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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No.909 of 1988

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This 9th day of May, 1994

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. B.K. Singh, Member (A)

S.N. Pathak,
Cleaning Jamadar, Loco Shed,
Northern Railway, Saharanpur.
R/o Rly. Quarter No. 3084/109 E,
Railway Loco Colony,
Kashmere Gate,
Delhi.

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Applicant.

By Advocate: Shri Mahesh Srivastava

VERSUS

1. Union of India, through:
General Manager,
Northern Railway,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.,
(HARYANA)
3. The Divisional Mechanical Engineer,
Northern Railway,
Ambala.
4. The Divisional Mechanical Engineer (P)
Northern Railway,
Pahar Ganj,
New Delhi.

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Respondents

By Advocate: Shri B.K. Aggarwal.

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O R D E R

(Hon'ble Mr. B.K. Singh, M(A))

This O.A. No.909/88 has been filed against the charge-sheet dated 29.12.86 issued by the respondent No.4 to the applicant. The applicant is also aggrieved by the order of appointment of enquiry officer and the order of punishment dated 15.9.87 and the other order passed by the appellate authority dated 11.1.88

2. The material averments in the O.A. are these. The applicant joined the service on 20.1.56 as a Loco Cleaner. At the time of removal from service, he was working as Cleaning Jamadar. He filed representation against the activities of Shri Prakash Lal, Divisional Mechanical Engineer (P) on 3.10.86 (annexure 'B' of the paper book). It is alleged that instead of taking action against Shri Prakash Lal, the authorities served a charge-sheet on the applicant on 29.12.86. Reply to the charge-sheet was submitted by the applicant on 19.12.87 (annexure 'E' of the paper-book). Departmental enquiry was launched and the report of the enquiry officer is marked as annexure 'F' of the paper-book. The Divisional Mechanical Engineer (P) awarded the punishment of removal from service on the basis of the enquiry report. The applicant filed an appeal which was rejected on 11.1.88. He filed a suit No.476/84 which was transferred to this Tribunal and was numbered as T-729/86. That petition was withdrawn with liberty to file a fresh petition since the order of removal had not been passed by the respondents when the suit was filed.

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By an amendment the order of removal and the order of the appellate authority were also included as part of the OA. The applicant is residing in Railway quarter and in spite of his removal from service and rejection of his appeal he has been continuously residing in the said quarter on the basis of order passed on 4.7.88 by this Tribunal.

3. The applicant has sought the following reliefs:
- (i) set aside the impugned order of removal and the order rejecting the appeal and declare the applicant has continued in service and as such is entitled to back wages and other benefits;
 - (ii) direct the respondents to give benefit of upgradation to the higher grade with all benefits and arrears.

4. A notice was issued to the respondents who filed a counter affidavit and opposed the grant of reliefs prayed for. The material averments in the counter affidavit are these. The applicant was chargesheeted on account of false, frivolous and baseless allegations against a senior officer who was on the verge of retirement after an unblemished and meritorious record of service and has retired w.e.f. 31.10.86. The allegations made by the applicant against the said officer were ^{thoroughly} enquired into and found baseless.

5. Enquiry proceedings were initiated against the applicant and Shri B.S. Anand was appointed as enquiry officer on 13.3.87. This enquiry was conducted against the applicant when Shri Prakash Lal, against whom the complaint ^{has} been filed, had superannuated on 31.10.86. It is rebutted that Shri B.S. Anand was working under Shri Prakash Lal. It is further asserted that Shri Ashok Gupta, DME(P) was ^{the} competent authority to issue

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charge-sheet. The applicant has only denied the charges and demanded enquiry into the allegations ~~and he~~ without relying on any documents. He never demanded any document or any other material. The respondents have denied having violated any principles of natural justice and they say that all the rules envisaged in the ~~Railway Servants (Discipline & Appeal) Rules, 1968~~ have been fully complied with.

6. It is further stated that the applicant on the very first day of hearing gave in writing that he was not going to associate himself with the inquiry proceedings (annexure R-1 ^{with} the counter affidavit). In view of this attitude adopted by the applicant, the enquiry officer was left with no other option but to go ahead with ex-parte proceedings. It has been further stated that the paragraphs added as a result of amendment to the OA are wrong and denied. Vide annexure R-1 the applicant categorically disassociated himself from the enquiry proceedings on the ground that the matter was pending before the Tribunal and that he did not expect justice from the enquiry conducted against him. It has been further stated that the applicant also changed the prayer ^{for} relief by placing some misleading facts. The question of applying for leave from 20.6.87 to 1.7.87 with rest days on 20.6.87 and 21.6.86 did not arise since the applicant had already been absent from duty since 23.5.87. He resumed duty only on 17.7.87 which was treated as leave by A.M.E. (annexure R-2). The applicant was given adequate opportunity to defend his case on 10.4.87, 20.4.87, 4.5.87, 16.5.87, 7.6.87, 17.6.87 and finally

