



## Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.4079/2014

Wednesday, this the 12<sup>th</sup> day of February 2020

**Hon'ble Sri Justice L. Narasimha Reddy, Chairman  
Hon'ble Sri A. K. Bishnoi, Member (A)**

Shri Mukandi Lal /so Shri Kishna Ram  
r/o 169/8, Railway Colony  
Delhi Kishanganj  
Aged about 56 years  
Ex Safaiwala

..Applicant  
(Dr. Romesh Gautam, Senior Advocate, and Dr. Malika  
Gautam and Sri Kshitij Gautam, Advocates) with him

### Versus

1. Union of India through the General Manager  
Northern Railway Headquarters  
Baroda House, New Delhi
2. Divisional Railway Manager  
State Entry Road, New Delhi
3. The Chief Traffic Manager  
Northern Railway  
Divisional Office State Entry Road  
New Delhi

..Respondents  
(Sri Kripa Shanker Prasad and Ms. Ekta Rani, Advocates)

### O R D E R (ORAL)

**Justice L. Narasimha Reddy:**

The applicant states that he was engaged as Water  
Khallasi in the Northern Railway on 11.06.1987 and was



later on, conferred with temporary status also. It is also stated that he has been appointed on regular basis as Safaiwala.

2. A charge memo was issued to him on 06.10.2004, alleging that he remained unauthorisedly absent for a long time. The applicant did not submit his explanation, nor did he participate in the inquiry. The inquiry officer submitted his report sometime in February 2005, holding the charge as proved. Taking the same into account, the disciplinary authority passed an order dated 26.08.2005 imposing the punishment of removal from service. Appeal preferred by the applicant was rejected on 25.02.2008. Thereafter, he availed the remedy of revision, which was rejected on 27.02.2013.

This O.A. is filed challenging the order of removal, as affirmed in appeal and revision.

3. The applicant contends that he remained absent for few days in the year 2003 and thereafter, on account of acute domestic problems and though he applied for leave, he was not sanctioned the same. He contends that in the imputation of charge, enclosed with the charge memo



issued to him, it was mentioned that he remained absent from 12.01.2003, whereas the attendance register clearly disclosed that he attended the office till 11.11.2003. Another contention of the applicant is that the respondents proceeded as though he remained absent from 09.11.2003 and there is any amount of inconsistency in this behalf. It is also stated that the inquiry officer deviated from the prescribed procedure, inasmuch as he did not examine any witnesses, nor did he take into account any documents but recorded a finding that the charge is proved only on the ground that he, i.e., the applicant remained absent.

4. The applicant further submits that the disciplinary authority did not apply his mind to the facts of the case, inasmuch as it was mentioned that the applicant remained absent for 147 days in the year 2003, whereas the charge memo relied upon by the respondents refers to the absence from 09.11.2003 onwards. Various other grounds are also raised.

5. The respondents filed counter affidavit opposing the O.A. It is stated that the applicant remained absent for quite a long time, and left with no alternative, disciplinary



proceedings were initiated. It is stated that the actual date of absence, mentioned in the charge memo, is 09.11.2003, and not 12.01.2003, as pleaded by the applicant. They further submit that the inquiry officer was left with no alternative, except to submit an *ex parte* report, on account of non-cooperation of the applicant. They deny other contentions advanced by the applicant.

6. We heard Dr. Romesh Gautam, learned senior counsel assisted by Dr. Malika Gautam and Sri Kshitij Gautam, learned counsel for applicant, and Sri Kripa Shanker Prasad, learned counsel for respondents, at length, and perused the records.

7. Though the respondents denied the plea of the applicant that he was taken into service on 11.06.1987, on casual basis, we do not intend to go deep into that. The fact remains that by the time the charge memo was issued to him on 06.10.2004, the applicant was a regular employee.

8. Along with the *proforma* charge memo dated 06.10.2004, the respondents have enclosed Annexures-1 & 2, being imputation of charges, in Hindi version. The



one filed by the applicant is in a typed form and indicates that he remained absent from service from 12.01.2003. The respondents have placed before us, a handwritten form in which the date is mentioned as 09.11.2003. There is no need to undertake any further verification in that behalf and it is better to go by the version presented by the respondents.

9. The applicant stated that the attendance register has clearly indicated that he was on duty up to 12.11.2003 and none of the versions, i.e., the allegation as to absence from 12.01.2003 or 09.11.2003, is correct. Here again, we do not intend to delve much.

10. Assuming that the applicant did not submit his explanation and did not participate in the inquiry, the inquiry officer was under obligation to examine the witnesses cited in the charge memo and to take the documents into account, and then to record the findings. In the charge memo, two witnesses, namely, Senior Chief Health Inspector and Health Inspector, New Delhi, were cited as witnesses. The inquiry officer did not examine any of those witnesses. The only basis for recording the finding is as under:-



“Shri Mukandi Lal safaiwala working under CHI New Delhi has been given many notice to cooperate in the enquiry. After receipt of SF% and Charge-sheet he has neither sent any reply or any application nor he had appeared in the enquiry. After giving enough chances the conclusion is drawn that by not presenting his case he is not cooperating in the enquiry.

Therefore, by taking ex-parte action the conclusion is drawn that the charges are correct. It is certified that the charges are considered to be correct.”

11. It is fairly well settled that whenever the disciplinary proceedings are initiated against an employee, the burden to prove the charges is upon the Department. The participation of the employee is mostly to enable him to cross examine the witnesses examined by the Department, and to put-forward his own version, if the situation warrants. The absence of the employee in the proceedings does not relieve the inquiry officer, from his obligation to record the evidence, relied upon in the charge memo. Viewed in this context, the report submitted by the inquiry officer cannot be sustained in law. As a result, the subsequent order of punishment, as affirmed in appeal and revision, are liable to be set aside.

12. We have noticed another discrepancy on the part of the disciplinary authority. The charge was that the



applicant remained absent from 09.11.2003 onwards. Assuming that the charge is proved, the absence of the applicant in the year 2003 can be around 52 days. In the impugned order dated 26.08.2005, the disciplinary authority mentioned the periods of absence of the applicant as under:-

Year 2002	=	8 days
2003	=	147 days
2004	=	365 days
2005	=	Remaining till date

13. If the applicant remained absent in the year 2003 for 147 days, that would virtually make the very charge factually incorrect. Further, the disciplinary authority is not permitted to take into account, any factors other than those mentioned in the charge memo. It is only in the context of examining the extenuating or aggravating circumstances, that they can be taken into account, but not with reference to the charges. Viewed from any angle, we find that the order of punishment passed against the applicant cannot be sustained in law.

14. We, therefore, set aside the impugned order dated 26.08.2005 as affirmed in appeal and revision, and the report of the inquiry officer. It is left open to the



respondents to conduct fresh inquiry in accordance with law.

15. The record discloses that the applicant has attained the age of superannuation on 30.09.2019. One option to the respondents can be to give a quietus to the issue by granting the retirement benefits with suitable deductions, and the other is to continue the disciplinary proceedings, in accordance with the relevant provisions of law. In case the second option is chosen, they shall be under obligation to pay the back-wages in accordance with law. The decision in this behalf shall be taken within two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

**February 12, 2020**  
/sunil/