

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 802/88

Date of decision: 29.05.92.

Shri B.S. Kumar

Applicant

Vs.

Union of India through the
Secretary, Railway Board and Another

Respondents

For the Applicant

Shri S.C. Gupta,
Sr. Counsel with
Shri L.R. Goel,
Counsel

For the Respondents

Shri Inderjit
Sharma, Counsel

CORAM:

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. I.K. RASGOTRA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed
to see the Judgment? *Y*

2. To be referred to the Reporters or not? *M*

JUDGMENT

(of the Bench delivered by Hon'ble Shri P.K.
Karth, Vice Chairman(J))

The applicant who has worked in the Railways
from 26.10.1951 till he was removed from service by the
impugned order dated 20.05.1982 ^{that} ~~is/he~~ has worked in the
various capacities in the Railways for over 30 years.
He was last posted as Assistant Superintendent (Inspection)
in the Diesel Locomotive Works in Varanasi. In this
application filed under Section 19 of the Administrative

GD

Tribunals Act, 1985, he has prayed for the following reliefs:-

- "(i) To quash the charge-sheet consequent upon which the ensuing ex-part^e inquiry has been held and the impugned order of penalty dated 20.05.1982 has been made.
- (ii) To quash the ex-part^e inquiry held against the applicant consequent upon which the impugned order of penalty dated 20.05.1982 has been made.
- (iii) To quash the impugned order dated 20.05.1982 imposing upon the applicant a major penalty of removal from service.
- (iv) To quash the order dated 15.02.1985 rejecting the applicant's appeal and which order was communicated at the applicant's correct address on 16.09.1987.
- (v) To order the respondents to reinstate the applicant back to his original post and to treat him as though he had never been removed from service.
- (vi) To order the respondents to give the applicant all arrears of pay and allowances from the date of his removal from service i.e., 20.05.1982.
- (vii) To order the respondents to correctly fix the pay of the applicant and to grant him his original seniority in his grade.
- (viii) To direct the respondents to give the applicant all consequential reliefs.

A

(ix) To grant the applicant any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and to grant the applicant costs of the case.

2. Some of the reliefs enumerated above, such as, his reinstatement in service has become infructuous as the applicant has in the meanwhile attained the age of superannuation of 58 years.

3. The case had appeared on the board in the list of ready cases for final hearing. All parties had been informed that the cases borne on the list were posted peremptorily for final hearing. When the case was taken up for final hearing on 26.05.1992, Shri S.C. Gupta, ^{Sharma, Counsel} S.C. Counsel appeared for the applicant and Shri Inderjit/ on behalf of the respondents. We have gone through the records of the case carefully including the counter-affidavit filed by the respondents and have heard the learned counsel for the parties.

4. A perusal of the case records indicate that the impugned order of removal from service was passed after holding an ex-parte inquiry against the applicant under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. The question arising for consideration is whether the holding of an ex-parte inquiry against the applicant and the imposition of the penalty of removal from service on him are legally tenable.

5. The facts of the case in brief are that while the applicant was working at Varanasi, he requested for leave for six days from 20.04.1981 to 25.04.1981 for personal reasons. He was accordingly sanctioned the said leave on average pay. In the application for leave submitted by him, he had requested the respondents to grant him permission to leave Headquarters and he had indicated the address at which he would be available while on leave, in case he was required to be contacted for any exigency. The permission to leave the Headquarters was also sanctioned by the respondents.

6. The applicant had sought the above mentioned leave in view of the ill health of his aged parents. He wanted to look after them by being with them and getting them medically treated. Thereafter, the applicant requested the respondents for extension of leave for 21 days vide his letter dated 26.04.1981. He again requested for extension of leave for 76 days. He has stated that he was in no position to join as the health of his parents continued to cause him concern and he, therefore, requested for a further extension of leave for six months. He sent the request for the said leave by registered post on 6.11.1981. He, however, could not receive any reply from the respondents and he himself was in no position to contact his office personally. However, he received acknowledgement card of his registered letter.

7. The applicant himself became a patient of hypertension. He was advised by the doctor to take complete rest. He sent two medical certificates to the respondents on 10.02.1982 and 14.08.1982.

8. On 31.05.1983, the applicant was declared fit to rejoin duty. He reported back for duty along with a medical certificate dated 31.05.1983. He also submitted his joining report on 02.06.1983. The respondents, however, did not allow him to join duty and they told him that he had been removed from service. No order of removal from service was, however, given to him. No such intimation had been received by him till then. He was unaware of any inquiry being held against him behind his back. The applicant has stated that the impugned order of removal from service has not been given to him till date. He, however, contacted all officials concerned and learnt that the order of removal from service was made on 20.05.1982. After much efforts, he managed to obtain an unofficial copy of the said removal order.

9. The applicant made an appeal to the appellate authority on 8.6.1983 even though he had not received officially a copy of the impugned order of removal from service together with the Inquiry Report. The Railway

✓

Board rejected his appeal on 15.02.1985 on the ground that it was time barred and also saying that "incidentally, Shri B.S. Kumar's working has been noticed by the Board to be very indifferent".

