

Central Administrative Tribunal
Principal Bench : New Delhi

O.A. No. 89/2003

New Delhi this the 2nd January, 2004

Hon'ble Shri R.K. Upadhyaya, Member (A)
Hon'ble Shri Bharat Bhushan, Member (J)

M.D. Ulman
Ex. Fireman - II
Under Loco foreman
Northern Railway,
Moradabad.

... Applicant

(By Advocate: Shri B.S. Mainee)

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

... Respondents

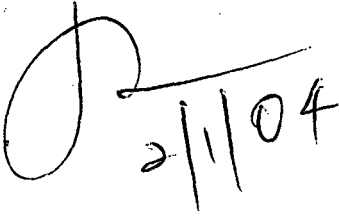
(By Advocate: Shri Rajinder Khatter)

O R D E R

Hon'ble Shri Bharat Bhushan, Member (J)

The challenge before us in this O.A. is the orders passed by the respondents regarding the removal from service of the applicant who was employed with the Railways as Fireman-II under Loco foreman, Northern Railway, Moradabad, on the allegations that he had unauthorisedly absented himself from 4.12.1995 to 14.1.1996 and as such he had contravened Railway Servants (Conduct) Rules. The orders of removal from service had been passed after conducting the departmental inquiry held by the disciplinary authority.


2. The charges of the illegal absence from duty have been denied by the applicant who has stated that


2/1/04

he had suddenly fallen ill and was under the treatment of Dr. D.N. Khanna from 4.12.1995 to 14.1.1996 for which he had obtained the medical certificate issued by the said doctor. Thereafter, he was under the treatment of Sr. Medical Officer, Northern Railway, Rosa from 14.1.1996 to 14.2.1996 and in support of this too, he had filed the medical as well as fitness certificates with the authorities. Assailing the inquiry terming it as totally illegal and against the principles of natural justice, the learned counsel for the applicant contended that in spite of the repeated requests the inquiry officer had neither shown the documents relied upon by him nor had he supplied the copies of the same and thus he had proceeded to conduct the inquiry thereby denying his valuable right to defend himself properly.

3. At the very out set, the learned counsel for the respondents raised two preliminary objections namely (i) the petition being barred by limitation and (ii) that the Principal Bench of the Tribunal has no territorial jurisdiction to entertain the case as the cause of action had arisen only in Moradabad.

4. Firstly let us take the first point i.e. the issue of limitation. In this regard, the petitioner, however, in his application seeking condonation of delay has stated that the Disciplinary Authority had passed an order on 12.11.1997, the appeal was rejected

 2/11/04

on 6.3.1998 and the revision application too was rejected in July 1998. But, thereafter, he had filed mercy petition to the President of India which too had been rejected on 16.11.2001 on the ground that the revision application filed by the applicant was defective and, therefore, not considered. To this, the learned counsel submits the applicant had submitted a request to the DRM, Moradabad for clarification as to the defects in the mercy petition. But no reply came from that end. So, after waiting for a sufficient time, he had filed this application. Hence, in this manner, he tried to explain the reasons for the delay in filing the application. And on these grounds sought the condonation of delay in the interest of justice. In this respect, it would be pertinent to place on record a Supreme Court judgement in State of Bihar vs. Kamlashwer Prasad Singh held in SLJ 2001 (1) SC 76 page-80 wherein the Apex Court had held that the limitation should not come in the way of substantial justice and that refusing to condone the delay can result in meritorious matter being thrown out. On the other hand, the learned counsel for the respondents too has placed reliance upon the following two judgements, namely, D.T.C. Vs Jai Bhagwan {SLJ 2003 (3) H.C.101} and G.A. Chada Vs UOI {2003 (2) CAT 357} to emphasise the point that the Courts must not accept applications after inordinate delay and that the Court should not decide on merits the case hit by limitation. But having considered the reasons of delay, we hold

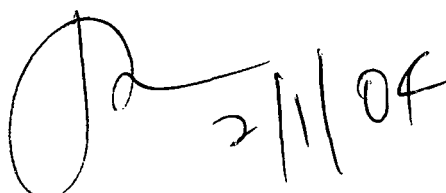
 2/11/04

that there are good grounds for condoning the delay. Hence the delay in filing is condoned.

5. Now, as regards the submission of the learned counsel for the respondents that since the cause of action had arisen at Moradabad and as such the Principal Bench of the Tribunal has no territorial jurisdiction to entertain the case is concerned, reliance has been placed upon order of the Principal Bench of the Tribunal dated 31.10.2003 in OA-3314/2002 and order dated 27.9.2002 of the Bangalore Bench in OA-1814/2000. On the other hand, the learned counsel for the applicant, while refuting the argument of learned counsel for the respondents, has contended that a part of the cause of action had arisen in Delhi on account of fact that no response to the mercy petition filed before the Hon'ble President of India against the penalty of removal of service has been given. The following orders were passed by the competent authority upon consideration of the mercy petition submitted by the applicant to the Hon'ble President of India:-

"Mercy petition to the President of India, in this case, does not end with specific requests & therefore cannot be processed."

Taking us through the said documents dated 16.10.2001 (Annexure A-4), the learned counsel for the applicant submitted that it was addressed to the General Manager (P), Northern Railway Headquarters Office, Baroda House, New

 2/11/04

Delhi. This being so, the learned counsel submits that the cause of action has partly arisen in Delhi only, as such the Principal Bench of the Tribunal, according to him, has got the territorial jurisdiction in the matter. In this respect, he has relied upon the Full Bench judgement in Alok Kumar Singh Vs. Union of India (Full Bench Judgements of CAT 1991-1994 Vol.III Page-7). Learned counsel has, therefore, submitted that the preliminary objection cannot be accepted as the cause of action has partly arisen in Delhi, if not wholly, as such both the Principal as well as the Allahabad Benches of the Tribunal have jurisdiction in the matter.

