding the reasons for his absence, nor he has submitted any medical certificate for the same. Since he has already worked for more than 10 years in the department, he cannot claim ignorance of rules and cannot claim benefit saying that he is illiterate.

8. We find that the enquiry proceedings are not available on record. Though the enquiry report has been filed by the respondents Annexure R/1, the details of the

proceedings on the third sitting namely 05.12.2011 has not been placed before us either by the applicant or by the respondents. In its absence, we cannot agree to the averment of learned counsel for the applicant that he was not afforded any proper opportunity for his defence. It is also undisputed that the applicant has not placed any medical certificate regarding his sickness for the unauthorized period. Therefore, the applicant has not made out the case where it can be said that his unauthorized absent was not willful.

9. Apart from the above, the applicant has failed to bring out any point that he failed to get natural justice.

10. The Hon'ble Supreme Court in the matters of **B.C. Chaturvedi Vs. Union of India**, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44, the Court has held:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal, the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose

appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

11. In the matters of Union of India Vs. Parma Nanda
(1989) 2 SCC 177 : 1989 SCC (L&S) 303 : (1989) 10 ATC 30, the Hon’ble Supreme Court while dealing with the scope of the Tribunal’s jurisdiction to interfere with the punishment awarded by the disciplinary authority observed as under:

“27. We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the

Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.”

12. In view of the aforementioned legal position, we do not find any illegality or irregularity in the impugned order passed by the respondents. Accordingly we find no substance in this Original Application and the same is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

kc