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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 2378/2003

New Delhi, this the 3rd day of July, 2006

**HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)**

Shri Jasbir Singh Rawat,
S/o Shri Gobind Singh,
Shunting Master Gr.II,
Under Station Superintendent
Kalka
(By Advocate : Shri B.S. Mainee)

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APPLICANT

VERSUS

Union of India : Through

1. The General Manager,
Northern Railway
Baroda House,
New Delhi
2. The Chief Operating Manager (G),
Northern Railway,
Baroda House,
New Delhi
3. The Divisional Railway Manager,
Northern Railway,
Ambala

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RESPONDENTS

(By Advocate : Shri Rajeev Bansal for Sh. B.K. Aggarwal)

O R D E R

By Mukesh Kumar Gupta, Member (J):

By the present OA, challenge is made to order dated 17.07.2002 passed by Sr. Divisional Operating Manager, Ambala, inflicting punishment of dismissal from service, modified vide appellate order dated 11.09.2002, taking a sympathetic view, reinstating him in grade of Rs.4,000-6,000/- at basic pay of Rs.4,000/- in the post of Shunting Jamadar, as up-held by dismissing revision petition by the Chief Operating Manager (G), Northern Railway, Delhi, vide order dated 09.05.2003.

2. The facts of case as stated are that Memorandum under rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968, was issued on

23/31.1.2002 alleging grave negligence, carelessness and serious misconduct. The article of charge reads as under:

ARTICLE OF CHARGE.

On 16/1/02 Guard Sh. J.S. Rawat was booked to work 312 Dn passenger train ex UMB to SRE as per link. Departure signals were lowered at 16.50 hrs. but Shri J.S. Rawat failed to give start signal to his train driver even for fifteen minutes. On receiving information from the driver, Dy. SS/UMB alongwith SM on duty reached the B/ Van & found Sh. J.S. Rawat sitting in intoxicated condition. Sh. Rawat was not in a position to work the train. Consequently another guard was arranged and the train left at 17.36 hrs after suffering detention of 46 minutes on this account.

Shri J.S. Rawat Guard, is therefore, held responsible for:-

1. For coming on duty in intoxicated condition.
2. For causing detention to the train.
3. For disturbing the link of normal booking arrangements of running staff.
4. For creating unsafe working conditions and thereby endangering safety of traveling passengers.

All above lapses speak of his gross negligence, carelessness and serious misconduct towards duty. Thus he has violated G.R. 2.09 and in addition para 3.1 (i), (ii) & (iii) of Railway Servants Conduct Rules, 1966."

3. Vide statement of imputation of misconduct, it was observed that as per previous record, applicant was habitual to consume alcohol while on duty. On complaints, he had been punished, but failed to improve his way of working and behaviour. Vide reply dated 01.03.2002, he requested to be excused on humanitarian grounds with assurance that he would be more careful towards his duties and would not give a chance of complaint in future. An oral enquiry was held and enquiry officer submitted his report dated 04.05.2002 returning findings of guilt and establishing all the charges. Thereafter, considering his representation dated 10/15.07.2002 pursuant to show cause notice dated 09.05.2002, making said enquiry report available to him, the disciplinary authority imposed punishment of dismissal from service vide impugned order dated 17.7.2002. We may note that applicant has not annexed a copy of

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the said representation dated 10/15.07.2002. By filing a detailed appeal dated 12.8.2002, he prayed for quashing the said punishment and also sought personal hearing. Acceding to his request for personal hearing, Addl. Divisional Railway Manager, Ambala Cantt. took an extremely sympathetic view and reinstated him in grade of Rs.4,000-6,000/- at the basic pay of Rs.4,000/- in the post of Shunting Jamadar vide order dated 11.09.2002. Being dis-satisfied, he preferred revision petition under rule 25 of Railway Servants (Discipline & Appeal) Rules, 1968 on 30.01.2003, which was rejected, vide communication dated 09.05.2003.

