

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1262/88
T.A. No.

199

DATE OF DECISION 18.1.1991.

Shri Vikram Singh

~~Petitioner~~ Applicant

Shri R.K. Kaura

~~Advocate for the Petitioner(s)~~ Applicant

Versus

Union of India & Others

Respondent

Shri B.K. Aggarwal

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */ No*
4. Whether it needs to be circulated to other Benches of the Tribunal? */ No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as a Peon in the
Office of the General Secretary, Indian Railway Conference
Association, New Delhi, filed this application under
Section 19 of the Administrative Tribunals Act, 1985,
seeking the following reliefs:-

(i) To set aside and quash the impugned order
dated 23.5.1988, whereby he was dismissed
from service w.e.f. 23.5.1988;

(ii) to direct the respondents to reinstate him
in service; and

(iii) to hold that he should be deemed to be in
service from the date the impugned order
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was passed for all purposes, including
pay, seniority, increments, etc.

2. The application was filed in the Tribunal on 7.7.1988. On 12.7.1988, the Tribunal passed an interim order to the effect that status quo as regards the applicant's occupation of Government accommodation be maintained.

3. On 6.9.1988, the learned counsel for the respondents brought to the notice of the Tribunal that the Indian Railway Conference Association, of which the applicant was an employee, was a voluntary association and not a statutory authority. It was not a part of the Union or a Union Territory. In view of this, the interim order regarding status quo in respect of the occupation of Government accommodation, was vacated. The applicant filed RA-130/88, being aggrieved by the above order passed by the Tribunal on 6.9.1988. The R.A. was disposed of by judgement dated 7.4.1989, wherein it was held that I.R.C.A. was not a department of the Railways and that it was an Association governed by separate rules, etc. As the applicant was an employee of that organisation, his case could not fall within the jurisdiction of this Tribunal. In view of this, the OA-1262/88 as well as RA-130/88 were held to be not maintainable for want of jurisdiction.

4. On 18.5.1989, the applicant filed Special Leave Petition (Civil) Nos. 7324 and 7325/89 against the aforesaid order passed by the Tribunal. . . The Supreme Court, by its order dated 18.5.1989, directed that the eviction of the petitioner from government quarter bearing No. 179/C-4, Vasant Lane, Railway Colony, Pahar Ganj, New Delhi, be stayed.

5. On 7.8.1989, the special leave was granted and on 10.4.1990, the S.L.P. was heard finally. The Supreme Court set aside the judgement and the order dated 7.4.89 of this Tribunal in RA-130/88 in OA-1262/88 and remanded the matter to the Tribunal with the direction that the Tribunal should restore to its file RA-130/88 in OA-1262/88 and dispose of the same on merits and in accordance with law.

6. Accordingly, the case was restored to its original position and the matter was heard finally on 31.12.1990.

7. This is an unfortunate case. The applicant was initially appointed as a Casual Labourer Khalasi on daily-rated wages in the Construction Organisation of the Northern Railway w.e.f. 16.12.1975. He was made permanent in March, 1982 in the Construction Organisation at New Delhi. He was subsequently, transferred to the Indian

Railway Conference Association as a Peon in July, 1984.

On 21.8.1984, he was posted as a Peon in the General Branch of I.R.C.A., New Delhi.

8. On 15.5.1987, Shri Murari Lal,CNI/SF, wrote to the Neutral Control Officer stating that at about 10.50 hours, the applicant brought some T.A. bills to him which were from Eastern region. He wanted him to get them processed. On scrutiny, Shri Murari Lal found that the T.A. bills were wrongly despatched to his office and hence, he asked the applicant to return the T.A. bills to the Establishment Branch for being sent to ANCO/Calcutta for necessary disposal. Shri Murari Lal further stated that the applicant did not leave the place and insisted upon getting the T.A. bills passed. According to him, the applicant "started accusing me that I was in the habit of harassing Line staff and F.S. staff and again insisted upon getting the T.A. bills passed. I advised him that it was none of his business to make comments on my working and instructed him to leave the place and go to his place of working. On this, Shri Vikram Singh got infuriated and started hurling abuses on me. Even on this, I did not lose my patience and again asked him to leave the place and to go to the place of his working. He still did not

go and insisted on immediately passing of T.A. bills.

He also tried to assault me but due to the timely intervention of Head Clerks, S/ Shri Rajinder Singh and C.D. Dua, the ugly scene could not take place."

