

Central Administrative Tribunal
Patna Bench, Patna.
 [Circuit Bench at Ranchi]
O.A./051/00455/2019

Date of CAV : 17.12.2019

Date of Order:- 19.12.2019

C O R A M

Hon'ble Shri Dinesh Sharma, Member [A]
Hon'ble Shri Swarup Kumar Mishra, Member [J]



Ludhu Mahato, aged 46 years, S/o Jiban Mahato, resident of Vilalge – Ruicnup, near Biramdih Station, District – Purulia-723143.

....Applicant

By Advocate : Mr. M.A.Khan
 Vs.

1. Union of India, through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata -43.
3. Additional Divisional Railway Manager, Revising Authority, South Eastern Railway, District – Adra – 72301.
4. Sr. Divisional Mechanical Engineer [SDME], Appellate Authority, Adra – 72301.
5. Divisional Mechanical Engineer [DEE], Disciplinary Authority, South Eastern Railway, Adra – 72301.

..... Respondents.

By Advocate : Shri Prabhat Kumar
 With Ms. Shivani Kapoor

O R D E R

Per Swarup Kumar Mishra, M [J] :-

The applicant has filed the instant OA for quashing and setting aside the order dated 19/27.04.2018 [Annexure-A/6] whereby he was retired compulsorily from service with immediate effect in terms of Rule 6[vii] of Railway Servants [D& A] Rules and with extending full compensation pension and gratuity as admissible under Rule 64 of Railway Service [Pension] Rules. The applicant has also prayed for quashing the order dated

2607.2018 [Annexure-A/8] issued by the Respondent No.4 affirming the order of Respondent No.5 and the order dated 01.02.2019 [Annexure-A/10] whereby the Revisional Authority affirmed the order passed by the Appellate Authority.



2. The applicant's case in brief is that while he was working as Technician Grade-III/C&W at Bhujudih, a memorandum dated 29/30.06.2017 [Annexure-A/1] was issued to him enclosing the Articles of Charges that he remained unauthorized absent from duty w.e.f. 13.12.2016 to 14.06.2017 and onwards without any intimation or permission from unit incharge. Sri Ludhu Mahato, the applicant had also failed to submit any document/information regarding his absence from duty within 48 hrs from his absence although he has been provided the Railway Quarter No.E/11/6 Type A at BJE. It is also observed therein that the applicant was earlier punished for similar type of misconduct for remaining absence from duty auauthorisedly vide punishment notice dated 08/15.12.2016 in one major penalty DAR case. Re-occurrence of similar misconduct clearly indicates that he has not rectified himself and due to his prolonged period of absence, the working of administration has been hampered badly.

3. Subsequently, the enquiry was completed and vide letter dated 15.03.2018 [Annexure-A/4], the respondent no.5 communicated the enquiry report submitted by the Enquiry Officer. The applicant submitted his reply along with medical papers on 09.04.2018 [Annexure-A/5] before the Respondent No.5 inter alia stating therein that due to illness, he was

absent from duty. However, the respondent no.5 without considering the materials on record, passed order dated 19/27.04.2018 [Annexure-A/6] for compulsory retirement from service. The applicant preferred appeal before the Respondent No.4 on 04.06.2018 [Annexure-A/7], however the same was rejected vide order dated 26.07.2018 by a non-speaking and cryptic order, which is in violation of Rule 22 of the Railway Servants [Appeal & Discipline] Rules, 1968. Thereafter, the applicant preferred a revision petition on 30.07.2018 [Annexure-A/9], which has also been rejected, vide order dated 01/06.02.2019 [Annexure-A/10] without proper application of mind, hence the present OA.



4. The applicant challenged the impugned orders on the ground that the punishment order is disproportionate to the gravity of misconduct. It has also been inter alia urged by the applicant in the OA and also submitted by the learned counsel for the applicant before the Tribunal that the medical documents and evidence produced by him during the course of enquiry and also before the Respondent No.5 have not been considered. The Appellate Authority as also the Revisional Authority have not considered the ground of illness of the applicant besides other grounds taken by him, vide memo of appeal and memo of revision [Annexure-A/7 and Annexure-A/9 respectively]. Besides that the Appellate Authority and the Revisional Authority have not applied their mind while disposing of the matter against the applicant.

5. The respondents have filed their written statement and contended that the applicant was served with a major penalty charge, as per the Railway Service [Discipline and Appeal] Rules as he remained absent from duty from 13.12.2016 to 14.06.2017 without intimation to the authority concerned. This hampered the working of the office severely.



6. The respondents further submitted that during the course of enquiry, the applicant himself admitted that after completion of duty on 11.12.2016, he availed rest on 12.12.2016 and thereafter, as he was attacked with stroke and unconsciousness, the family members took him to the hospital and thereafter he was undergoing treatment. However, in support thereof, he did not produce any chit of papers in spite of being given sufficient opportunity to submit the same, vide Annexure-R/1.

7. Thereafter, the Disciplinary Authority in view of the enquiry report submitted by the Enquiry Officer and also considering the documents submitted by the applicant, passed the order of compulsory retirement from service, which was affirmed by the Appellate Authority as also by the Revisional Authority, vide Annexure-R/3 and R/4 respectively.

8. The respondents submitted that full compensation pension and gratuity has been provided to the applicant in view of Rule 64 of Railway Service [Pension] Rules, 1993, hence no prejudice has been caused to the applicant. The respondents relied on the decision rendered in the case of Union of India vs. Parma Nand, [1989] 2 SCC 177, wherein

the Hon'ble Apex Court held that the Tribunal has no power to interfere with the penalty imposed by the Disciplinary Authority on the ground that it is disproportionate to the proved misconduct, when the findings as to misconduct or misdemeanor of the delinquent employee is supported by legal evidence. Further, the court held that if there was an enquiry consistent to the rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority.