4. Shri B.S. Maine, learned counsel for applicant raised numerous contentions, viz.-

- i) Charges levelled against applicant were false and baseless;
- ii) Neither he was intoxicated nor the delay to the train was on account of him, rather he had at the very outset requested Station Superintendent, Ambala, to arrange for another Guard because he was not in a proper physical position to work the train on account of loss of V.H.F., an essential equipment for a passenger train guard;
- iii) Documents relied upon in support of charges as well as statement of witnesses recorded during preliminary inquiry were not supplied despite demand made;
- iv) Inquiry Officer did not hold enquiry in accordance with rules and returned findings of guilt based upon surmises and conjectures without subjecting him to medical examination.
- v) Disciplinary authority passed dismissal order without considering his defence as well as inquiry officer violated rule 9 (22) by not permitting him to file defence brief.

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vi) Appellate authority committed serious illegality in considering the past record and passed order to revert him to the post of Shunting Jamadar for an unspecified period without considering that he could not be reverted to a post which he had never held.

vii) Revisional authority committed serious irregularity in rejecting revision petition on the ground of limitation stating that he had not asked for condonation of delay which was factually incorrect as vide para-3 of revision petition he had made such a request to condone delay under rule 27 of the said Rules. On the one hand, appellate authority had not indicated in his order about his right to file a revision petition within the specified time span and on the other hand such baseless allegations were made against him.

viii) Applicant could not have been charged with intoxication having consumed liquor without subjecting him to medical examination.

ix) Appellate authority did not allow him personal hearing along with his defence helper as per rules.

x) There was no evidence in support of the charges and inquiry officer had asked leading questions to the prosecution witnesses with pre-determined mind and, therefore, the entire procedure followed was arbitrary, discriminatory and malafide.

Reliance was placed on 2003 (1) ATJ 105 **Latoor Singh vs UOI & Ors** to support the contention that when the delinquent was dismissed from service on the ground that he was found in the state of intoxication

based on medical report without examination of the Medical Officer, the principle of natural justice had been violated.

5. The respondents resisted applicant's claim stating that he was booked to work 312 Dn. Passenger Train ex Ambala Saharanpur as per link. Departure signals were lowered at 16.50 hours but the applicant failed to give start signal to his train Driver. On receiving information from the Driver, Dy. SS Ambala along with Station Master on duty reached the B/Van and found the applicant sitting in intoxicated condition. Consequently, another Guard was arranged and the Train left at 17.36 hrs. i.e. after suffering detention of 46 minutes on this account. Enquiry officer proved all the charges from the basis of circumstantial, documentary and other evidences. Penalty of dismissal was inflicted by passing a reasoned and speaking order while agreeing with the findings recorded by enquiry officer. The Appellate authority afforded him personal hearing wherein he accepted his mistake and requested for mercy. The Appellate Authority thus taking a sympathetic and humane view, partly allowed the appeal and the applicant was reinstated in service as Shunting Jamadar. It was not disputed that the Revision Petition was dismissed having been filed after prescribed limitation period. Statements of PWs were recorded in his presence and he cross-examined the same too. It was further stated that the applicant admitted that he was afforded full opportunity to place his defence. If the applicant was mentally disturbed due to loss of VHF set, then he should have reported the matter in time, when he attended Train at 1600 hrs. Medical examination could not be arranged, as Dy. SS was busy to start the train and in the meantime he slipped away from the site of incident.

6. The applicant by filing rejoinder admitted that he was mentally disturbed & not prepared to work his Train, which could jeopardize the safety of the Train & passenger. The reason for mentally disturbance



was loss of a costly item i.e. VHF. It was contended that the applicant's appeal was rejected taking in view "some extraneous matter" and on the basis of indulging in repeated misdemeanor, details of which were not provided. It was further stated that the appellate authority keeping in view the serious flaws in the inquiry proceedings ought to have set aside the punishment awarded by the Disciplinary Authority.

