

**(2010) 03 MP CK 0003**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 2835 of 2003**

Union of India (UOI) and Others

APPELLANT

Vs

Ashok Kumar Dubey and Another

RESPONDENT

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**Date of Decision : 26-03-2010**

**Acts Referred:**

Constitution of India, 1950 — Article 227

**Citation : (2010) ILR (MP) 1717**

**Hon'ble Judges : Ramesh Surajmal Garg, J;Rakesh Chandra Mishra, J**

**Bench : Division Bench**

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## **Judgement**

R.S. Garg, J.—The Petitioners, Union of India and Department of Central Railway, being aggrieved by order dated 14.8.2003 passed by the Central Administrative Tribunal, Jabalpur in Original Application No. 276/1999 Ashok Dubey v. Union of India and Two Ors. have come to this Court under Article 227 of the Constitution of India with a submission that the authority was not entitled to interfere on the question of punishment especially when it is proved on the record that the Respondent/employee was unauthorizedly absent for the period between 12.5.1996 and 2.1.1997 and even remained absent after service of the charge-sheet in relation to the unauthorized absence.

2. Short facts necessary for disposal of the present petition are that the charge-sheet as contained in Annexure P/1 was issued upon the Respondent/employee calling upon him to show cause against the charge that he was unauthorizedly absent with effect from 12.5.1996 upto the date of issue of the notice i.e. 2.1.1997. The Respondent/employee despite service of the notice did not attend the proceedings, therefore, Inquiry Officer, namely, Station Manager, Itarsi proceeded ex-parte and alongwith his covering letter dated 20.7.1998 submitted the inquiry report. It was submitted by the Inquiry Officer that various notices were issued and number of dates were fixed for appearance of the Respondent/employee but he remained absent. It would be necessary to note even at this stage that the inquiry report submitted by the Station Manager, Itarsi has not

been filed before us.

3. After receiving the inquiry report, the Divisional Operations Manager, Central Railway, Bhopal issued an order on 23.10.1998 which reads as under:

1. The employee remained absent even after issuing SF-5 and conducting enquiry.

2. He has not turned up for duty till date, nor any information given by him regarding his attendance.

3. After going through his case carefully, I have come to the conclusion that "he should be removed from service" with effect from 23.10.1998.

4. It is also to be noticed that during pendency of the first departmental enquiry, the Respondent/employee was issued yet another charge-sheet but it is not known to anybody as to what happened to that enquiry.

5. Learned Counsel for the Petitioners however submitted that the second enquiry was probably dropped or kept in abeyance because of imposition of penalty vide order dated 23.10.1998 Annexure P/3.

6. The employee being aggrieved by order dated 23.10.1998 {Annexure P/3} filed Original Application No. 276/1999 {Ashok Dubey v. Union of India and Two Ors.} before the learned Central Administrative Tribunal which after hearing the parties came to the conclusion that though the employee was absent for a period of 27 months and though there appears to be some dispute about the dates, the Department was not justified in awarding the punishment of removal from service. After setting aside the order dated 23.10.1998 {Annexure P/3}, the Central Administrative Tribunal directed that the employee would be entitled to all consequential benefits except back wages for the period of absence and during the period the employee was removed from service as a result of the punishment till the time he rejoined. After passing this much of the order, the Tribunal further directed that the Respondents of the said original application will be at liberty to impose a minor penalty on the employee {applicant of the original application} after following the due process. The Petitioners being aggrieved by the said order are before this Court.

7. Even at this stage, we are unable to approve part of the order contained in Paragraph 9. If the Tribunal was of the opinion that the employee could not be awarded such major punishment and the Department was obliged to impose a minor penalty then question of payment of back wages should have been left to the discretion of the Tribunal. On one side, the Tribunal had set aside the order imposing penalty and at the same time, it had directed that the employee would not be entitled to the back wages except the consequential benefits. Be that as it may; we will not enter into that controversy because that part of the order is not under challenge before us at the instance of the Respondent/employee.

