CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

(9)

Original Application No. 404 of 1994

New Delhi, this the 9th day of March, 1999

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN (J)
HON'BLE MR. K.MUTHUKUMAR, MEMBER (A)

Niranjan S/O Sh. Dhannu, Ex-Khalasi Under Signal Inspector (D), Northern Railway, Chandausi (UP).

Residential Address:-

Niranjan, C/O Sh. Prem Shankar Lal, Qr.No.T-238/4/ (Jhuggi), Railway Colony, Shankarbasti, Delhi - 110 034.

--APPLICANT.

(By Advocate Sh. G.D.Bhandari)

Versus

1. Union of India through The General Manager, Northern Railway, Baroda House, New Delhi.

2. The Divisional Railway Manager, Northern Railway, Moradabad (UP).

--RESPONDENTS.

(By Advocate -Sh. B.S.Jain)

O R D E R (ORAL)

By Hon'ble Mr. Justice S. Venkatraman, Vice Chairman (J)

The applicant is aggrieved by the order dated 7.3.89 (Annexure-2) passed by the Disciplinary Authority holding the applicant guilty of the charges framed against him and imposing the penalty of removal from service, the order dated 10.8.89 (Annexure-4) passed by the Appellate Authority rejecting his appeal and Annexure-1 order dated 4.10.93 passed by the Reviewing Authority upholding the decision of the disciplinary authority.

2. Two charges were framed against the applicant. The first charge was that while working as Khalasi, he absconded from duty from 18.2.81 to 22.6.81 without any

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sactioned leave or without any authority and lost contact with the Railway Administration. Second charge was that the applicant had played a fraud with the Railway authorities by producing some other person for Medical Examination at the time of joining duty with an ulterior motive to get appointment for himself and that this fact was ascertained by lab test made by the Finger Print Expert who reported that the thumb impression on the service record of the applicant does not match with the finger impression affixed on the Medical Fitness Certificate dated 5.8.70. An enquiry was conducted by the enquiry authority who submitted a report (Annexure-7), dated NIL wherein he has held that the first charge was proved while the second one was not proved. It is conceded that the copy of that enquiry report was not furnished to the applicant, as it is stated that during that period there was no provision under rules to furnish a copy of the report. Be that as it may, the Disciplinary Authority in the penalty order, the translation of which is at Annexure-2, purporting to agree with the conclusion arrived at by the enquiry officer, proceeded to hold the applicant guilty of both the charges and imposed the penalty of removal from service. In that order, a copy of the enquiry report is stated to have been enclosed. But according to the applicant, he was not given a copy of the enquiry report even at that stage. The appellate authority has passed a short order stating that the procedure had been complied with, that the findings of the disciplinary authority "are OK", that imposed penalty was justified and that though personal hearing was given to the applicant he had nothing to say in his defence. The applicant appears to

have submitted a revision petition dated 28.6.1992. Before submitting that revision petition, the applicant had submitted a mercy appeal on 28.3.1992 to the Divisional Railway Manager who is the Revisional Authority. On this mercy appeal, dated 28.3.1992, the DRM has sent a communication as per Annexure-6 dated 25.2.93. In this communication, it is stated that after considering the appeal, the revision authority, namely, DRM had decided that a copy of the enquiry report should be furnished to the applicant in order to give him an additional chance of defence, that accordingly a copy of the enquiry report was sent with that letter to enable the applicant to furnish necessary comments on the report for further consideration by the Competent Authority. In persuance to Annexure-6, the applicant submitted a representation as per Annexure-10, dated 5.3.93. The applicant is stated to have given another representation as per Annexure-12. Thus two representations were given with regard to the enquiry report as permitted by the revisioning authority by the letter Annexure-6. Strangely the revising authority by Annexure-1, dated 4.10.1993 has passed an order upholding the disciplinary authority s decision and rejected the revision petition dated 28.6.92. When the revising authority himself had given an opportunity to the applicant to put-forth his representation after furnishing a copy of the enquiry report, it is unintelligible as to why no order was passed by the competent authority on the representations given by the applicant against the enquiry report and as to how the revising authority over-looking his own earlier order Annexure-6 proceeded to uphold the decision of the disciplinary authority (Annexure-1).

