

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.477
T.A. No.

198 9.

DATE OF DECISION 21.9.89.

Shri R.P. Meena, Applicant (s)

Shri V.P.Sharma, Advocate for the Applicant (s)
Versus
Union of India Respondent (s)

Shri O.P.Kshatriya, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P. Srinivasan, Administrative Member.

The Hon'ble Mr. T.S. Oberoi, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT (ORAL)

(Judgement of the Bench delivered by Hon'ble
Shri P. Srinivasan, Administrative Member).

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was working as Deputy Yard Master at Rewari in the Northern Railway is aggrieved with an order dated 28.2.1989 passed by the Senior Divisional Operative Superintendent, Bikaner, removing him from service.

2. Shri V.P.Sharma, learned counsel for the applicant and Shri O.P.Kshatriya, learned counsel for the respondents have been heard.
3. Though a number of grounds have been urged to challenge the penalty order, we find this application can be disposed of on a short point. The applicant states in his application that the order of penalty has not been served on him. Shri Kshatriya, on the other hand, produces the records of the respondents to show

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that the order of penalty was actually sent to the applicant at his last known address by registered post acknowledgement due but was returned by the Postal Authorities with the remark that the applicant was not residing at the address but at Bikaner. Thereafter an effort was made to have the order served on him in person but he refused to accept the same. Left with no other alternative, the respondents had the notice served by substituted service. He, therefore, submits that service has been completed.

4. We have perused the order dated 28.2.1989 said to have been passed by the Divisional Operative Superintendent. It is a printed form which reads as follows:

N.R.

Genl.230.
Form No.32.

Orders of Imposition of Penalty under Rule 6(VII) to (IX) of Railways Servants (Discipline and Appeal) Rules-1968.

No.15IT/RPM Meena/38 TM 86

Place of Issue: D.R.M's Office
Bikaner.

Dated: 28th February, 1989.

To.

Shri Ram Prasad Meena, Dy.CYM/Rewari
C/D40/Bikaner.
Bill Section.

(Through S.S./Rewari).

I have carefully considered your representation..dated ... in reply to the Memorandum of // SF5 Notice No.151T/ RPM Meena-38/TM/86/I do not find your representation to be satisfactory due to the following reasons.

.....
..... Please see Annexure 'A'
.....

I, therefore, hold you guilty of the charge(s) viz. as mentioned in S.F.5 of even number dated 17.9.86 levelled against you and have decided to impose upon you the penalty of compulsory retirement/removal/dismissal from service. You are, therefore, compulsorily retired/removed/dismissed from service with effect from.....

2. Under Rule-18 of the Railway Servants (Discipline and Appeal) Rules,1968 an appeal against these orders lies to ADRM/BkN provided:

- (i) the appeal is submitted within 45 days from the date you receive the orders; and
- (ii) the appeal does not contain improper or disrespectful language.

3. Please acknowledge receipt of this letter.

Signature.....Sd/-
(H.C.Punia)

Encl:One.

Sr.Dvl.Optg. Supdt.N.Rly Bikaner.

It will be seen immediately that this a form which is to be used for different punishments to be imposed, indicated by oblique lines separating each of them. Of the three alternative punishments, two were scored out and the third reading "removal" ticked to indicate the punishment imposed on the applicant. However, after the words "you are, therefore, compulsorily retired/removed/dismissed from service w.e.f.

....." no date is mentioned. When the disciplinary proceedings are initiated and penalty is imposed, the disciplinary authority is expected to apply his mind and pass an individual order and not to mechanically fill up a printed proforma as has been done in this case. In view of the above, we have no hesitation in setting aside the impugned order with the direction to the Disciplinary Authority to dispose of the disciplinary proceedings by passing an order in accordance with the law.

5. Shri Kshtriya submitted that the applicant has not exhausted the departmental remedies by filing an appeal. Normally, we would have rejected such an application as premature but since the order imposing penalty in this case is patently invalid, we are sending it back to the disciplinary authority. We may also mention here that along with the impugned order an annexure is attached in which, again the disciplinary authority says "I, therefore, after considering the above facts carefully decide that Shri Ram Prasad Meena, Dy. CYM/RE (the then SM/JMS) may be removed from service in the public interest and to ensure 'safety' by taking ex-parte decision." (emphasis supplied) Here also there is no clear cut decision of the disciplinary authority imposing the penalty on the applicant.

6. In view of the above, we allow the application, quash the order of penalty dated ~~22.2.1989~~ ^{28.2.1989} with a direction to the disciplinary authority to dispose of the disciplinary proceedings in accordance with law. Pending passing such

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orders the disciplinary authority should also pass ^{order} ~~order~~ ^{the} immediately in accordance with ~~the~~ rules either permitting the applicant to resume duty or placing him under suspension.

7. The application is disposed of on the above terms leaving the parties to bear their own costs.


(T.S. Oberoi)
Member (Judl.)


(P. Srinivasan)
Member (Admn.)