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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.2188/89

New Delhi, this the 19th day of July, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Naresh Kumar Batra,
S/o Late Shri Bodh Raj Batra
R/O 169/1 Railway Colony,
Kishanganj,
DELHI-110 007.

....Applicant

By Advocate : B.S. Mainee

VERSUS

THE UNION OF INDIA, THROUGH

The General Manager,
Northern Railway,
Baroda House,
New Delhi.

...Respondents

By Advocate : None

JUDGEMENT (Oral)

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

The applicant was employed as clerk in Northern Railway, Baroda House, New Delhi. He was served with Memo of chargesheet under Railway Service (Discipline & Appeal) Rules, 1968 (Rules), containing 2 articles of charge as follows:-
"That the applicant has ^{been} on unauthorised absence on certain dates mentioned in the article of charge from 04.10.1985 to September, 1986. Out of 365 days, the applicant was absent for 178 days." (Annexure A-3)

2. The other charge that he refused to attend official work on 14th August, 1986 and he acted in a rude manner viz with ATO(T) in his chamber on that date.

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3. It was, therefore, said that he violated rule 3.1 (ii) & (iii) of Railway Service Conduct Rules 1966. The enquiry commenced under Rule 9 (Discipline and Appeal) Rules, 1968. The enquiry Officer examined the applicant on 11th September, 1987 after putting certain questions to him and gave the findings as part of the Inquiry Officer's report on 21st September, 1987. The disciplinary authority on 15th October, 1987 imposed penalty of dismissal from service agreeing with the report of the Inquiry Officer. On appeal, the Appellate Authority interfered with the punishment imposed by the disciplinary authority and took a lenient view, reducing punishment by way of reduction in the initial grade at the minimum of the scale and 2 increments stopped permanently and, the period from the date of dismissal. The resumption of reinstatement was to be treated as period not to be treated on duty and no pay and allowances to be paid.

4. The present application was filed on 13th October, 1989 and notice was issued to the respondents for 19.12.89 to file their reply before D.R. The same was not done. On 2nd Jan, 90, it was ordered since the respondents have not filed the reply, the right to file reply was forfeited and the case was ordered to be listed in its turn as it had been admitted on 31st October, 1989.

5. Shri B.S. Mainee is present on behalf of the applicant and none is present on behalf of the respondents. The respondents have not come forward to contest this application. Basically, we find that when against a railway servant disciplinary enquiry is initiated, procedure laid down under

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Rule 9 has to be complied with. After serving the Rule 17 of the Rules, memo of chargesheet under rule 9, under the oral and documentary evidence by which the articles of charge are proposed to be proved, shall be produced by all on behalf of the disciplinary authority, the witness shall be examined by or on behalf of the presenting officer, if any, may be cross-examined by or on behalf of the railway servant. The presenting officer, if any, shall be entitled to re-examine the witness on any points on which they have been cross-examined, but not on any new matter without the leave of inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit. After this process is over then under Rule 17 sub-rule(9) railway servant enter into defence and after the railway servant has closed his case then the railway servant has to be re-examined on the circumstances appearing against him in the evidence for the purpose of enabling railway servant to explain any circumstance appearing in the evidence against him. After the conclusion of the enquiry under sub-rule 25, the Inquiry Officer has to give finding on each article of charge and reasons therefor.

6. Now, coming to the present case, Inquiry Officer either was not aware of the statutory rule (9) or for that if the delinquent concedes the charges he can dispense with the enquiry. However, the applicant has denied the charge. In any case, there was no occasion for the Inquiry Officer to examine the delinquent before examining the witness in support of the charge. The perusal of the question-answer put to the applicant shows answer to Question No. 3 put to him, the applicant has replied that he has

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given his reply in his defence to him (Inquiry Officer). He, however, informed the Inquiry Officer that because of his illness of his widowed mother, he could not attend to the Office and applied for leave. The Inquiry Officer, has taken it for granted as ^a sort of admission, which it is not, and gave its finding in 2 paragraphs in half of the full-scape page, but nowhere stated that the charges against the applicant has been proved. He has only commented and the comments were forwarded to the disciplinary authority who also did not apply its mind and agreeing with the report of the Inquiry Officer, imposed penalty of dismissal.

7. This is totally against the procedure prescribed by the Inquiry and, such an enquiry can ^{not be} said to be according to law and the rules framed under Railway Servants (Discipline & Appeal) Rules, 1968. It may be because of this that the respondents did not come forward to support the order of the disciplinary authority.

8. Regarding the Appellate order, we find that the applicant in his appeal has stated that his earlier absence has been condoned as leave without pay by order dated 31st March, 1986 and for the absence in September, 1986, ^{of} OS, operating 26 days, LAP for his absence. When the period of absence had already been regularised by the competent authority, then this period cannot be, in any way, taken to be absence of the applicant in an unauthorised manner from his duty. The Appellate Authority in cryptic order though was sympathetic in reducing order of dismissal did not apply its mind to the various averments made

in the memo of appeal nor in any way referred to them in the Appellate Order. It was expected of the Appellate Authority to refer to the averments made by the applicant in the beginning of the Memo of appeal that the period of unauthorised absence had already been condoned by the Competent Authority and as such whether after that condonation of the absence from duty, would still amount to misconduct. If the applicant has explained his absence in a particular manner to the satisfaction of the Supervisory Authority, competent to sanction leave to him, then in such a situation, it was demanded from the Appellate Authority either to go through that sanctioned leave or condonation of absence from duty and then dispose of the impugned order of punishment passed by the Disciplinary Authority.

9. We find that the Appellate Authority did not consider any of the aspect of the matter nor did it take care to go through the file whether the Inquiring authority has observed the rules, laying down procedure for holding the enquiry i.e. Rule (9). Rule 18 of the rules provide for filing of the appeal and Rule 22 provides for consideration of such an appeal by the Appellate Authority and that has to be considered in the light of the sub para (a) (b) & (c). The Appellate Authority has not considered whether procedure laid down in the rules have been complied with or not and whether the Inquiry Officer has given any finding that the guilt against the applicant has been established. Such an Appellate Order, therefore, also cannot stand according to law.

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10. Having given a careful consideration and having gone through the pleadings of the applicant including annexures from the record we find that the applicant could not have been proceeded under any disciplinary enquiry as misconduct alleged, against him, unauthorised absence from the duty has already stood condoned by subsequent orders passed by Competent Authorities, condoning that absence from duty. We are not verifying the averments made in the memo of appeals. None is present on behalf of the respondents.

11. Having held that the unauthorised absence of the applicant had already been condoned, initiation of the proceedings of the department is unjustified besides the orders passed by the disciplinary authority as well as Appellate Authority are in total contravention of Rule 9, Rule 22 of the Railway Servants (Discipline & Appeal) Rules, 1968.

12. In the above conspectus of the facts and circumstances of the case, the application is allowed and the impugned order dt 13.5.88 (Annexure A-1) and order dated 13.9.88 Annexure A-2) is quashed and set-aside. The applicant is restored to its

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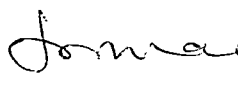
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position as he was before the imposition of the order of punishment by the disciplinary authority as modified by the Appellate Authority and shall be deemed to be in continuous service, and shall be entitled to the back wages, for all the period, he has been out of work because of the Order of dismissal, passed by the Disciplinary Authority. His increments and pay shall be restored to its original position.

(ii) He shall also be considered in order of seniority for any such promotion which has fallen out during the period and in the case of selection post, review DPC may be held.

(iii) However, applicant shall bear his own cost.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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