(RESERVED ON 03.4.2024)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH, ALLAHABAD

This the 09th day of April, 2024

ORIGINAL APPLICATION NO. 452 OF 2021

HON'BLE MR. JUSTICE OM PRAKASH VII, MEMBER (J)
HON'BLE MR. MOHAN PYARE, MEMBER(A)

Ajay Kumar, aged about 41 years, S/o Late Sita Ram, R/o [redacted]

…… Applicant

By Advocate: Sri Rajesh Kumar

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Divisional Mechanical Engineer (Diesel), Jhansi.
4. Additional Divisional Railway Manager, North Central Railway, Jhansi.

…… Respondents

By Advocate : Sri Ajay Kumar Rai

O R D E R

Per Justice Om Prakash VII, Member-J

By means of this Original Application (OA), the applicant has sought the following relief(s):-

> "(a) This Hon'ble Tribunal may please to issue an order or direction in appropriate nature, to quash and set-aside the impugned removal order dated 30.5.2019, appellate order dated 15.10.2019 and order dated 3.2.2021 (Annexure A-1) to this Original Application.
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> (b) This Hon'ble Tribunal may please to issue an order or direction in the appropriate nature to the concerned competent authority to reinstate in service the applicant.
>
> (c) This Hon'ble Tribunal may please to issue any other or further writ, order or direction in facts and circumstances of the case, which this Hon'ble Tribunal may deem fit and proper.

(d) This Hon'ble Tribunal may please to award the cost of the application in favour of the applicant."

2. The facts leading to this Original Application are that while the applicant was working on the post of Junior Engineer (T&C) fell seriously ill with the result he could not attend his duty for the period from 25.6.2018 to 3.9.2018 and as such he applied for medical leave for the said period. A major penalty charge-sheet dated 30.9.2018 was issued by the respondent no.3 in favour of the applicant. Thereafter, Inquiry Officer was appointed to enquire into the charges leveled against the applicant in the chargesheet. The Inquiry Officer wrote a letter dated 18.1.2019 requiring the applicant to be present in the enquiry on the date mentioned therein. Thereafter, another letter dated 5.2.2019 was issued requiring the applicant to attend the enquiry, but the applicant did not attend the enquiry due to illness and a request was made to grant some more time to appear in the enquiry. However, the Inquiry Officer concluded the enquiry ex-parte and submitted its report to the disciplinary authority on 6.3.2019. Thereafter, Senior Divisional Mechanical Engineer sent a letter dated 14.3.2019 giving one last opportunity to the applicant to confirm his present, but this time too, the applicant could not appear before the authority concerned due to his serious illness. The disciplinary authority, thereafter, passed an order dated 29.5.2019 by means of which the applicant came to be removed from service. Feeling aggrieved, the applicant preferred an appeal before the appellate authority, which too came to be rejected vide order dated 15.10.2019. Having no option, the applicant preferred IInd appeal before the DRM, NCR, Jhansi. To this, the applicant was informed vide letter dated 11.12.2020 that there is no provision to file second appeal and as such no action is required to be taken by advising him that he may file Revision Petition under Rule 25 of (D&AR) Rules before the concerned competent authority. The applicant, thereafter, filed Revision Petition/Appeal before the DRM, NCR, Jhansi on 9.1.2021, which was decided on 3.2.2021. Hence, this O.A.

3. Per-contra, the respondents have resisted the claim of the respondents by filing a detailed Counter Affidavit wherein they have stated that the applicant was un-authorisedly absent from duty w.e.f. 25.6.2018 without any information. They have further stated that if the applicant was fell ill, he has to intimate about the same to the respondents by getting medical certificate from the recognized hospital, which he failed to do so. They have also added that the applicant could not submit any proof regarding service of report/prescription to the respondents. The respondents have denied to receive the representation of the applicant dated 5.2.2019 with reference to letter dated 18.1.2019.

3.1 The respondents have also pleaded that the applicant could not appear before the Inquiry Officer on the dates fixed. However, he sent a representation mentioning therein his ill health as well as family problems. According to the respondents, the documents sent by the applicant about his medial treatment could not be accepted as per PMC Rules. The disciplinary authority also given a chance to the applicant to submit his defence brief on the enquiry report, which too the applicant has failed to do so. Thereafter, the disciplinary authority, having no option passed an order of removal from service of the applicant. In the Counter Affidavit, the respondents have also stated that earlier the applicant was absent from duty un-authorisedly for which he was awarded punishment of removal from service, which was revoked by the appellate authority and the applicant was taken back in service.

3.2 The respondents also averred that the appeal of the applicant was time barred as it was submitted after the statutory period of 45 days, however, the same was considered and decided vide order dated 15.10.2019. No provision exists under the relevant rules to submit second appeal and as such no action was required to be taken on the second appeal of the applicant. Lastly, the respondents have stated that the orders, impugned in the Application, are perfectly legal and valid and the same do

not call for any interference, hence the O.A. is liable to be dismissed.

4. The applicant has filed Rejoinder Affidavit to the Counter Affidavit filed by the respondents refuting the contentions of the respondents made in Counter Affidavit reiterating the averments as already advanced in the O.A. by enclosing the judgment of Principal Bench of the Tribunal rendered in O.A. No. 3075 of 2012 in re. Ramesh Chander Vs. Union of India & Others decided on 11.2.2014.

5. We have heard the learned counsel for the parties at length and also perused the pleadings available on record.

6. The short point involved in this O.A. is that whether the applicant, who was un-authorisedly absent from duty for a period of more than two months, is entitled to get any relief or not.? The facts as projected by the applicant have not been disputed by the respondents.

