



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.287 of 2013

Date of order: 12.5.2016

Present: Hon'ble Justice Shri Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

PRALAY KUMAR GHOSH

VS.

UNION OF INDIA & ORS.
(EASTERN RAILWAY)

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. B.K. Roy, counsel

ORDER

Per Ms. Jaya Das Gupta, A.M.

The applicant, Sri Pralay Kumar Ghosh approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"a) To quash and/or set aside the Major Penalty Charge-Sheet Memo No.LE/94/Z/A-643/DA/03 CWM-Eastern Railway/LLH dated 12.9.2003 issued by the Deputy Chief Mechanical Engineer(M), CWM/Eastern Railway, against the applicant vide Annexure A-1 of this original application;

b) To quash and/or set aside the findings of the Enquiry Report dated 12.2.2004 and the report of the Enquiry Officer dated 07.11.2005 against the applicant vide Annexure A-3 and A-5 of this original application;

c) To quash and/or set aside the impugned punishment notice of removal from service being No.LE.94/2/A643/DA/03 dated 6.11.2006 issued by the Deputy Chief Mechanical Engineer, Eastern Railway, Liluah along with speaking order of removal from service against the applicant vide Annexure A-10 of this original application and to reinstate the applicant in service along with all consequential benefits;

d) To quash and/or set aside the order of the Appellate Authority dated 18.8.2012 which was communicated to the applicant vide letter dated 21st August, 2012 and to exonerate your applicant from all charges and to reinstate him in service with all back wages;

e) To declare that the entire proceedings which was initiated by the disciplinary authority as well as appellate authority is wholly ultra vires and bad in law and to quash and set aside the impugned disciplinary proceedings against your applicant."

2. Heard both and consulted the records.

3. The applicant was working in the post of Welder Gr.I in the C&W Workshop, Eastern Railway, Liluah and he remained absent from duty w.e.f. 06.04.2003 to 28.08.2003 allegedly on the ground of illness. The respondent authorities issued a charge sheet dated 12.09.2003 to the applicant for his unauthorized absence. The article of charge is set out below:-

"Article-I

That Sri P.K. Ghosh, A-643 while functioning as Tech-I, Welder, absented himself from duty since 6.4.03 to 28.8.03 without any intimation to the authority concerned as reported by SSE/A Shop/L&H vide his letter No.4/4/03/9 dt.28.8.03 which tantamounts to unauthorized absence on the part of Sri P.K. Ghosh A643.

As such, it is alleged that Sri P.K. Ghosh, A 643 Tech-I, Welder has violated the provision of Sub-Rule 1(ii) of Rule 3 of Railway Service Conduct Rule, 1966."

4. The applicant submitted his reply in defence to the charge sheet on 22.09.2003 where he gave various reasons for being absent, but it is noted from such written statement (Annexure A-2) that he has not mentioned that he had informed his higher officials regarding his absence from duty. However, he mentioned that he had submitted a request for voluntary retirement on 06.06.2003 which was not granted by the respondent authorities vide letter dated 01.09.2003. The Enquiry Officer came to the conclusion that the charged officer, namely, Sri Pralay Kumar Ghosh violated Sub-Rule 3 of Railway Services Conduct Rules and in his opinion, the charged official was found "guilty" on 12.02.2004. This finding of the Enquiry Officer was, however, not accepted by the Disciplinary Authority, who ordered a de novo enquiry.

In the second enquiry report submitted on 07.11.2005 the charged official was again found guilty as he was absenting himself unauthorisedly from 06.11.2003 to 07.11.2005. This order of the enquiry officer was passed on 07.11.2005. The Disciplinary Authority passed a speaking order on 06.11.2006 having come to the conclusion of finding the charged official guilty and ordered the penalty of "Removal" from Railway service w.e.f. 15.11.2006. The speaking order is extracted hereunder for ready reference:-

"SPEAKING ORDER

I being the Disciplinary Authority have gone through the entire DA Case file alongwith the Inquiry Report so submitted by the Inquiry Officer and the following observations are made.

That, Sri Proloy Kr. Ghosh, Tech.I/Welder, T.No.A-643 was issued with SF-5 Vide No.LE.94/2/A-643/DA/03 dt.12.9.03 for his unauthorized absence from 06.4.03 to 28.8.03. He resumed duty on 04.9.03 and further unauthorisedly absenting himself since 6.11.03 to till date vide SSE/A's Letter No.A/4/2006/30 dt.20.10.06.

Two letters were sent to the C.O. vide No.LE.94/2/A-643/DA/03 dt.08.05.06 & 29.06.06, though acknowledged by him on 19.5.06 & 08.07.06 but no reply was received from his end. Thus, it proves that he is not interested in his duty.

It is also observed that the I.O. has found him guilty for his unauthorized absence of the charge framed under the aforesaid SF-5 after holding the DA Inquiry proceeding on 07.11.2005.

Sri Ghosh, A-643 has been absenting unauthorisedly for a very long period and as shown no interest in joining his duty though sufficient opportunity has been given to him.

