

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 1653/98

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NEW DELHI THIS THE 4th DAY OF NOVEMBER, 1999

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

In the matter of:

Sh Narain Dass,
S/o Sh Chhotte Lal,
PWI (N), Jhansi Central Railway,
R/o- C/o Mohan Lal,
4034, Baghichi Ram Chandra,
Gali School wali, Paharganj, N. Delhi-55.

(By Shri H.P. Chakravorty, Advocate) ----- Applicant

Vs.

1. The Union of India through,
The Chairman, Railway Board,
The Principal Secretary to
The Government of India,
The Ministry of Railway, Railway Bhawan,
New Delhi-110 001.
2. The Assistant Engineer,
(Broad Gauge), Central Railway,
Gwalior.
3. The Divisional Engineer,
(Headquarter), Central Railway,
Jhansi.
(By Shri B.S. Jain, Advocate)

..... Respondents

O R D E R (ORAL)

BY REDDY. J.

Heard the counsel for the applicant and the respondents.

2. The applicant was working as Gangman in the Railways. The applicant was absent from duty for 525 days. He was therefore issued a charge memo on 21.10.91. An Enquiry Officer was appointed. The Enquiry Officer sent notices for enquiry to the applicant on various dates. Some of the letters have been returned unserved while some of them ^{were} served upon the applicant. The applicant however did not participate in the enquiry. The enquiry was therefore held as ex parte and

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Enquiry Officer submitted his report on 30.5.94 stating that applicant was guilty of unauthorised absence as alleged. The disciplinary authority perused the findings of the Enquiry Officer and the record of the enquiry and holding the applicant guilty of the charges imposed the punishment of removal from service by the impugned order dated 13.7.94. The applicant filed an appeal and the same was also rejected. Thereafter he filed the revision petition to the Addl. General Manager, Central Railway on 1.1.96. But the revision petition has not been disposed of. Hence the OA is filed for quashing of the orders of the disciplinary authority as well as the order of the appellate authority.

3. It is contended by the learned counsel for the applicant that there was no enquiry at all as the applicant was never given opportunity to participate in the enquiry. Since he was sick and suffering from Chronic Psychosis he could not participate in the enquiry. It is also contended that the enquiry report has not been furnished to him hence the applicant could not be able to properly defend himself in the enquiry.

4. Learned counsel for the respondents raised a preliminary objection of limitation. He also contends that in spite of several notices to the applicant the applicant deliberately not participated in the enquiry. Hence it was heard ex parte and impugned order was passed. It is further contended that the Enquiry Officer's report could not be given to the applicant in view of his absence from the enquiry and the mere fact that non-furnishing of the enquiry report is not a valid

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4 ground to vitiate the enquiry unless ~~was~~ ^{was} prejudice shown by the applicant.

5. We do not subscribe to the view that the impugned order was passed without holding any enquiry. It is seen from the counter that the respondents had made several attempts to serve notices on the applicant so that the applicant could participate in the enquiry. They have sent notices to the last given address more than half a dozen times to the applicant to participate but he did not participate. It was said that the enquiry officer vide his letter dated 29.11.91, 27.12.91, 7.2.92, 31.7.92, 9.4.94 and 14.5.94 asked the applicant to participate in the enquiry but he did not attend the enquiry. Hence, the enquiry had to be held ex parte.

6. It is vehemently contended by the learned counsel for the applicant that the applicant was admitted in the hospital from 1992 to 1995 hence he could not participate in the enquiry. He placed reliance upon his certificate given by the Medical Department. The Medical certificate only shows that the applicant "is likely to be unfit to perform his duties _____ days w.e.f. 5.5.92". Certificate was dt.9.3.95. It is, therefore, neither in order nor does it go to show that the applicant was unwell or is sick from 1991 to 1995. The certificate dated 8.2.95 issued by Dr. Babasaheb Ambedkar Memorial Hospital, Bombay also does not show that the applicant was admitted in the hospital or ^{was} bed ridden during the period of enquiry. It is to be noticed in this case that no information was also sent to the department during the period of enquiry by the applicant about his alleged illness. The contention, therefore, has to be rejected.

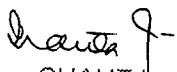
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7. The contention that the applicant was not served with the copy of the enquiry report cannot also be held as a vitiating factor in this case. The applicant was never participated in the enquiry and his whereabouts were unknown. Probably, that was the reason why the respondents could not send the report to him. The applicant has not established any prejudice in his defence only on the ground that the enquiry report was not furnished to him. It is well established that unless prejudice is established for non-supply of the report the said fact cannot be taken as a ground for vitiating the enquiry. In the present case the applicant has not participated in the enquiry at all nor shown any interest in his defence. Hence, the non-supply of the enquiry report cannot be held as prejudicing factor in his defence.

8. We are also of the view that the OA is liable to be dismissed on the ground of limitation. The primary order of removal from service was passed in 1994. The applicant filed an appeal which was also dismissed in 1995. Though representation is said to have been sent by him in 1996 the same has been denied by the respondents. The OA is filed in 1998. It is, therefore, hit by Section 21 of the AT Act.

9. The OA is, therefore, dismissed on both the grounds - of limitation as well as on merits.


(MRS. SHANTA SHASTRY)
Member (A)


(V. RAJAGOPALA REDDY)
Vice Chairman (J)

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