10. With regard to the appellate order, the learned counsel for the applicant submitted that the appellate authority has levelled a new charge against the applicant which did not form the part of the original charge, brought against him. He also submitted that the appellate order is a non-speaking order and is liable to be quashed on that ground.

11. The applicant has stated that the aforesaid decision of the appellate authority was sent to his address at Delhi at E-108, East of Kailash, New Delhi on 16.09.1987. In the said letter, the respondents have stated that the appellate order dated 15.02.1985 had been sent to him at his home address under registered/ A.D. post and was returned undelivered and, therefore, it was again sent in original at the address given in his application dated 20.10.1985.

12. The impugned order of removal from service dated 20.05.1982 is at Annexure D to the application, pages 30-31 of the paper book. It has been stated therein that a Memorandum together with Statement of Articles of Charges framed against the applicant for prolonged unauthorised absence from duty with effect from 21.05.1981 was sent to his address by letter dated 3.10.1981 by registered post with acknowledgement. It was returned undelivered by the postal

authorities. Despite best efforts, it was not possible to serve the Memorandum in question upon him and as such the same was pasted on the notice board nearest to his working place. A departmental enquiry was ordered and intimation was sent to his permanent address (home address) as recorded in the service records by registered post with acknowledgement due. That too was returned undelivered by the postal authorities and accordingly that was also pasted on the notice board. In these circumstances, the Inquiring Authority proceeded to hold the enquiry ex-parte and submitted his findings on all the material available on record. The disciplinary authority considered the findings as well as other materials on record and came to the conclusion that the charges framed against the applicant has been proved and he was not a fit person to be retained in service.

13. The admitted factual position is that the applicant had left Varanasi on sanctioned leave and the address while on leave had also been indicated by him to be at Delhi. The sanctioned leave, however, was only for 6 days and consequently the address given by him was valid only for that period. All the communications in regard to the enquiry initiated against him were sent to his office address at Varanasi, whereas the applicant contends that he was all the while at Delhi. The applicant has stated in his appeal dated 8.6.1983 that his Delhi address was also available in the Leave Record File. It was argued that ^{had} the Memorandum of

Charges framed against him been sent to his Delhi address or the subsequent correspondence been sent to his Delhi address, he could have participated in the enquiry. He has also submitted that there had been no adverse remark in his confidential reports throughout his career and no charge-sheet or other enquiry had been initiated against him for more than three decades of his service with the respondents.

14. An ex-parte enquiry was held against the applicant on the alleged ground that the communications sent to his office address were returned by the postal authorities undelivered. It would appear that all the communications were sent by the respondents to the office address of the applicant in the absence of any other intimation given by the applicant. The respondents, however, did not take any steps to effect any substituted service in the form of publication in the News Papers which is a recognised method in a case where the address of the person concerned is not certain or known. Instead of resorting to this, the respondents merely pasted the returned letters on the

notice board of their office at Varanasi which served no purpose.

15. We are, therefore, of the view that the holding of an ex parte enquiry against the applicant in the facts and circumstances of the case is not wholly justified.

16. With regard to the appellate order, we are of the opinion that the same is a non-speaking order and is liable to be set aside and quashed. In *Ram Chander Vs. Union of India & Others*, AIR 1986 SC 1173, the Supreme Court has observed that duty to give reasons is an incident of judicial process. The appellate authority is required to consider:

- (1) Whether the procedure laid down in the rules had been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice;
- (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and
- (3) whether the penalty imposed is adequate, inadequate or severe and pass orders confirming, enhancing, reducing or setting aside the penalty or remit back the case to the authority which imposed or enhanced the punishment etc.

17. Rama Chander's case also related to the removal from service of a Railway servant. The Supreme Court set

aside the order of removal on the ground that the appellate authority had passed a non-speaking order.

18. The ratio in Rama Chander's case equally applies to the instant case.

19. The learned counsel for the applicant argued that apart from the fact that the appellate order is a non-speaking one, the appellate authority has also erred in levelling the charge of being indifferent in his work on the applicant without giving a show cause notice to him. In our opinion, the appeal had been rejected by the appellate authority as time barred and reference to applicant's indifference to work is only an incidental observation which could have been omitted. It is, however, not tantamount to levelling a fresh charge on the applicant, as contended by him.

20. In the conspectus of the facts and circumstances of the case, we set aside and quash the impugned order of removal of service of the applicant dated 20.05.1982 and the impugned appellate order dated 16.09.1987 and direct the applicant to file a review petition to the respondents within a period of 30 days from the date of receipt of this order, bringing out all relevant factors, including as to why he did not formally intimate to them his address

and whereabouts immediately after the expiry of the sanctioned leave. In that event, the respondents shall consider the review petition on the merits, also keeping in view the period of service rendered by him, and pass appropriate and reasoned orders as expeditiously as possible but preferably within 60 days of the receipt of the petition. The application is disposed of accordingly.

There will be no order as to costs.

Subhikhi 29/5/92
(I.K. RASGOTRA)
MEMBER (A)
29.05.1992

Subhikhi 29/5/92
(P.K. KARTHA)
VICE CHAIRMAN (J)
29.05.1992

RKS
290592