

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 582/1995

New Delhi this the 12th day of March, 1999.

HON'BLE SHRI JUSTICE S. VENKARARAMAN, VICE CHAIRMAN

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

Shyam Sundar Kumar S/O Ram Lubhaya,
R/O Gali No. 13, House No.W2 43E,
Krishna Park Extension,
New Delhi-110018.

... Applicant

(By Shri P.T.S. Murthy, Advocate)

-Versus-

1. Divisional Railway Manager,
Northern Railway,
Jodhpur.
2. Chief Commercial Manager (G),
Northern Railway Headquarters Office,
Baroda House,
New Delhi.
3. General Manager,
Northern Railway,
New Delhi.

... Respondents

(By Shri H. K. Gangwani, Advocate)

O R D E R (ORAL)

Shri Justice S. Venkataraman :

The applicant has filed this application to quash the order of removal passed by the respondents as a result of ^{an} the ex parte inquiry purported to have been held against him in his absence, and for a direction to reinstate him in service with backwages.

2. It is a peculiar case where the applicant has sought to challenge the order of removal without

12

17

producing that order. According to the applicant, he was never served with the chargesheet or the order of removal, and that the order has been passed ex parte. It would appear that the applicant was proceeded against departmentally on charge of unauthorised absence from September, 1979 onwards. According to the respondents, efforts were made to serve the chargesheet on the applicant on his last available address with them, but it was not possible to do so as the registered letters were returned with the remarks "addressee left without address". Ex parte proceedings are stated to have been taken and order of removal is stated to have been passed on 3.6.1982. The applicant preferred an appeal against that order on 31.10.1989 to the Divisional Railway Manager (DRM). According to the applicant, he received a letter from the DRM as per Annexure-I dated 24.5.1994 requiring him to state as to what had happened from 1978 to 1989 "making a clean breast of every thing without hiding any facts." On receipt of this letter, the applicant filed this application.

3. The applicant not ~~even~~ having produced the order of removal from service, we might have straightway rejected this application, more so in view of the fact that in his appeal, Annexure-II, he has stated that the disciplinary authority vide its communication dated 3.6.1982 removed him from service by taking ex parte proceedings, which indicates that he was made aware of the order of removal then itself.

2

No doubt, the revisional authority was not justified in asking the applicant to furnish the particulars which he had asked for in Annexure-I while dealing with the revision filed by the applicant. Be that as it may, the respondents have produced the order of the revisional authority rejecting the revision petition.

4. Though the applicant has not made out any good grounds to interfere with the order of the disciplinary authority, we find from the reply filed by the respondents themselves that on the appeal preferred by the applicant, the appellate authority had initially ordered reinstatement of the applicant reducing the penalty imposed to reduction in the lower grade of Rs.950-1500 and sent back the file to DPO on 16.12.1989. In the reply, it is stated that the DPO again presented the case to the DRM bringing to his notice the criminal case pending in court against the employee and that the DRM then cancelled his orders passed on 16.12.1989 and finally turned down the applicant's appeal on 18.5.1990 and sent communication to the applicant on 3.9.1992. We wanted to know from the respondents' counsel as to how the appellate authority having passed an order reducing the penalty on the appeal preferred by the applicant could have subsequently cancelled that order and dismissed the appeal, the learned counsel took some time to secure the records and make his submissions. Time was given for that purpose. But the learned counsel for the respondents has not been able to secure those records.

2

19

5. The learned counsel for the respondents relying on the decision of the Supreme Court in **Bachhittar Singh v. The State of Punjab**, (1962) Supp. 3 SCR 713 contended that the appellate authority could have changed its order as the order had not become final by its communication to the applicant and that there is nothing wrong in the subsequent order passed by the appellate authority rejecting the appeal.

6. In **Bachhittar Singh**^{Case} (supra), the appeal had to be considered and disposed of by the State Government. On an advance copy of the appeal sent by the party, the Revenue Minister had made a note that the punishment was harsh and he should be reverted to his original post. Before that order could be communicated, the State of PEPSU merged in the State of Punjab and the file was sent to the Chief Minister of Punjab, who upheld the order of dismissal which was formally communicated to the party. The Supreme Court pointed out that Article 166 (1) of the Constitution requires that all Executive actions of the State Government should be expressed in the name of the Governor; that there is provision in the Constitution for the authentication of the orders and other instructions made and executed in the name of the Governor; and that the note made by the Revenue Minister which was also not communicated to the party cannot be held to be an order of the Government. The said decision is not applicable to a case where a statutory appeal is decided under the provisions of

20

the Railway Servants (Discipline & Appeal) Rules, 1968. Rule 32 of these rules provides as to how an appeal should be disposed of. There is no provision contemplating an initial decision by the appellate authority and ~~the~~ final decision later on. There is also no provision for review of the order passed by the appellate authority nor is there a provision which says that an order passed by the appellate authority would not be finally ^{final} communicated to the party. Even if it can be said that the appellate authority can review its order, the review could be only in respect of matters which are subject matter of the appeal. In the instant case, the appellate authority has not purported to review the order on the ground that there ~~is~~ any error in the order earlier passed by him on the basis of the material which was on record. What is stated to have been done is ^{that} when the file containing the order was sent to the DPO, the latter is stated to have again presented the case to the appellate authority intimating him that a criminal case was pending against the employee. The pendency of criminal case was totally irrelevant for the purpose of decision of the appeal and the appellate authority could not have, on the basis of that information, cancelled an order which it had already passed. It, therefore, follows that the subsequent order passed by him dismissing the appeal is an invalid order. It is seen that in the Annexure-III dated 4/7.6.1994 submitted by the applicant in continuation of his revision petition, he has stated that he had been

2

(2)

- 6 -

informed in December, 1989 by the DRM that he had been exonerated and that, however, he was not communicated the order of reinstatement. He has also alleged that the order of the appellate authority has been subsequently got changed in May, 1990. The revisional authority had not considered this aspect while disposing of the revision petition.


7. On admitted facts, the applicant is entitled to the benefit of the order passed by the appellate authority and we cannot shut our eyes to what is stated in the reply and deny the relief to the applicant which he is entitled to as per the reply.


8. For the above reasons, this application is allowed in part and while quashing the orders of the revisional authority and the subsequent order of the appellate authority dated 18.5.1990, we restore the earlier order passed by the appellate authority reducing the penalty imposed to reduction in the lower grade of Rs.950-1500. The respondents may implement that part of the order and reinstate the applicant forthwith. However, in view of the fact that the applicant has been absent for a very long period, we direct that he shall not be entitled to any backwages and his seniority shall be counted in the lower grade

2/

22

from the date he is reinstated. The respondents shall pass appropriate orders regarding the period of absence in accordance with law. No costs.


(K. Muthukumar)
Member (A)


(S. Venkataraman)
Vice Chairman

/as/