

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

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OA. No. 340 of 1994

Dated New Delhi, the 15th day of September, 1994.

Hon'ble Shri J. P. Sharma, Member(A)

Hon'ble Shri B. K. Singh, Member(J)

Shri Naresh Kumar Batra  
R/o Lt.No.169/1, Railway Colony  
Kishan Ganj  
DELHI

... Applicant

By Advocate: Shri B. S. Mainee

VERSUS

Union of India through

1. The General Manager  
Northern Railway  
Baroda House  
NEW DELHI

2. The Divisional Superintending  
Engineer(Estate)  
Northern Railway  
D.R.M. Office  
NEW DELHI

... Respondents

By Advocate: Shri R. L. Dhawan

O R D E R  
(Oral)

Shri J. P. Sharma, M(J)

The applicant joined as L.D.C. in Northern Railway in 1977 and thereafter promoted as Senior Clerk in the year 1982. He has been processed in a departmental enquiry earlier in which disciplinary authority passed an order on 13.5.88 and was dismissed from service but by order dated 5.12.88 the appellate authority reduced his punishment reducing the applicant to the initial grade in the pay scale and also stopped two increments with cumulative effect. The applicant assailed that order in OA.2188/89 which was pending at the time of filing of this application in

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February, 1994. He was served with another memo of charge sheet on major penalty on 16.1.90 and alleged to have committed misconduct being unauthorisedly absent from duty. The applicant denied the charge. The disciplinary inquiry was held under Rule 9 of the Railway Servant (Discipline and Appeal) Rules, 1968 and vide order dated 2.3.93 the applicant was dismissed from service. The applicant sent a letter dated 18.4.93 titling it as appeal against the dismissal from service. Since he did not receive any reply, he filed this OA after expiry of the waiting period. The prayer in this application is for quashing of the impugned order dated 2.3.93 and for vacation of the order dated 14.9.93.

2. The respondents contested this application and took the stand that the applicant did not participate in the departmental proceedings and the Inquiry Officer gave his finding that the charges levelled against the applicant have been established and forwarded the same to the disciplinary authority, who by the impugned order dated 2.3.93 imposed the punishment of dismissal from service. It is said that the letter sent by the applicant on 18.4.93 cannot be said to be an appeal as provided under Rule 9 of the Railway Servant (Discipline & Appeal) Rules, 1968. It is also stated that the applicant has not exhausted the departmental remedy and the application is barred under

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the provisions of Section 20 of the Administrative Tribunal Act, 1985.

3. The applicant in the rejoinder reiterated the stand taken in the OA. It is said that the applicant has filed an appeal and the same has not been considered by the respondents nor any result of the appeal has been conveyed to him.

4. We heard the learned counsel for the parties at length and also got the departmental enquiry file from the department. It is a fact that the applicant was served with a memo of charge sheet on unauthorised absence from duty to which he has simply filed a reply on 20.1.90 (Annexure-A.3).

5. Thereafter the applicant did not join the departmental enquiry. There is a definite procedure laid down for the Inquiry Officer. In case the delinquent do not cooperate with the enquiry then under Rule 9 sub clause 17, the witnesses are to be examined by the Inquiry Officer. In the present case witnesses have not been examined. Now the question arises whether without taking any evidence into account, oral or documentary, the finding of the Inquiry Officer would be justifiable simply writing by a stroke of pen that the charges against the delinquent stand established. The learned counsel for the respondents in fact, could

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not show that the report of the Inquiry Officer mentions any such fact which may lead to irresistible conclusion that the documents were seen by the Inquiry Officer. This was a case of unauthorised absence from duty. The immediate supervisor of the applicant, Attendance Register if any, maintained by the department and that a person was in-charge of the allotted work to the applicant should have been the best person to show that the applicant was not attending to his normal duties after having been reinstated in service. It is because of this fact that the applicant was earlier dismissed from service in the first enquiry and the punishment was reduced to reduction to a lower stage and stoppage of two increments with cumulative effect in December, 1988. The present memo of charge sheet was served in January, 1990. It may be that the applicant was watching the result of the OA assailing the order by which he was reduced to lower stage of pay, but all these should have come in the record and the report of the Inquiry Officer.

6. We have gone through the order passed by the disciplinary authority and it goes to show that he concurred of the report of the Inquiry Officer, But he too did not go through the records and without proper application of mind, imposed the punishment of dismissal from service by the impugned order dated 2.3.93. This order, therefore, cannot stand. The controversy has arisen because of

Respondents' stand that no appeal has been filed against this order. Since the applicant, as argued by the learned counsel for the respondents has not exhausted statutory remedy, so this application is not maintainable and he has also placed reliance on a decision in the case of Ravindra Singh Vs U.O.I. & Ors. in OA.741/91 decided on 18.2.93. In that case it was ordered that the petitioner of that case did not exhaust the remedy available to him at the departmental level, so he was directed to exhaust that remedy and thereafter if any grievance survives, he was given liberty to approach the Tribunal. However, in this case, we find that the applicant has despatched the letter dated 18.4.93, the receipt of which is not denied by the respondents where he has titled this letter as an appeal. This letter may not be in the prescribed procedure under Rule 18 of the Railway Servant(Discipline & Appeal) Rules 1968, but by passing an order <sup>it</sup> should have been conveyed ~~and~~ to the applicant. Contents of this letter goes to show that the applicant has challenged the dismissal. If this application did not contain any grounds challenging the order of the disciplinary authority, as argued by the learned counsel for the respondents, the respondents were free to pass appropriate orders rejecting the same or any suitable order deemed fit. When the respondents have not done this, it is not open to them to take the plea that no appeal has been preferred by the applicant.

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7. The aforesaid letter of 18.4.93 do go to show that there is a mention as a fact that the Inquiry Officer has not held any inquiry. The appellate authority should have considered atleast all these aspect and this has not been done even upto the time of hearing of this application to-day.

8. Since we have also observed in the earlier part of the order that the Inquiry Officer did not record any evidence, may be due to the fault for non co-operation of the delinquent, but at the same time the principles of natural justice as well as the procedure laid down for holding enquiry under Rule 9 warrants that even in case of ex-parte enquiry, the Inquiry Officer has to take atleast some evidence oral or documentary to arrive at a justifiable conclusion.

9. The application, therefore, is allowed that:(i) the impugned order of dismissal dated 2.3.93 is set aside and the appeal filed by the applicant stand abated. The respondents are at liberty to recommence the enquiry on the basis of <sup>served</sup> charge sheet, admitted by the applicant, and proceed according to Rule 9 of the Rules and conclude enquiry as early as possible. If the applicant still <sup>does</sup> not cooperate with the enquiry or evades service of the hearing of the enquiry, it shall be open to the Inquiry Officer to proceed ex-parte

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according to rules.


ii) The period from the date of alleged unauthorised absence till the date of conclusion of enquiry shall be passed by the respondents after the enquiry is concluded. In case no enquiry is held by the respondents, then appropriate orders should be passed by the competent authority giving benefit to the applicant to which he is entitled as if no misconduct has been committed by him.

iii) Since the impugned order dated 2.3. 93 is quashed the applicant may be reinstated in service as per order dated 5.12.88 passed by the Appellate Authority in the enquiry. He shall be paid accordingly from the date of his joining as per extant rules. For the period prior to his joining by virtue of this order shall be governed by the direction given in paragraph (ii) above.

iv) If the respondents hold the enquiry as directed in paragraph (i) above that shall be concluded expeditiously.

10. The application is disposed of accordingly with no order as to costs.

  
(B. K. Singh)  
Member(A)

  
(J. P. Sharma)  
Member(J)

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