



2024:CGHC:32137-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1617 of 2024

Order Reserved on 14.08.2024

Order Delivered on 23.08.2024

1. Smt. Sulabee, Wife of Sardar Khan, aged about 65 years, R/o H.No.1484/1, NE Colony, Bilaspur (C.G.)
2. Yasmin Khan, W/o Late Id Mohammad Khan, aged about 38 years, R/o H.No.1484/1, NE Colony, Bilaspur (C.G.)
3. Mohd. Sultan Khan, S/o Late Id Mohammad Khan, aged about 18 years, R/o H.No.1484/1, NE Colony, Bilaspur (C.G.)

... Petitioners

versus

1. Union of India through General Manager, South East Central Railway, Bilaspur (C.G.)
2. Chief Personnel Officer, South East Central Railway, Bilaspur (C.G.)
3. Divisional Railway Manager, South East Central Railway, Bilaspur (C.G.)
4. Additional Divisional Railway Manager, South East Central Railway, Bilaspur (C.G.)
5. Sr Divisional Operations Manager, South East Central Railway, Bilaspur (C.G.)

... Respondents

For Petitioners : Mr. A.V. Shridhar, Advocate

For Respondents : Mr. Ramakant Mishra, Deputy Solicitor General

Hon'ble Smt. Rajani Dubey, Judge
Hon'ble Shri Amitendra Kishore Prasad, Judge

C A V Order

Per Amitendra Kishore Prasad, Judge

1. Heard Mr. A.V. Shridhar, learned counsel for the petitioners. Also heard Mr. Ramakant Mishra, learned Deputy Solicitor General, appearing for the respondents.
2. The petitioners are the legal heirs of deceased employee- Late Id Mohammad Khan, who was working as Porter/SEY under the Railways and posted at Bilaspur, Chhattisgarh. He was served with a charge-sheet dated 06.01.2014 issued by the DOM/CIC/BSP (Disciplinary Authority) with an allegation that he was remained unauthorisedly absent from duty from 11.12.2012 to 26.12.2013 and onwards, as such, a notice was issued to him that due to afore-stated unauthorised absent, he failed to maintain devotion in duty and acted in the manner of unbecoming of a railway employee by contravening the Rule 3.1 (ii) & (iii) of the Railway Services (Conduct) Rules, 1966 (for short, "RS (Conduct) Rules") and thereby rendered himself liable for disciplinary action under Railway Services (Discipline & Appeal) Rules, 1968 (for short, "RS (D & A) Rules").
3. The respondent authorities initiated a departmental enquiry and after completion of the same, findings have been given stating that *"After carefully gone through all these evidence orally and documentary evidences, I am of the opinion that Sri ID*

MOHAMMAD posted as PORTER at SIVNI remained unauthorised absent from duty for the period from 11/12/12 to 26/12/13 and onwards is PROVED EX-PARTE”.

4. On the aforesaid premises, departmental enquiry was conducted and after completion of the same, it was found that the petitioner was remained unauthorised absent from 11.12.2013 to 26.12.2013 and onwards and he was required to be removed from service. It was further held that the employee was not a fit person to be retained in Railway service anymore. Therefore, in exercise of power conferred in Rule 10(5) and Schedule-II vide Rule No.6 & 7 of the delegation of power under RS (D & A) Rules, the disciplinary authority, after full and proper application of mind imposed the punishment of removal from railway service with immediate effect. It was also held that since the petitioner was imposed penalty and he has been removed from railway service, hence, removal is without sanction of any compassionate allowances.
5. Since the petitioner was expired, his son preferred an appeal against punishment of removal from service as awarded by the disciplinary authority on 11.02.2016, however the appellate authority rejected the appeal vide order dated 19.12.2016. Thereafter, his son preferred a revision petition before the competent authority, which was also dismissed.
6. Being aggrieved by the dismissal of the revision petition, he preferred a mercy appeal before His Excellency The President of

India on 09.03.2018 and by communication dated 01.05.2018, the son of late employee was communicated that the competent authority has decided to withhold the mercy appeal addressed to His Excellency The President of India. Thereafter, his son preferred an original application before the Hon'ble Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (for short, "CAT") bearing Original Application No.203/00640/2018, but during the pendency of the same, son of late employee and petitioner No.1 died on 24.05.2020, the present petitioners were brought on record. The said Original Application was dismissed by the learned CAT vide order dated 04.07.2023 affirming the orders passed by the disciplinary authority, appellate authority as well as revisional authority. The order of disciplinary authority regarding removal from service without sanction of compassionate allowances was affirmed by the learned CAT.