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After examining all the aspects, the undersigned has also found him guilty for his offence and also agree with findings of the I.O. that the charged official Sri Prolay Kr. Ghosh, Tech.I/Welder, T.No.A-643 is responsible for his offence in violating the Service Conduct Rules, 1966.

As such, the undersigned being the Disc. Authority in exercise of power conferred upon it passes the following orders against the charged official as a measure of penalty. "Sri Prolay Kr. Ghosh, Tech.I/Welder, T.No.A-643 of A-Shop is removed from Railway Service with effect from 15.11.2006(F.N.)."

The Disciplinary Authority had additionally passed an order for grant of two thirds of compassionate allowance and gratuity on his removal from service which is set out below:-

"The undersigned being a Disciplinary Authority has gone through the DA case as well as his past service rendered in the Railway and his service Record, the undersigned has considered him for grant of 2/3rd Compassionate Allowance and gratuity on his removal arising out of DA Case vide No.LE 94/2/A-643/DA/03 dt.12.9.03 as per provision stipulated in the CPO/KKK's Sl.No.62(5)/05."

5. It is surprising that only on 02.11.2011 i.e. after about five years the applicant preferred an appeal/prayer for allowing him to join duty by treating the entire period of his unauthorized absence on leave as he was under the treatment of a Neuropsychiatrist at Ranchi. It is also seen from such prayer/appeal that he admitted that he was absent from duty and could not inform the controlling officer. Such appeal is extracted below:-

"With due respect I beg to inform you that due to absent on duty on and from 06.11.2003 to till date of issuing charge sheet as treating the entire period as unauthorized absent without intimation on ex parte decision the Disciplinary authority imposed punishment as 'Removed from Railway Service w.e.f. 15.11.2006."

That on and from 04.11.2003 due to my serious condition I was compelled to undergo treatment of a Neuropsychianist at Ranchi who treated me and issued a fit certificate on and from 31.10.2011.

That as there was no such male member and except my minor daughter none was in my family for which the reason of my absent on duty not known by office. Also the said absent on duty I could not inform to my Controlling Officer.

That at present I am quite fit for duty as per the Fit Certificate issued by my attending physician. I am ready and willing to join to my original post as Welder Gr.-I' wherfrom I removed from service as per Punishment Notice being No. LE.94/2/A-643/DA/03 dt.06.11.2006 issued by the Dy. Chief Mechanicat Enggr. (M), E. Rly./Lituah.

So, I pray to your Honour kindly allow me to resume duty in my originating post as Welder Gr.-I 'A' Shop by considering the aforesaid absent period as per Medical Report and help a poor employee and his family members from starvation in this hard days.

Soliciting an early order.

Thanking you"

It is evident that the charged officer has admitted that he was absent from duty and could not inform his Controlling Officer.

7. Against such prayer/appeal the Appellate Authority passed an order on 18.08.2012 and came to the conclusion of upholding the punishment awarded by the Disciplinary Authority.

The order of the Appellate Authority dated 18.08.2012 is set out below:-

JW

Speaking Order

Case No.LE.94/2/A-643/DA/03 dated 12.09.03

The Charged Official(CO), Shri Praloy Kumar Ghosh, the then Ticket No.A-643 was issued Major Penalty Charge Sheet No.LE.94/2/A-643/DA/03 dated 12.09.2003 for remaining "unauthorized absent from 06.04.2003 to 28.08.2003" issued by DYCME/M. Shri D. Majumdar, SSE/HT was appointed as Enquiry Officer(EO). Inquiry was held on 11.02.2004 where CO was present. EO submitted his Report on 12.02.2004 wherein he concluded that Shri P.K. Ghosh is guilty of the Charges.

Subsequently, Disciplinary Authority (DA) ordered EO for re-inquiry of the above case on 03.05.05. In the Inquiry held on 05.05.05 and 07.11.05, CO was not present. EO submitted his Report again on 07.11.2005 wherein he concluded Shri P.K Ghosh is guilty of the Charges.

Shri Ghosh on his letter dated 24.09.03 has mentioned many reasons due to which he remained unauthorized absent. It included his 90 years old mother, wife being sent for higher studies, daughter remaining alone in Siliguri and finally, his own suffering from Gastritis and severe pain in Abdomen. He has also mentioned that he has submitted VR on 06.06.2003 which was not considered..

On the case file at Page-16, a list of leave availed by the CO has been placed. It is seen that in addition to remain authorized sick, the CO has remained absent from his work for more than 150 days a year starting from 1999. In his letter to DA dated 05.02.06, CO has mentioned that "his Health is not permitting him". Considering these facts of the case, DA imposed a Penalty of "Removal from Service" on the CO. The Speaking Order of the DA was communicated to the CO on 05.11.2006.

It is seen from the case file that the employee was appointed on 18.02.81. It means that on the date issuance of the Charged Sheet, CO had completed more than 22 years of service in the Railway. The CO submitted his Appeal on November, 2011 i.e. about more than 4 and a half years after the Speaking Order was passed. In his Appeal, Shri Ghosh has said that he is now "fit for duty". It is also noted from the file that the Appeal is "Time Barred."