The respondents submitted that in the present case the entire enquiry proceeding was completed in accordance with law and in consonance with the principles of natural justice, therefore, the Tribunal cannot go into the quantum of punishment imposed by the disciplinary authority based on enquiry report.

9. Heard the learned counsel for the parties and gone through the records.

10. Admittedly, a memorandum dated 29/30.06.2017 [Annexure-A/1] was issued against the applicant enclosing the Articles of Charges that he remained unauthorizedly absent from duty w.e.f. 13.12.2016 to 14.06.2017 and onwards without any intimation or permission from unit incharge. The applicant had also failed to submit any document/information regarding his absence from duty within 48 hrs from his absenteeism although he has been provided the Railway Quarter No.E/11/6 Type A at BJE. It is also observed therein

that the applicant was earlier punished for similar type of misconduct for remaining absent from duty unauthorisedly vide punishment notice dated 08/15.12.2016 in one major penalty DAR case. Re-occurrence of similar misconduct clearly indicates that he has not rectified himself and due to his prolonged period of absence, the working of administration has been hampered badly.



11. The averments made by the applicant that he had submitted the medical papers and evidence during the course of enquiry before the Respondent No.5 as made in the OA and also specifically made in para 4.9 and 4.12 has not been specifically controverted by the respondents in their counter although it is obligatory and expected from them that they should have come up with clear stand in this regard. Annexure-A/3 shows that the delinquent employee was examined by the Enquiry Officer on 13.03.2018 and on that occasion, he had taken the ground of illness of his own and had prayed time till 19.03.2018 for production of all documents, although the Enquiry Officer has written in Annexure-A/3 that he has given chance to the applicant to submit documents within short time otherwise the enquiry officer will submit enquiry report to the Disciplinary Authority. For the reason best known to the Enquiry Officer, he submitted the report on 15.03.2018. Therefore, this Tribunal is of the opinion that no due opportunity was given to the applicant to produce the documents in question before the Enquiry Officer although he was in the impression and as assurance given by

the Enquiry Officer himself that he has given short time for this purpose. The short time, by no stretch of imagination can be considered in one day given to the delinquent employee.

12. In the background and facts and circumstances of the case that the delinquent employee has also claimed that he was sick and resumed duty after declaring him fit by the Railway Doctor, vide order dated 30.03.2018 [Annexure-A/5]. Although the respondents have themselves failed to consider the medical documents produced by the applicant, vide Annexure-A/8 comprising of 3 documents, neither the Enquiry Officer nor the Appellate Authority or Revisional Authority have referred the said documents either in their findings or in the impugned orders that the same is not genuine or reliable. In absence of any such findings, it can not be said, under the circumstances, that the absence of the applicant from duty was considered sympathetically.



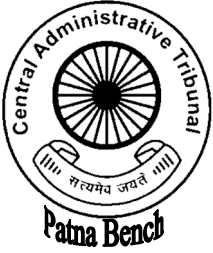
13. The non application of mind by the Appellate Authority as well as Revisional Authority in this regard cannot also be over-looked. The point regarding non consideration of the grounds taken by the applicant of this OA in his appeal and revision petition before the competent authority of the department, has already been discussed. The non consideration of the medical documents in question is vital aspects, which ought to have been considered by the authorities. The Disciplinary Authority while issuing the notice to the applicant, vide Annexure-A/3, dated 19/27.04.2018 has mentioned that the applicant was present before the Enquiry

Officer on 12.03.2017 and received the letter of enquiry on the same date. He has also mentioned that during the course of enquiry on 13.03.2017, the applicant had attacked with stroke and had been admitted in the hospital. The Enquiry Officer should not have submitted the enquiry report on 15.03.2018, which shows that he was in great haste for disposal of the proceeding although he had assured the applicant that he will give him short time for production of documents. The period of absence from duty is from 13.12.2016 to 14.06.2017 onwards for the unauthorized absence in question.



14. The ground of illness and the medical documents filed by the applicant, vide Annexure-R/2, it is seen that the concerned doctor has given the applicant medical certificate on 20.03.2018. Therefore, the applicant could not have produced the certificate earlier. This Tribunal is satisfied that due and reasonable opportunity was not given to the applicant to put forth his case by filing the medical certificate in question and the documents submitted by him, has not been considered in proper perspective. Therefore, there is violation of natural justice. Resultantly, the decision making process during the course of enquiry and subsequently by the Appellate Authority and Revisional Authority has been vitiated and becomes vulnerable on those aspects. Therefore, this Tribunal has no hesitation to quash and set aside the impugned order dated 19/27.04.2018 [Annexure-A/6]. This Tribunal is also of the opinion that the applicant should be given due opportunity to

put forth all the materials in his favour in the departmental proceeding in question. Accordingly, the impugned order dated 19/27.04.2019 [Annexure-A/6] is quashed and the matter is remanded back to the Disciplinary Authority, who shall given opportunity to the applicant to put forth all the materials in his favour in the enquiry in question. It is hereby directed that the departmental proceeding shall be completed within a period of four months from the date of receipt of a copy of this order. In case the departmental proceeding is not completed within the said stipulated period, then it will be deemed to have been quashed. The result of the departmental proceeding shall govern the future service of the applicant in accordance with rule.



15. The OA is disposed of accordingly. No costs.

[Swarup Kr. Mishra]M[J]

[Dinesh Sharma]M[A]

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