

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1925/2000

(3)

New Delhi, this the 14th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Vijay
S/o Shri Gaya Prasad
Ex. Gangmen,
Under Senior Section
Engineer/P.Way (II)
Northern Railway
Tundla.

R/o Tundla Khan, New Rly. Colony
Primary School Tundla.

...Applicant

(By Advocate Ms. Meenu Mainee, proxy
counsel for Shri B.S.Mainee)

V E R S U S

UNION OF INDIA : THROUGH

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional
Superintending Engineer (II)
Northern Railway
Allahabad (U.P.)
3. The Assistant Engineer (Track)
Northern Railway
Tundla.

...Respondents

(By Advocate Shri B.S.Jain)

O R D E R

By Hon'ble Shri Govindan S. Tampi,

Applicant in this OA, challenges orders dated 30-10-99, passed by the Disciplinary authority removing him from service and dated 24-12-1999, passed by the appellate authority confirming the same.

2. Heard S/Shri B.S.Mainee with Smt. Meenu Mainee and Shri B.S.Jain, learned counsel respectively for the applicant and the respondents.

3. Stated briefly, the facts in the OA are that the applicant, a Gangman in the Railways at Tundla, was issued a Charge Sheet on 22-3-1999 for major penalty, for long unauthorised absence. The applicant replied that while working at Tundla, on 22-7-1998 he fell ill and as the treatment at Tundla did not cure him, he went to his own place Kanpur for treatment where he remained till became well. In the Deptt. enquiry held on 8-10-1999 and 11-10-1999, the Inquiry Officer examined the applicant first and asked him to produce the medical certificate. The prosecution witness was cross examined by the I.O. thereafter, which was illegal. On 11-10-1999 itself the I.O. gave his report. Thereafter the applicant was medically examined and taken back on duty on 26-10-1999, but on the very next day he was removed from service by the disciplinary authority without even giving him a copy of the inquiry report and without putting him on notice on the proposed action. His appeal dated 10-12-1999 was rejected by the appellate authority by a cryptic and non-speaking order. Hence this application.

4. According to the applicant, the entire proceedings were marked by violations of the principles of natural justice. The inquiry officer, disciplinary authority and the appellate authority had acted in a casual and incorrect manner. They had declined to accept the truth that the reason for his absence from duty was genuine and that he had fallen ill. He had also taken steps to have the respondents informed about the position as soon as he became well. The proceedings adopted by the I.O. were against the

interests of the applicant. Disciplinary authority had taken the decision to remove the applicant without giving him the copy of the inquiry report and the appellate authority had passed a totally non-speaking order. The Tribunal should in the circumstances intervene in the matter and render justice to him, is what the applicant prays for.

5. Contesting the above, the respondents point out that the applicant had left his place of posting - Tundla - to Kanpur without any authorisation or intimation and had remained absent w.e.f. 25-7-1998 as proved by the I.O.'s report dated 11-10-1999. The I.O. had acted correctly and he did not examine the applicant on 8-10-1999 and had given him time to produce the necessary evidence by 11-10-1999. The applicant had declined the services of a defence assistant and conducted his defence on his own. The inquiry report was indeed supplied to the applicant on 13-10-1999 and the applicant's averment to the contrary are wrong. As far as the appeal was concerned it was only a mercy petition and the same was accordingly disposed of correctly by the concerned authority. The proceedings thus having been gone through properly there was no ground at all for the Tribunal to interfere in the matter, according to the respondents.

6. Both the learned counsel - Smt. Meenu Mainee and Shri B.S.Jain - reiterated their pleas vehemently during the oral submissions. Smt. Mainee, learned counsel also relied upon the decision of the

Tribunal dated 12-11-1996 in OA No.2610/93, wherein the action of the appellate authority in issuing a non-speaking order has been severely criticised.

(b)

7. We have carefully considered the matter. While the fact of the absence of the applicant from Tundla, his place of work is not disputed, the applicant has stated that he had to leave for Kanpur, his hometown as he could not get proper treatment in Tundla and that he had informed the respondents about his being away, as soon as he could. On the other hand, the respondents hold that he was unauthorisedly absent. However, we observe that the proceedings have not been gone through correctly. Firstly there is no evidence to show that the I.O.s report was given to the applicant for giving his representation. Though the respondents have stated that the same report was issued on 13-10-1999, there is no record that the said report was given to the applicant. In fact, the Disciplinary Authority's order suffers on account of this clear violation of the principles of natural justice. Further the appellate order is totally cryptic and non-speaking. The entire appellate order reads as below :-

The undersigned after having carefully gone through the DAR case file, inquiry report and your appeal dated 10-12-1999, has come to the conclusion that the employee is guilty and penalty imposed by A.E.N. Track is proper.

"And your appeal is rejected"

The order is as vague as vague can be and exhibits total non-application of mind. Even while the applicant's plea has been a mercy appeal, as he had indicated the circumstances leading to his absence,

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the appellate authority was bound to examine them and record his findings thereon. The appellate authority's failure to do so has rendered the order non-speaking. Therefore, both the disciplinary authority's order and the appellate order suffer from infirmities and accordingly deserve to be set aside. (A)

8. In the above view of the matter, the application succeeds and is accordingly allowed. Impugned orders of the disciplinary authority dated 30-10-1999 and of the appellate authority dated 24-12-1999 are quashed and set aside. The respondents are directed to reinstate the applicant in service within one month from the date of receipt of a copy of this order. The applicant will not be entitled to any back wages for the period from the date of his removal to the date of reinstatement. This order will also not come in the way of the respondents' proceeding against the applicant for unauthorised absence, if so advised. If the respondents take any further step it should be done after supplying to the applicant a copy of the inquiry officer's report and considering his representation, if any, submitted.

No costs.

Govindan S. Tampi
Member (A)

/vikas/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)