7. We heard both sides and perused the pleadings, materials placed on records carefully. The basic plea raised by the applicant is two fold namely; the penalty was imposed upon him without examination of the medical officer, which was violative of the provisions of Medical Manual and secondly his revision petition was rejected on the plea of limitation though he had prayed for condonation of the delay. As far as the first contention is concerned, we may note that vide his appeal (at page 31 of paper book) he relied upon the provisions of SR & GR 2.09 appearing at page 15 of General and Subsidiary Rules for Northern Railway Print-1995, which reads thus:

"When any Railway servant is found intoxicated on the railway premises or suspected to be in a state of intoxication the evidence of two independent witnesses and **if possible** a medical report regarding his condition be obtained. Arrangements for his relief should immediately be made and matter reported to the proper authority." (emphasis supplied)

8. On perusal of the above rule position we may note that emphasis is laid therein on the term "**if possible**". The said term has to be given its due meaning and holding of medical cannot be read as mandatory. On perusal of the Latoor Singh (supra) judgment we find that these aspects have not been given any consideration. A perusal of the inquiry report and the evidence tendered by witnesses show that it had been explained in detail as to why the applicant could not be medically examined. There is overwhelming evidence against him on this aspect. In these circumstances we do not find any justification in the applicant's





contention. The applicant had raised further contention that he did not accept his mistake before the appellate authority as observed by the said authority vide order dated 11.9.2002. On careful consideration of this aspect, we do not find any substance in the said contention. We may note that a lenient & extremely sympathetic view had been taken by the appellate authority & the applicant was reinstated in service in Grade of Rs 4000-6000. After accepting mistake & extracting such compassion order, one cannot be allowed to contend that in personal meeting with the appellate authority, he had not admitted his mistake. The applicant was charged for various misconducts and the state of intoxication was only one of them. We also do not find any justification in the contention that there had been some procedural flaw or irregularities committed by the Enquiry Officer. No prejudice caused to him has been established. As such on this account also, the applicant would not entitle to any relief.

9. However, his further contention that the revisional authority rejected his revision petition on the plea of delay and stating in specific that: "**There is no request/ground for condonation of delay in your revision petition**". This aspect is contrary to factual situation as noticed from para 3 of the revision petition, copy of which was placed on record (pages 34-38 of paper book), wherein he indeed made a request to the following effect: "**your goodself is requested to be kind enough to condone the delay under Rule -27 of RS (D&A) Rules-1968.**" In these circumstances we are of the considered opinion that there is total non-application of mind in dealing with the said revision petition, and we are unable to sustain such an order. Therefore, we are left with no other option except to quash & set-aside the same. Accordingly, the revisional order dated 9.5.2003 (annexure A3) is quashed. The matter is remitted to Chief Operating Manager (G) Northern Railway, New Delhi with a

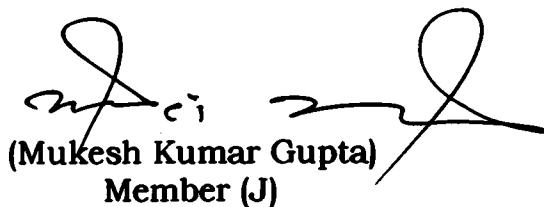




direction to consider applicant's revision petition dt 30.1.03, consider his request for condonation of delay and in accordance with the rules and law in vogue on the said subject pass reasoned & speaking order within a period of 2 months from the date of receipt of this order.

10. Before parting with the case we would like to observe that perusal of the order sheet maintained in the present OA reveals that Ld. Counsel for the respondents, who filed his Memo of Appearance on 4.3.2004, along with counter reply, did not ^{choose} _^ to appear even once in this case and had always been represented by one or other proxy counsel. Railway administration should take note of this aspect and ensure that the Tribunal is rendered proper assistance.

11. OA is accordingly disposed of. No costs.



(Mukesh Kumar Gupta)
Member (J)



(V.K. Majotra)
Vice-Chairman (A)

/PKR/