8. The question before us is that whether the Tribunal was justified in interfering

with the quantum of punishment. It is not in dispute now that alongwith Annexure P/2, an enquiry report was forwarded by the Station Manager, Itarsi to the Disciplinary Authority. It is also not proved on the record that after receiving the enquiry report, the Disciplinary Authority after recording its agreement with the said report ever sent a copy of the said report to the delinquent employee or sent a notice to him against the proposed punishment; that ground could have been taken by the Respondent/employee before the Tribunal but it appears not to have been taken before the Tribunal.

9. Annexure P/3 which is the order imposing punishment calls itself to be a "speaking order"; we have already referred to the order in the earlier paragraph of this judgment. In the entire order, the Disciplinary Authority nowhere says that it is agreeing with the findings recorded by the Inquiry Officer. It nowhere says that the employee was called upon to submit his comments against the report of the Inquiry Officer.

10. The ground mentioned in first paragraph of Annexure P/3 says that the employee remained absent even after issuing SF-5 and conducting enquiry. SF-5 was issued on 2.1.1997 and it was in relation to the Respondent's absence for the period between 12.5.1996 to 2.1.1997. The conduct of the employee subsequent to issue of the notice could not form basis for imposing punishment or for recording a finding against his interest.

11. The ground mentioned in second paragraph of Annexure P/3 says that the employee did not turn up for duty till date "23.10.1998" nor any information was given by him regarding his attendance. Paragraph 2 of the letter is also in relation to conduct of the employee exhibited by him subsequent to issue of the charge-sheet; that conduct, in our opinion, could not be taken into consideration for imposing punishment unless subsequent conduct was also made a ground for imposing punishment and a notice of the same was issued to the employee.

12. The ground mentioned in third paragraph of Annexure P/3 says that after going through his case carefully, the authority had come to the conclusion that "he {employee} should be removed from service" with effect from 23.10.1998.

13. We are at a loss to understand that what persuaded the authority to impose such a punishment. It also appears that the first two grounds mentioned in the order {Annexure P/3} infect persuaded the Disciplinary Authority to award the capital punishment of removal from service. If first and second grounds mentioned in Annexure P/3 are not taken into consideration then in our opinion, the result would have been different. The order {Annexure P/3} imposing capital punishment, in our opinion, was properly not approved by the Tribunal.

14. After going through the entire discussions made by the Disciplinary Authority and also taking into consideration that the employee was asserting that he had attended his duty for the period between 11.8.1998 to 20.9.1998, that he was permitted to appear in the written examination of GDCE in which he appeared at Mumbai and qualified in the test on 12.10.1998; that he resumed his duty and

thereafter he was under a treatment of a Railway Medical Officer, we are also of the opinion that award of punishment of removal from service was on the higher side.

15. For the reasons aforesaid, we find present to be a fit case for non-interference. The petition is dismissed. The interim order is vacated. The Respondent/employee would be entitled to reinstatement with back wages from 14th August 2003 i.e. from the date of the order passed by the Tribunal. He would also be entitled to all consequential benefits including seniority, grades etc.

16. At this stage, Shri Prakash Upadhyay, learned Counsel for the Petitioners submits that present is a fit case where back wages should not be allowed in favour of the employee even from the date of the order passed by the Tribunal till he is reinstated.

17. When an authority passes an order for reinstatement then rights of the parties would be crystallized on the said date. In the present matter, the Petitioners should have thought twice before obtaining a stay order from this Court. If the Petitioners obtained a stay order and did not allow the Respondent/employee to join and work then for an action on part of the Petitioner/employer, the employee who was kept away from working and receiving salary cannot unnecessarily be punished. The Department should always think twice before asking for a stay because in case of dismissal of the petition or the proceedings filed at the instance of the Department, the Department may have to pay the entire back wages atleast from the date of the order passed by the Subordinate Court/Tribunal or from the date the proceedings were initiated in the High Court or before the Higher Forum. The prayer for non-grant of back wages is rejected.