Shri Murari Lal stated that he was greatly perturbed "due to the misbehaviour and misdeed of Shri Vikram Singh". He, therefore, requested to ensure that in future the applicant did not interfere in the working of N.C. Branch and also misbehave with him.

9. A copy of the above communication was not given to the applicant at any point of time. There is a noting on the letter to the effect that it may be kept as record and that the working and behaviour of the applicant should be watched.

10. On 10.9.1987, Shri A.K. Sinha, Caretaker, submitted a report to the respondents a copy of which was not given to the applicant. The said report has, however, been referred to in the Inquiry Officer's report.

11. On 21.9.1987, the respondents issued to the applicant a charge-sheet for minor penalty containing the following imputation of misconduct against him:-

"Misconduct:- In that Sh. Vikram Singh, Peon, while performing his duty as a Farash is not cleaning the office premises properly in spite of repeated verbal instructions.

Thus, he is held responsible for disobeying the orders and dereliction of duty which tantamounts to serious misconduct."

12. The applicant submitted a reply to the above charge-sheet on 27.9.1987, wherein he did not admit any guilt.

13. On 29.9.1987, the respondents imposed the minor penalty of stoppage of one increment for one year without further effect.

14. On 15.10.1987, the applicant submitted an appeal to the General Secretary, I.R.C.A. against the aforesaid penalty. This was followed by further appeals dated 21.10.1987 and 4.12.1987 by way of reminders. He also met the General Secretary in person but no action was taken on his appeals, nor was any reply given to him.

15. On 20.1.1988, the applicant submitted a representation to the Director (Estt.), Railway Board, wherein he had challenged the validity of the penalty imposed on him and alleged that Shri Murari Lal and Shri A.K. Sinha had threatened him.

16. On 14.3.1988, the respondents placed the applicant under suspension. He preferred an appeal against the said order to the General Secretary, I.R.C.A., on 15.3.1988 followed by two reminders of 18.3.1988 and 25.3.1988 requesting to advise the reasons for suspension and also to revoke the same. On 16.3.1988, he made a representation to the President, I.R.C.A. against the order of suspension.

17. On 23.3.1988, the respondents issued to him a memorandum proposing to impose major penalty on the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The Article of Charge was as under:-

"That the said Shri Vikram Singh while functioning as Peon during the period, committed the following irregular work, misbehaved with his superiors and created indiscipline and hindrances in official work:-

- (1) On 15.5.87 he did not carry out the official business as directed by the C.N.I.(FS) Hd. Qrs. Office and misbehaved and used abusive language as reported by C.N.I.(FS) vide his report dated 15.5.87.
- (2) In his defence dated 22.9.87 to this office Memorandum No. EP/4573, dated 21.9.87, he put false charges on his supervisors and officers of I.R.C.A.
- (3) He made a complaint direct to higher authorities giving false, fabricated and uncalled for remarks against officers and staff thus taking office norms and discipline in his own hands.

He is, therefore, held responsible for violation of Rule 3(1) (i), (ii) & (iii) of Railway Services (Conduct) Rules 1966 which amounts to serious misconduct, showing lack of integrity, devotion to duty and committed an act unbecoming of a Railway servant."

18. On 30.3.1988, the applicant gave his reply to the charge-sheet, wherein he stated that he had not committed any offence, as alleged.

19. On 30.3.1988, the respondents appointed Shri Hans Raj, Chief Clerk, as the Inquiry Officer to inquire into the charges framed against the applicant.

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20. On 11.4.1988, the applicant requested the General Secretary, I.R.C.A., that in connection with the disciplinary inquiry, he may be supplied photostat copies of the following documents:-

1. Duty list of Chaprasis (Peons)
2. I may be permitted to take extracts of the complaint filed by Shri Murari Lal, CNI/FS and connected papers.
3. Photostat copies of certificates of Shri Raj Kumar son of Shri Ram Krishan.
4. Copies of Rules and regulations relating to the appointment of Casual labour and their promotion in Canteens."

21. On 12.4.1988, the applicant wrote to the General Secretary, I.R.C.A., requesting that the Inquiry Officer may be changed, and that the inquiry be entrusted to an outside agency of the Northern Railway. The respondents, however, did not accede to his request.

22. The applicant made repeated requests for supplying to him copies of the documents required for his defence vide his letters dated 13.4.1988, 25.4.1988 and 28.4.88.