7. Being aggrieved with the order dated 04.07.2023 passed by the learned CAT in Original Application No.203/00640/2018, the petitioners have filed the instant writ petition inter-alia challenging the findings given by the disciplinary authority, which was affirmed by the appellate authority as well as revisional authority with the following relief(s):-

"10.1 That, this Hon'ble Court may kindly be pleased to call the entire records pertaining to the case of the petitioner.

10.2 That, this Hon'ble Court may kindly be pleased to quash the order passed by the

Hon'ble Tribunal in OA No. 203/640/2018 dated 04.07.2023 (Annexure P/1).

10.3 That, this Hon'ble Court may kindly be pleased to grant all reliefs as claimed by the petitioners before the Hon'ble Tribunal.

10.4 Any other relief in the facts and circumstances of the case which the Hon'ble Court deems fit and proper may be passed.

10.5 Cost of the Petition be awarded to the petitioner.”

8. It is argued by the learned counsel for the petitioners that while passing the order of removal from railway service in respect of Late Id Mohammad Khan i.e. employee of railway, who was working as Porter/SEY, is contrary to the rules of Central Civil Services (Conduct) Rules, 1964 (for short, “CCS (Conduct) Rules”) and it is also against the principles of natural justice as the employee was not given proper opportunity of hearing in the departmental proceedings, as such, preliminary order passed by the disciplinary authority, which was affirmed by the appellate authority as well as revisional authority, is liable to be set-aside. It is further argued that disciplinary authority has committed an error of law while holding unauthorised absence of the petitioner whereas in the departmental proceedings, if allegation of unauthorised absent from duty is made, disciplinary authority is required to proof that the unauthorised absence is willful. In absence of such finding, absence will not amount to misconduct. Learned counsel has drawn attention of this Court to Annexure

A/4 i.e. proceeding of departmental enquiry, in which, on 07.04.2014, the prosecution witnesses were examined and Mr. L.N. Tandon, the prosecution witness, has specifically stated that the absence of the employee is genuine while answering to question No.9, as such, it appears that the department itself has considered the absence of the employee to be genuine one. He placed reliance on the judgment rendered by Hon'ble Supreme Court in case of **Krushnakant B. Parmar v. Union of India & Another** reported in **(2012) 3 SCC 178** to buttress his submissions.

9. Per contra, it is argued by learned counsel for the respondents that the employee was unauthorisedly absent without there being any reason as well as he has not appeared before the disciplinary authority and therefore, ex-parte proceeding was initiated against him. It is further argued that the conduct of the employee would show that it was willful absence, as such, the employee is not entitled to get any relief. It is contended that the disciplinary authority, appellate authority as well as revisional authority have concurrently held that removal of the employee is in accordance with law, as such, no interference is warranted by this Court.
10. We have heard learned counsel appearing for the parties at length and perused the documents annexed with the writ petition with utmost circumspection.
11. In **Krushnakant B. Parmar** (supra), Hon'ble Supreme Court has held as under :-

“15. Rules 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a Government servant and reads as follows:

"3-General.-(1) Every Government servant shall at all times-

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant."

16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a Government servant. The question whether “unauthorised absence from duty” amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful.

There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was willful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty.

20. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in **M.B. Bijlani v. Union of India** reported in **(2006) 5 SCC 88** wherein this Court held: (SCC p. 95, para 25)

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi- criminal in nature, there should be some evidence to prove the charge.

Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

X X X X

24. In the result, the appeal is allowed. The impugned orders of dismissal passed by disciplinary authority, affirmed by the Appellate Authority, Central Administrative Tribunal and the High Court are set aside. The appellant stands reinstated.