Having gone through the entire case, I have noted that in his Appeal the CO has not placed any additional facts of the case. He has only mentioned that now he is fit and therefore, he pleads to be taken back to duty. CO's above argument for reinstating is neither adequate and nor administratively appropriate. One of the primary objectives in a case like this where Appeal has been made is to examine all the aspects regarding the issuance of Charge Sheet, the quantum of aberrations along with its being commensurate with the Punishment. In this case, consideration needs to be shown to the staff who has remained absent from his place of duty for long periods without significant reasons. Any consideration shown in this case would lead to breakdown of existing administrative protocol and discipline. Therefore, I upheld the Punishment awarded by the DA.

(S.R. Ghosh)
Appellate Authority
&
Chief Works Manager
Liluah."

8. During submissions at the bar, the Id. counsel for the applicant submitted that he will be satisfied if only the issue of disproportionality of the punishment of "Removal" is considered/arbitrated in this case. He had accordingly submitted three judgments of the Hon'ble Calcutta High Court namely, WPCT.31/2012 [Sukukar Dey Vs. Union of India & Ors. (S.E. Railway)] dated 21.02.2012, FMA No.348/2008(Maitrayee Ghosh vs. Kolkata Port Trust & Ors.) dated 18.09.2007 and G.A.No.2892/2010/APOT No.513 of 2010 (Haren Barui Vs. Coal India Limited & Ors.) dated 08.12.2010.

SW

9. From the above citations it is observed that the case relating to WPCT.31/2012 is not applicable to the present case as the case in the High Court was on the point of absenting from duties by reasons of **overstay** which is not the case in the present O.A. Regarding FMA 348/2008 (**Maitrayee Ghosh vs. Kolkata Port Trust & Ors.**) dated 18.09.2007, the Hon'ble High Court At Calcutta observed that :-

"31. In any event, the penalty of removal from service on the appellant herein is shockingly disproportionate in view of the facts that the said appellant admittedly, sent intimation regarding her absence from duties immediately after expiry of the sanctioned leave and all through expressed her desire to join the duties apart from the facts that the appellant herein had to rush abroad in an emergent situation arising out of the illness of her husband.....(not legible) undergo operation and the appellant also became unwell on account of her pregnancy which prevented her from undertaking air travel for the purpose of returning to the country and to join duties.

32. In the aforesaid circumstances, we are unable to approve the order passed by the disciplinary authority imposing the penalty of removal from service on the appellant herein and, therefore, we set aside and quash the order of punishment as imposed by the disciplinary authority on the appellant herein as mentioned in the order dated 16th May, 2003. The order passed by the appellate authority as communicated by the Assistant Manager by the written communication dated 3rd February, 2004 affirming the decision of the disciplinary authority, therefore, cannot be sustained and the same is also quashed.

33. The concerned disciplinary authority of the appellant herein is directed to reconsider the matter relating to imposition of penalty on the appellant herein in the light of the observations mentioned hereinabove and pass appropriate order of punishment without imposing the penalty of dismissal or removal from service on the appellant herein. Considering the conduct of the appellant herein, we are not inclined to pass any order directing the respondent authorities to pay any amount towards the back wages."

In the G.A.No.2892/2010/APOT No.513 of 2010 (**Haren Barui Vs. Coal India Limited & Ors.**) dated 08.12.2010 it has been observed as under:-

"The concerned disciplinary authority of the appellant herein is directed to reconsider the matter afresh relating to the imposition of penalty on the appellant/petitioner herein in the light of our observations and findings as recorded hereinbefore and pass appropriate order of punishment without imposing the penalty of termination or discontinuation from service by way of dismissal, removal or compulsory retirement so that the said appellant/ petitioner can be reinstated in service in spite of imposition of the penalty. However, considering the conduct of the appellant/petitioner herein the disciplinary authority will be at liberty to refuse to pay any amount towards the back wages or any other financial benefits.

Since a considerable time has elapsed, we direct the disciplinary authority to pass appropriate order pursuant to the aforesaid direction without any further delay but positively within a period of four weeks from the date of communication of this order."

10. The applicant in this case was born on 17.08.1957 and, therefore, he would be retiring on 31.08.2017 if he was not removed from service. Initially he was appointed as a Labourer on 18.02.1981 and has completed more than 22 years of service.

11. On consideration of the fact that the charged officer has completed a substantial length of service period and the relevant judgment of the Hon'ble High Court of Calcutta(supra), we



feel that the "penalty of removal" imposed on the applicant is disproportionate and as such the order of penalty needs to be quashed and set aside.

12. Accordingly the penalty order of Disciplinary Authority which is merged with the order of the Appellate Authority is quashed and set aside. As he has completed more than 22 years of service, we feel that ends of justice would be met if the penalty of "compulsory retirement" is imposed on the applicant from the date of his effective removal by the Disciplinary Authority i.e. from 15.11.2006. Hence, ordered accordingly. This order shall be made effective by the respondent authorities within a period of three months of getting a certified copy of this order.

13. The O.A. is accordingly disposed of. No cost.

(J. Das Gupta)
Administrative Member

s.b

(Justice V.C. Gupta)
Judicial Member