23. On 25.4.1988, the Inquiry Officer wrote to the applicant informing him with reference to his representation dated 28.4.1988 from which it will be seen that the documents sought by the applicant were not given to him, and that the Inquiry Officer decided to proceed with the inquiry. The letter of the Inquiry Officer reads as

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follows:-

"You are hereby informed that your representations dt. 11.4.88 and 12.4.88 have already been replied vide letter of even No. dated 12.4.88, and you were directed to attend the Enquiry on 14.4.88. Your enquiry on 14.4.88 was adjourned, as your defence helper was on leave. It was again fixed for 25.4.88.

2. Your representation dt. 25.4.88 is a repetition of your earlier letters dt. 11.4.88 and 12.4.88, and it is evident that you are evading to attend the D&AR Enquiry in your case.

3. However, in order to give you final chance to attend the enquiry, the next date of enquiry is fixed for 2.5.88. You must attend the same in the office of the General Secretary, IRCA, New Delhi at 10.30 hrs. along with your defence helper, failing which ex-parte action will be taken under D&A Rules."

24. 16.5.1988, the applicant again requested the General Secretary, I.R.C.A., to revoke the order of suspension. On 19.5.1988, the order of suspension was revoked with immediate effect and the applicant joined duty on the same day.

25. Thereafter, the respondents conducted an ex parte inquiry in which the applicant was found guilty of the charges.

26. On 23.5.1988, the respondents passed the impugned order, whereby the penalty of dismissal was imposed on him. It is clear from the order that a copy of the inquiry report was made available to him only along with the order of dismissal which is as under:-

"1. You are hereby informed that in accordance

or

with the orders passed by the undersigned,
the following penalty has been awarded to
you:-

"DISMISSAL FROM SERVICE W.E.F. 23.5.1988 (AN)"

2. This penalty has been imposed for the following specific charges which stand substantiated:

(Copy enclosed)

3. You are required to acknowledge receipt of this Notice on the form subjoined.

Encl: 1. Statement of charges
2. Enquiry Report
(ten pages)

In all 15 sheets.

Sd/-
General Secretary, I.R.C.A.
New Delhi."

27. The appeal filed by him to the President, I.R.C.A. on 13.6.1988, did not yield any result.

28. The applicant has raised several contentions challenging the validity of the impugned order of dismissal dated 23.5.1988. He has contended, inter alia, that he was denied reasonable opportunity by the refusal on the part of the respondents to give copies of the relevant documents required for his defence, and that a copy of the inquiry report was supplied to him only along with the order of dismissal.

29. The respondents have contended in their counter-affidavit that there was no infirmity in the inquiry, and that the applicant was given reasonable opportunity to defend himself. They have also contended that the

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has not Q
applicant/exhausted the remedies available to him as
he has filed his application without waiting for orders
on the appeal preferred by him on 13.6.1988.

30. The applicant has annexed to his rejoinder
affidavit a copy of letter dated 4th August, 1988,
whereby the President of the I.R.C.A. has rejected
his appeal.

31. The respondents have made available to us the
relevant file relating to the disciplinary inquiry
held against the applicant. It is seen that with
reference to the applications dated 11.4.1988 and
12.4.1988 made by the applicant requesting for supplying
him documents required for his defence, the respondents
informed him vide their letter dated 12.4.1988 as
follows:-

"Sub.: Memorandum No. EP/4573/1 dated 23.3.88.

Ref.: Your application dated 11.4.88 and
12.4.1988.

In reference to your application dated
11.4.88, it is to inform you that the relevant
documents have already been supplied to you
along with the memorandum quoted above.

2. You have already submitted the written
statement of defence and thereupon an Inquiry
Officer has been appointed to enquire into
the charges.

3. The documents, viz., 1, 3 and 4 asked for
by you in your above application, are not
relevant to the charges framed against you and
document at S.No.2, has already been furnished
to you along with the memorandum.

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4. Further, in reference to your application dated 12.4.88, it is to inform you that your request for change of Inquiry Officer cannot be acceded to and you are advised to attend the inquiry as advised by the Inquiry Officer."

32. We may first consider whether the respondents were within their rights in not making available to the applicant the documents sought by him.