25. Taking into consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the disciplinary authority for any further action. Further, keeping in view the fact that the appellant

has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs.”

12. From perusal of the documents annexed with the writ petition, it appears that in the departmental enquiry, disciplinary authority has failed to prove that absence of employee was willful and it amounts to misconduct as per CCS (Conduct) Rules. It is further apparent that the department itself considered the absence of employee to be genuine one as stated by the prosecution witness, namely Mr. L.N. Tandon while answering to question No.9.
13. If we shall examine the facts of the instant case in the light of aforementioned judgment rendered by the Hon'ble Supreme Court in **Krushnakant B. Parmar** (supra), it is quite vivid that learned CAT has failed to appreciate that it is a settled issue that punishment in a departmental proceedings on account of unauthorised absence cannot be imposed until and unless the unauthorised absence is established to be willful. On a bare perusal of the enquiry report, it becomes abundantly clear that the absence of employee was genuine one as stated by the prosecution witness, namely Mr. L.N. Tandon. Even the charges as framed against him do not constitute a misconduct in true perspective and looking to the gravity of misconduct, the imposition of punishment of removal from railway service without compassionate allowance is highly disproportionate.
14. Principle of natural justice is attracted whenever a person suffers

a civil consequence or a prejudice is caused to him by an administrative action. In other words, principle of natural justice is attracted where there is some right, which is likely to be affected by any act of the administration including a legitimate expectation. The procedure to be followed is not a matter of secondary importance and in the broadest sense, natural justice simply indicates the sense of what is right and wrong and even in its technical sense, it is now often equated with fairness. As a well-defined concept, it comprises of two fundamental rules of fair procedure that- a man may not be a judge in his own cause and that a man's defence must always be fairly heard. It is fundamental to fair procedure that both sides should be heard.

- 15.** The disciplinary proceedings are quasi-judicial proceedings and Enquiry Officer is in the position of an independent adjudicator and he is obligated to act fairly, impartially and without any bias. Rules of natural justice have been recognized and developed as principles of administrative law. The rules of natural justice is meant for securing justice or to put it negatively, to prevent miscarriage of justice. The concept of natural justice has undergone changes over a period of time. In the past, it was thought that principles of natural justice included just two principles, namely, (1) no one shall be a judge in his own case and (2) no decision shall be given against a party without affording him a reasonable hearing. Later on, a third principle was envisaged, which prescribes that quasi-judicial enquiries must be

held in good faith, without bias and not arbitrarily or unreasonably.

In **State of Uttar Pradesh and Others v. Saroj Kumar Sinha** reported in **(2010) 2 SCC 772**, Hon'ble Supreme Court had laid down that Enquiry Officer is a quasi-judicial authority and that he has to act as an independent adjudicator and that he is not a representative of the Department / Disciplinary Authority.

16. Reverting to the facts of the present case in the light of aforementioned judgment of Hon'ble Supreme Court as well as considering the principles of natural justice, it is quite apparent that the employee was not given proper opportunity of hearing and major punishment of removal from service has been passed, which bears civil consequences.
17. Considering the matter in its entirety as well as considering the principles of natural justice, this Court is of the opinion that the order passed by the Enquiry Officer in respect of removal from railway service of the employee, is not in accordance with law and the same is required to be quashed.
18. Since the order passed by the disciplinary authority itself is not in accordance with law and it is against the principles of natural justice, the impugned order passed by the disciplinary authority dated 15.05.2014 imposing punishment for removal from service is hereby set-aside.
19. As a fallout, the orders passed by the appellate authority dated 19.12.2016, revisional authority dated 19.04.2017 as well as order

passed by the learned CAT dated 04.07.2023, are also hereby set-aside.

- 20.** Now, the employee has already expired, hence, legal heirs of deceased employee are required to be given all service benefits. The respondents are directed to calculate the service benefits of the deceased employee, namely Late Id Mohammad Khan and the same be given to the legal heirs within a period of 4 months from the date of production of copy of this order.
- 21.** With the aforementioned observations/directions, the writ petition stands allowed. There shall be no order as to cost(s).

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge

Yogesh