6. We have carefully considered the preliminary objection regarding the territorial jurisdiction as mentioned above. Rule 6(1) (ii) of the CAT (Procedure) Rules, 1987 reads as follows:-

"Place of filing application- (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

i) the applicant is posted for the time being, or (ii) the cause of action, wholly or in part, has arisen."

7. This being the rule position, in our view, the facts and circumstances of the case reflect the position that part

 2/11/04

of the cause of action had arisen in Delhi as well. This being so, the preliminary objection of jurisdiction raised by the respondents is also not tenable.

8. In their counter affidavit, the respondents have stated that the applicant had not adopted the proper procedure of taking the medical leave on ground of illness. According to them, the applicant should have informed the Administration as well as the Railway doctor from time to time during his illness of the fact that he was getting the medical treatment of his own. Their further case is that the applicant remained absent from duty without leave and no intimation was given by him to the Railway Administration. So, therefore, was served a major penalty charge-sheet.

9. We have heard the learned counsel for the parties and perused the material placed on record. The orders of penalty of removal from service passed by Shri S.C.Choudhary, disciplinary authority are dated 12.11.1997. The same reads as under:-

"I have gone through the enquiry report and other relevant materials on record. The CO has not submitted any defence note in spite of a copy of enquiry report having been given to him. CO's careless attitude towards his job is clearly established from his repeated unauthorised absences and also his absconding during the course of enquiry. Enquiry proceedings indicate his leaving the HQ without any permission and also failing to inform his incharge about his whereabouts. When he resorted to PMC. Seeing his past record & also the carelessness towards his job, he is not considered a fit person to be retained in

 2/11/04

Rly. service and is removed from service with immediate effect".

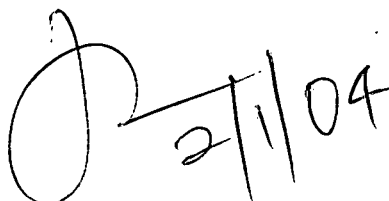
I, therefore, hold you guilty of the charge(s) viz. SF-5 No. even dated 9/4/96 for U/Abs. from 04-12-95 to 14-1-96 levelled against you and have decided to impose upon the penalty of removal from service. You are, therefore removed from service with immediate effect."

10. A perusal of the aforesaid clearly shows that the disciplinary authority has held the applicant "guilty of the charge(s) viz. SF-5 No. even dated 9/4/96 for U/Abs. from 04-12-95 to 14-1-96", even though the chargesheet dated 9.4.1996 was for the misconduct of the unauthorised absence from 4.12.1995 to 14.1.1996 and also for unauthorised absence of 8 times in the year 1994, 4 times in the year 1995 and once in the year 1996. The appellate authority vide his order dated 6.3.1998 (Annexure A-2) has rejected the appeal as follows:-

"The DAR enquiry and the procedure in this case is found to be in accordance with rules. It has been clearly established that CO remained under unauthorised absence almost for one year as per the charges levelled against him. His record shows that he is also a habitual absentee unauthorisedly."

(emphasis supplied)

11. The observations of the appellate authority are based on extraneous factors which are not the basis for order of the disciplinary authority. He has rejected the appeal on the assumption that the applicant was "under unauthorised absence almost for one year". This is contrary to the observations of the disciplinary authority where he has punished the applicant for unauthorised absence from 4.12.1995 to 14.1.1996 only. Similar is the case with the order of the revisionary

 2/1/04

authority who has rejected the revision petition which has been communicated vide letter dated 27.9.1998 (Annexure A3). The revisionary authority also did not consider the proportionality of the punishment. In the representation dated 25.1.1998 (Annexure A/15), the applicant had clearly mentioned the fact that "The period of absence was only one month and 10 days but the A.D.R.M. has wrongly rejected my Appeal saying that I was absent for one year".

12. The Hon'ble Supreme Court in the case of B.C. Chaturvedi Vs. Union of India, (1996) 32 Administrative Tribunals Cases 44, has held as follows:-


"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, imposed appropriate punishment with cogent reasons in support thereof."

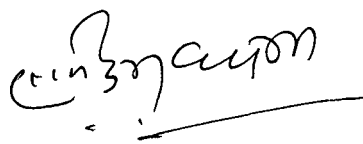
13. On the facts of this case and in view of the decision of the Hon'ble Supreme Court in the case of B.C. Chaturvedi (supra), we are of the view that the orders of appellate authority and well as revisionary

 2/1/04

authority deserve to be quashed and set aside, as the disciplinary authority in his impugned order dated 12.11.1997 (Annexure A/1) had confined himself to levy punishment on the applicant with reference to unauthorised absence from 4.12.1995 to 14.1.1996 only. Accordingly, we quash them and set aside them. In our opinion, the punishment of removal from service for absence from 4.12.1995 to 14.1.1996, prima facie, appears to be harsh and disproportionate to the misconduct. The applicant was appointed on 22.5.1980 and has not been inflicted such a major punishment earlier during his 15 years of service. Therefore, we direct the appellate authority to reconsider the facts of this case and if he considers appropriate to impose penalty again on the applicant, he may do so after allowing an opportunity of hearing to the applicant before passing any order in pursuance to this direction. He is further directed not to impose punishment of removal or dismissal from service upon the applicant, as in our considered view such a penalty is clearly disproportionate to the gravity of the misconduct.

14. Subject to the directions in the preceding paragraph, this Original Application is disposed of without any order as to costs.


(Bharat Bhushan)
Member(J)


(R.K. Upadhyaya)
Member(A)

JK