33. In this context, reference may be made to the O.M. No.F-39/5/61-AVD dated 25.8.1961 issued by the Ministry of Home Affairs dealing with the instructions regarding supply of copies and affording access to official records to the delinquent officer. Referring to the decision of the Supreme Court in Trilok Nath's case, the aforesaid O.M. clearly lays down that the power to refuse access to official records should be very sparingly exercised, and that "the question of relevancy should be looked at from the point of view of defence and if there is any possible line of defence to which the document may, in some way be relevant, though the relevance is not clear to the disciplinary authority at the time that the request is made, the request for access should not be rejected". In any case, where it is decided to refuse access, reasons for refusal should be cogent and substantial and should

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invariably be recorded in writing. In the instant case, the respondents have not given any cogent or substantial reasons for refusing the documents for which the request was made by the applicant. The applicant had sought for supply of copies of the Duty Register of Chaprasis, the complaint filed by Shri Murari Lal, and connected papers and copies of rules and regulations relating to the appointment of casual labour and their promotion in canteens. The note dated 15.5.1987 of Shri Murari Lal was one of the documents included in the list of documents by which the articles of charge framed against the applicant were proposed to be sustained. S/Shri Murari Lal, CNI(FS) Headquarters Office, New Delhi, and Shri A.K. Sinha, Head Clerk, I.R.C.A., were the witnesses by whom the articles of charge framed against the applicant were proposed to be sustained. The applicant was not given the statements or reports made by either Shri Murari Lal or Shri A.K. Sinha. S/Shri Murari Lal and Sinha were, however, examined as prosecution witnesses in the inquiry held. The inquiry report reveals ^{that} S/Shri Murari Lal and A.K. Sinha confirmed their statements and they reiterated their versions against the applicant.

33. In State of Madhya Pradesh Vs. Chintaman, AIR 1961 S.C. 1623, the Supreme Court observed that rules of natural justice require that a party should have opportunity of adducing "all relevant evidence on which he relies".

34. In Trilek Nath Vs. Union of India & Others, 1967 S.L.R. (SC) 759 at 763 and 764, the Supreme Court has observed that "if the public servant so required for his defence, he has to be furnished with copies of all the relevant documents, i.e., documents sought to be relied upon by the Inquiry Officer or required by the public servant for his defence."

35. In State of Gujarat Vs. Ramesh Chandra Mashruwala, 1977 S.L.J 178 at 201, the Supreme Court expressed the same view.

36. The rationale for making available the documents required by the delinquent officer is that it is indispensable for putting forward effectively his defence. In Kashi Nath Dikshita Vs. Union of India, A.I.R. 1986 S.C. 2118 at 2122, the Supreme Court observed as follows:-

".....If only the disciplinary authority had asked itself a question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand, there was the risk of the time and effort invested in the departmental inquiry being wasted if the courts came to the conclusion that failure to supply

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these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand, by making available the copies of the documents and statements, the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

37. In view of the above, the refusal by the respondents to give to the applicant the documents required by him, amounts to denial of reasonable opportunity and vitiates the entire proceedings.

38. Another infirmity in the disciplinary proceedings is that a copy of the Inquiry Officer's report was made available to the applicant only along with the impugned order of dismissal dated 23.5.1988. In Prem Nath K. Sharma Vs. Union of India & Others, 1988 (3) SLJ 449(CAT), a Full Bench of this Tribunal has held that a copy of the inquiry report must be made available to the Government servant concerned before imposing penalty and that he must be given an opportunity to make a representation to the disciplinary authority against the report in writing.

39. In Union of India Vs. E. Bashyan, AIR 1988 S.C. 1000, the Supreme Court has held that non-supply of the report of the Inquiry Officer would constitute violation of principles of natural justice and would be tantamount to denial of reasonable opportunity within the meaning

of Article 311 (2) of the Constitution.

40. In view of the aforesaid legal infirmities in the disciplinary proceedings held against the applicant, which go into the root of the matter, we are of the opinion that the impugned order is not legally sustainable. Accordingly, the application is disposed of with the following orders and directions:-

- (i) We set aside and quash the impugned order dated 23.5.1988, whereby the applicant was dismissed from service. The applicant shall be reinstated in service forthwith. He would be entitled to all consequential benefits, including arrears of pay and allowances, and increments which have fallen due to him during the said period.
- (ii) The respondents shall comply with the above directions within a period of two months from the date of receipt of this order.
- (iii) There will be no order as to costs.

D. K. Chakravorty
(D. K. Chakravorty)
Administrative Member
18/1/91

18/1/91
(P. K. Kartha)
P. K. Kartha
Vice-Chairman (Judl.)