



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 859 of 2011

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr.P.K.Basu, Administrative Member

JHUKLI DEVI

VS

UNION OF INDIA & ORS. (E.RLY.)

For the applicant : Mr.P.K.Ghosh, counsel
Mr.S.N.Mitra, counsel

For the respondents : Mr.S.Banerjee, counsel

Order on : 30.3.16

O R D E R

Ms.Bidisha Banerjee, J.M.

The original applicant Biroo has been substituted by his widow Jhukli Devi after his death.

2. The Present OA was filed by the said Biroo, seeking the following reliefs :

"An order setting aside and/or quashing the punishment order of removal from service of applicant w.e.f. 28.1.03 as contained in AEN/2/ASN's letter No. E/25/Biroo dt. 28.1.03 and a further order directing respondents to regularise the period of absence of applicant on account of his own illness from 1.12.01 onwards as leave due including extra ordinary leave on account of applicant's own sickness, counting for increment benefits as well as qualifying service for pensionary/retiral benefits and to treat the applicant has retired from the date on which he was due to retire on attaining the age of superannuation and to grant applicant all pensionary/ retiral benefits."

3. The facts of the application in a nutshell, would be as under :

The original applicant Biroo was engaged as CPC Trackman on 1.1.83 under S.E. P.Way, Asansol Division, Eastern Railway. He absented from duty from 1.12.2000 without intimation to the authorities. SF 11 i.e. a minor penalty proceeding was initiated against him. On 17.4.01 SF 11 was withdrawn and instead on 22.10.01, SF 5 for major penalty proceeding was issued. On 21.2.02 an enquiry Officer was nominated who issued a notice on 7.5.02 directing Biroo to nominate his defence helper, followed by a letter dated

7.6.02. On 29.6.02 he was intimated that an enquiry was fixed on 13.7.02 and he was directed to attend the enquiry. Further on 19.7.02 he was directed to attend the enquiry to be held on 24.7.02 and further on 13.8.02 he was asked to attend on 17.8.02. On 21.8.03 the Disciplinary Authority removed him from service for unauthorised absence from 1.12.02 to till such date. On 3.3.03 the employee Biroo preferred a mercy appeal to Sr. DEN-II where he submitted that he was under treatment of Dr. A.K.Nag at Ranchi for his mental illness and made a request to allow him to resume his duties. The Sr. DEN-II, Asansol on 16.6.03 directed the said Biroo to appear before the Railway Medical Authority for a special medical examination. The applicant attended the Special Medical Examination as would appear from the reply of the respondents but no order was issued to him thereafter. On 5.11.03 in the Special Medical Examination he was referred to Sr. DMO (eye). On 1.10.10 the applicant appeared before the Section Engineer, P.Way.

The wife of the applicant namely Jhukli Devi made a representation before the Section Engineer , P.Way seeking permission on behalf of her husband Biroo for resumption of his duty as a Gangman. In the said representation Smt. Jhukli Devi specifically submitted that her husband appeared for Special Medical Examination as was ordered on 10.7.03. He was under examination with treatment till 6.11.03 whereafter he started feeling uneasy mentally and had to be presented before A.Kumar at Ranchi Institute of Neuro Psychiatric & Allied Science at Kanke. After thorough examination the doctor started treatment considering him a relapsed case of mental illness. The doctor, after a prolonged treatment of 6 years 10 months 22 days declared him to be fit on 28.9.10, vide certificate dated 27.9.10, which certificate she enclosed along with her representation. The respondents did not pass any order on his representation.

4. During the course of hearing ld. Counsel for the applicant would strenuously urge that the applicant being mentally ill was not in a position either to attend his duties or the enquiry and only on being declared fit he presented himself for joining in the year 2010 and therefore his unauthorised

absence or non-attending of enquiry which was due to reasons beyond his control, should be leniently viewed.

5. Per contra ld. Counsel for the respondents would submit that having not attended the enquiry and having not submitted the reports and certificates of his treatment the applicant was rightly found guilty of unauthorised absence and removed from service. He had never prayed for leniency in the matter of punishment. Surprisingly, although he did not attend the enquiry immediately on his removal he preferred a mercy appeal, which was also duly considered by the authorities who asked him to present himself before the Medical Board for Special Medical Examination. After his representation in 2010, since the applicant was about to reach the age of superannuation, he was not taken back to Railway service.

6. Ld. Counsel for the applicant relied upon a decision rendered by Hon'ble High Court at Calcutta in WPCT 4/12 wherein in the case of a dismissal due to unauthorised absence, the Hon'ble Court opined that the punishment of dismissal for absence of three months was too harsh as there were reasons for such absence as the petitioner was suffering from various illness. Since the employee had expired by then, the Hon'ble Court converted the penalty of dismissal to one of compulsory retirement w.e.f. the date of dismissal.

7. Ld. Counsel would submit that since it was a case of removal from service the widow is virtually reeling under penurious circumstances having nothing to fall back upon.

8. At this juncture ld. Counsel for the respondents would submit that since the appeal of the widow is pending the same may be directed to be considered sympathetically.

9. We have heard ld. Counsels for the parties and perused the materials on record.

10. Absentism is no doubt an indication of lack of devotion to duty and is punishable if warnings and other measures have failed and as a concomitance to Disciplinary Proceeding the delinquent employee is liable to be imposed a

formal penalty which must also be commensurate with the misconduct proved in the proceeding.

11. The Hon'ble Apex Court had time and again held that penalty of dismissal from service on account of unauthorised absence is disproportionate (*UOI -vs- Giriraj Sharma [1995 SCC (L&S) 290]*), (*Malkiat Singh -vs- State of Punjab [1996 SCC (L&S) 656]*) and ordered for lesser penalty (*H.S.Arora -vs- UOI [1998 SCC (L&S) 172]*).

In a case where the employee was a TB patient and was absenting without notice which resulted in his dismissal from service on the allegations of unauthorised absence, the Hon'ble Gauhati High Court quashed the dismissal order as unconscionable (*Dulal Ch., Sharma -vs- State of Mizoram [2003 (1) ATJ 404]*).

Similarly Hon'ble High Court at Punjab & Haryana in *Ex-Constable Balwant Singh -vs- State of Punjab & Haryana [1999 (2) ATJ 113]* laid down the proposition that if an employee was under treatment during the period of absence, such absence could not be said to be the gravest form of misconduct.

12. In the aforesaid legal backdrop we noted that in the present case admittedly the employee was under treatment for his mental illness at the renowned Institute of Ranchi which in fact prevented him from attending his normal duties. Therefore it could not be said that he had deliberately not attended his duties. Since the circumstance was beyond his control in our considered opinion the penalty of the gravest form of removal or dismissal would be *per se be* disproportionate.

13. We would notice that even on dismissal or removal due to unauthorised absence, where no element of moral turpitude is involved like in the present case, provisions exist in Railway Rules of providing compassionate allowance to the family of the deceased employee as 2/3rd of the pension or gratuity or both. In the present case even that was not allowed by the Disciplinary Authority for reasons unknown.

14. In view of such we quash the penalty of removal from service and remand the matter back to the Disciplinary Authority to pass appropriate order so that the widow would earn her family pension to the full and get at least a proportionate gratuity amount, if not full and other settlement benefits in accordance with law.

15. The orders be issued within two months from the date of communication of this order with arrears as admissible.

16. The OA is accordingly disposed of. No order is passed as to costs.

~~(P.K.BASU)~~
MEMBER (A)

In

~~(BIDISHA BANERJEE)~~
MEMBER (J)