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3. Learned counsel for the applicant has mainly contended that the applicant was not at all furnished a copy of the enquiry report before the disciplinary authority passed the punishment order and that even after the copy was furnished and he was given an opporunity to make his representation against that report, the Competent Authority had not passed any order and that as such the impugned orders are vitiated. He next contended that the enquiry report in which the first charge has been held to have been proved, has not at all recorded any reason for holding the first charge as proved and that so far as the disciplinary authority is concerned, not only he has not given any reason for holding the first charge proved but, he has not at all applied his mind to the enquiry report inasmuch as he has held even the second charge proved without either giving reasons for disagreeing with the enquiry officer's finding or giving an opporutnity to the applicant to put-forth his representation with regard to that charge. He also contended that the order of the disciplinary authority is not an order in conformity with rule 22 (ii) of the Railway Servants (Discipline & Appeal) Rules, 1968.

4. Learned counsel for respondents valiantly sought to support the orders which are patently indefensible. He submitted that the disciplinary authority has given reasons in the file in 1985 for holding that second charge has also been proved and that there was no necessity for the disciplinary authority to communicate those reasons to the applicant and that the order of the

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disciplinary authority cannot be interfered with only on the ground that the reasons have not been given in Annexure-2 order.

5. Firstly, we wish to point out that inspite of specific ground taken by the applicant in his application, the respondents have not filed any reply in time. They have filed a reply subsequently after forfeitting the right to do so. That apart, it is conceded by the respondents' counsel that even in that reply the respondents have not pleaded that any separate order giving reasons had been passed by the disciplinary authority in the file in 1985. As such, we are only to look into Annexure-2 to find out whether that order can be sustained. In Annexure-2, the disciplinary authority while clearly stating that he agrees with the conclusions arrived at by the enquiry officer on the charges levelled against the applicant, has proceeded to hold the applicant guilty on both the charges without giving even one single reason as to why he disagrees with the finding of the enquiry officer on charge No.2 or on what basis he has come to the conclusion that charge No.2 is proved. It is obivious that the disciplinary authority has not at all applied his mind to the report submitted by the enquiry officer and has mechanically passed Annexure-2 order, persuming that the enquiring authority has held the applicant guilty of both the charges. This one ground is sufficient to quash the disciplinary authority's orders. So far as the appellate authority is concerned, he has clearly failed to take note of the above circumstances and has passed the order on the appeal in a mechanical way without considering the

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evidence on record in support of the charge and complying with the specific mandate of rule 22 (ii) of the Rules. As such, the appellate authority's order also requires to be quashed. We have already pointed out the irregularity in the order passed by the revisional authority without taking note of his own earlier order. We are, therefore, constrained to quash the impugned orders.

6. With regard to the finding on charge 1 given by the enquiring authority, the only reason given by him to hold that charge is proved is as under:-

> "Regarding allegation No.1 of the Annexure-I of the aforesaid Memorandum, on cross examination, the employee vide Q.No.11 has admitted that he did no maintain liason with SI (D)/CH during the period 18.2.1981 to 22.6.1981."

7. The fact that the applicant did not maintain liason with the concerned officer is made the only basis to hold that he was guilty of the charge of abscondance ~~duties~~ duty during that period without authorisation. No other reason is given by the enquiry authority to hold the first charge as proved. The reason given is no reasonat all. Thus, even the enquiry report, so far as it pertains to first charge, cannot be sustained.

8. The last point that requires to be considered is whether we should permit the respondents to continue the proceedings afresh from the stage at which the illegality ocurred. It is seen that the charges were framed as long back as 1983 and the second charge pertains to the misconduct which is stated to have been commited in 1970.

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The applicant is a Khalasi and if after lapse of such a long time the proceedings are allowed to be started again it would result in undue hardship to the applicant.

9. In the light of the above facts and circumstances, we do not grant permission to the respondents to continue with the proceedings again. The ends of justice would be met if the applicant is directed to be reinstated without back-wages.

10. For the above reasons, we allow this application quashing the impugned orders and directing the respondents to reinstate the applicant making it clear that he would not be entitled to back-wages. However, we make it clear that it is open to the respondents, if they consider the applicant medically unfit, to take action in accordance with law. No costs.

(K.MUTHUKUMAR)
MEMBER (A)

(S.VENKATRAMAN)
VICE CHAIRMAN (J)

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