7. In the instant matter, the applicant remained absent from duty from 25.4.2018 to 3.9.2018. The chargesheet has been served upon him as SF-5 for major punishment in regard to absence period. It is also evident from records that there is service of chargesheet upon the applicant. He was also asked to participate in the enquiry proceedings. Despite having knowledge regarding continuation of enquiry proceedings, the applicant did not appear before the Enquiry officer. It also appears that the applicant requested for adjournments time and again. From the entire facts and circumstances of the case, it is established that the applicant remained absent from duty for the period from 25.6.2018 to 3.9.2018. The applicant's plea is that due to compelling circumstances and his illness, he could not participate in the enquiry proceedings, nor he joined his duty. It is also the plea of the applicant that his absence is neither willfull or deliberate. The enquiry was completed ex-parte and Enquiry Officer has opined that the charges levelled against the applicant are found proved. It also appears from the records that

after submitting the enquiry report, a copy of which was served upon him for furnishing his reply, but the same was not done. Thereafter, the disciplinary authoritypassed the punishment order for removal from service. Although, the applicant has availed the remedy of appeal and revision, but the same were also dismissed. Thus, from the analysis of the entire facts and circumstances of the case and comparing the same with the submissions of learned counsel appearing on behalf of both the parties, it emerges out that while conducting the enquiry, the procedure as prescribed under law has been followed. Nothing is on record brought out on behalf of the applicant to establish that any sort of irregularity or procedural illegality was committed in conducting the enquiry as sufficient opportunity for defence has been given to the applicant. Thus, it cannot be said that the enquiry was conducted violating the principles of natural justice.

8. Ex-parte procedure-Ex-parte proceedings does not mean that all the witnesses should be recorded strictly as per Evidence Act. This proceeding means that Inquiry Officer can proceed on the basis of the material available to him in absence of delinquent. If at any stage the Inquiry Officer comes to the conclusion that further enquiry is necessary, it is open to him to do so. If the delinquent waives his right of hearing, he has to blame himself. He cannot be allowed, after the completion of enquiry, to turn round and say that the principles of natural justice have been infringed since no oral inquiry was held. He cannot be allowed to play fast and loose with the Inquiry Officer. Where he did not appear in inquiry which was decided without getting his written brief, no fault can be found on this count. The question of filing a written brief in such a case does not arise and there is no need to ask the delinquent to file a written brief.

9. As far as the issue regarding quantum of punishment is concerned, the Hon'ble Supreme Court in the case of **Union of India Vs. S.S. Ahluwalia reported in 2007 Law Suit (SC) 950**, has observed as under:-

> *"The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty."*

10. In the case of **State of Meghalaya Vs. Mecken Singh N Marak reported in 2009 Law Suit (SC) 1935**, the Hon'ble Supreme Court has held as under:-

> *"A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefore. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review."*

11. In the case of **Director General, RPF Vs. Sai Babu reported in 2003 Law Suit (SC) 117**, the Hon'ble Apex Court has held as under:-

> "4. Shri Mukul Rohtagi, learned Additional Solicitor General appearing for the appellants urged that the learned Single Judge was not right and justified in modifying the order of punishment, having observed that the respondent was a habitual offender and due to dereliction of duties, the punishment of stoppage of increments for three years was already ordered in 1984 and that there was no improvement in the conduct of the respondent. He alternatively submitted even if the learned Single Judge was of the view that the punishment imposed was grossly or shockingly disproportionate, punishment could not have been modified but the matter could be remitted to the disciplinary authority to re-examine the issue in regard to the imposition of penalty on the respondent. He further submitted that the Division Bench of the High Court did not go into the merits of the contentions and simply endorsed the view taken by the learned Single Judge."

12. Broadly speaking, the quantum of punishment ought to have been decided by the authority concerned keeping in view the following six points:-

i) Gravity of misconduct
ii) Past Conduct
iii) Nature of duties
iv) Position in organization
v) Previous penalty, if any
vi) Kind of discipline required to be maintained.

13. On plain reading of the aforementioned judgments, the legal position is clear that the power of Hon'ble High Court or the Tribunal is very limited while exercising the power of judicial review, so far as it relates to the quantum of punishment. However, the Hon'ble Supreme Court consistently held that if the punishment imposed was grossly or shockingly disproportionate, then the court can review the order. This Tribunal also found that the punishment awarded to the applicant is quite harsh and disproportionate to the gravity of offences.

14. The charge levelled against the applicant is only in respect of unauthorized absence from working place without information. Even if the charge leveled against the applicant stands proved, the offence remained only absence from duty. The Tribunal found that in many cases where the employees remained absent from duty from number of months and years together and reported back to duty, the employer regularize his absence from duty by treating the absence without pay or discontinuance from service but not in any case punishment of removal from services was passed. In the case, in hand, the punishment awarded to the applicant appears to be very harsh and shockingly to the mind of the Tribunal especially when the applicant proved the compelling circumstances under which the applicant remain absented. So far as the proof of charge is concerned, the applicant and respondents have their separate stands but the Tribunal without going into the controversy of

proof of charge, considered that even if the charges are proved and the applicant was given ample opportunity to defend his case during the enquiry, still the fact remains that the decision of removal from service is quite harsh and hit conscience of the Court/Tribunal.

15. In view of the above discussions, O.A. succeeds and is liable to be allowed and is accordingly allowed. Orders dated 30.5.2019, 15.10.2019 and 3.2.2021 passed by the respondents are set-aside. The matter is remitted back to the disciplinary authority for reconsideration of the matter with regard to quantum of punishment in accordance with the procedure and rules except dismissal/removal/compulsory retirement and pass a fresh order against the applicant. The aforesaid drill shall be completed within a period of three months from the date of receipt of certified copy of this order. No costs.

16. All the associated MAs stand also disposed of.

(Mohan Pyare)
Member-A

(Justice Om Prakash VII)
Member-J

Girish/-