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he was asked to appear on 30.6.87. The applicant remained defiant and adopted recalcitrant attitude by disassociating himself from the enquiry in the light of his categorical assertion in his own letter dated 20.4.87. The applicant left Saharanpur, his place of duty without seeking any permission to leave the headquarters or giving any intimation and thus remained on unauthorised leave. A registered letter was sent to his address on 25.6.87 which was duly acknowledged by him vide his reply at annexure R-3. In the OA he has given the cause for his unauthorised absence from the enquiry as death of his mother on 30.6.87. No death certificate was ever produced before the competent authority or before the enquiry officer. This has been contradicted by annexure R-3 where he has stated that he was absent from the enquiry due to his own illness. He never informed the respondents about the death of his mother nor did he produce any death certificate either to the enquiry officer or to the competent authority or to the appellate authority. It is admitted by both the parties that the applicant returned from his native place on 26.6.87. If his mother was seriously ill and he knew this fact, he would have not returned from his native place. He could have applied for leave on this ground and there was every likelihood that the leave would have been granted. It is admitted by both the parties that he was in Delhi on 26.6.87. On receipt of a telegram on 30.6.87 intimating the death of his mother, the applicant applied for extension of leave from 2.7.87 to 16.7.87. The statements made by him are, thus, contradictory. He must have left Saharanpur on 1.7.87 whereas in his application at annexure R-3 he has stated that on 30.6.87 he was bed-ridden due to high fever. If

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this version is taken to be correct, he could not have left Saharanpur for his village. He has admitted that he received the telegram dated 30.6.87 on 1.7.87. In the OA he has nowhere mentioned as to when he left Saharanpur after 26.6.87. He has only stated that he was back to Saharanpur on 26.6.87. On the face of it, it is difficult to believe his version because he applied for extension of leave from 2.7.87 to 16.7.87 when he had already left for his native village on receipt of the telegram on 1.7.87.

7. It is stated that the DME(P) is the competent for all ~~xxxx~~ Group 'D' railway employees working under him to impose penalty of removal from service. It has been further stated that the appeal filed by the applicant was duly considered by the appellate authority and since he did not find any merit in it, he rejected the same. The applicant never made a request for a personal hearing.

8. Rejoinder filed by the applicant merely reiterates what has been stated in the OA. The OA was filed when the disciplinary proceedings were on and the amended OA was filed after removal of the applicant from service.

9. Shri Mahesh Srivastava appeared as counsel for the applicant and Shri B.K. Aggarwal appeared as counsel for the respondents.

10. The learned counsel for the applicant argued that the enquiry ^{was} proceeded ex parte and that the applicant was denied the opportunity to state his case involving the denial of principles of natural justice. This argument of the learned counsel is not tenable since the annexure R-1 appended to the counter affidavit clearly

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indicates that the applicant categorically stated on 20.4.87 in his own pen that he would not associate himself with the enquiry proceedings on the grounds already mentioned above. The learned counsel further argued that the departmental officers were biased against him since he filed a petition against Shri Prakash Lal, who was a senior officer and who retired w.e.f 31.10.86. The allegations made in the petition of the applicant were thoroughly enquired into and found frivolous and baseless. Since P. Lal retired on 31.10.86, therefore the contention that Shri B.S. Anand who was appointed as enquiry officer, was working under him, is not correct. Once an officer retires there is no question of his being in a position to exercise any undue influence on the enquiry officer especially when Shri B.S. Anand was not working under Shri Prakash Lal. The other contention that Shri Ashok Gupta, DME(P) was not competent to issue charge-sheet, is not correct. Shri Ashok ^{Gupta} succeeded Shri P. Lal, DME(P) and as such he was the competent authority to issue charge sheet. A perusal of the pleadings on record and the arguments will indicate that the principles of natural justice as required in exparte enquiry, have ^{annexure} been followed. When vide/RI the applicant refused to associate himself with the enquiry proceedings, there was no option left with the respondents but to proceed with an exparte enquiry. The principles of natural justice require that the articles of charges must be clear and not vague and the delinquent employee should be given full opportunity to state his case and the disciplinary/appellate authority should pass speaking orders. In

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the present case the article of charges served on the applicant (annexure 'A') contain the imputation of misconduct and these have been very precisely and clearly stated. These charges were served on him vide memo dated 12.9.1986. The charges were framed and served when Shri P. Lal, against whom the applicant had submitted a complaint petition, had already retired. As already mentioned, Shri Lal retired on 31.10.86.

Agreeing with the recommendations of the enquiry officer for giving a severe and exemplary punishment, the disciplinary authority held the applicant guilty of the charges and imposed upon him the penalty of removal from service under Rule 6^{to (IX)}(VII) of the Railway Servants (Discipline & Appeal) Rules 1968 vide letter dated 15.9.87. He was given liberty to file an appeal under Rule 18 of Railway Servants (Discipline & Appeal) Rules 1968 to D.R.M., Ambala within 45 days from the date of receipt of the punishment order. The appellate authority while agreeing with the punishment inflicted by the disciplinary authority, rejected the appeal. Where the appellate authority agrees with the findings of the disciplinary authority, he is not required to give reasons for doing so. Report of the enquiry officer is marked as annexure 'E' of the paper-book and it is an exhaustive one. The enquiry officer concluded the enquiry taking the evidence on record in the case file and holding exparte enquiry in view of categorical statement of the applicant that he would not associate himself with the enquiry proceedings. The applicant was held guilty of misconduct and misbehaviour and insubordination as alleged in the charge-sheet^{dated 29.12.86}/framed against him (annexure 'F'). The enquiry officer recommended

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that the punishment should not only be severe in nature but also be exemplary one in order to curb misbehaviour and insubordination and undesirable activities on the part of the other employees.

A perusal of the record also shows that the applicant had been ^{meeting} the Minister, his staff and and getting endorsement from them every now and then.

An employee of the rank of the applicant approaching Minister and making frivolous ^{and baseless} complaint against senior officers cannot but be called an act of grave misconduct and insubordination.

11. Krishna Iyer, J. quoted the following observations of Lord Denning as imbued with 'realism and principled pragmatism' in Union of India Vs. Col J.N. Sinha (1970) 2 SCC 458 :-

"The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity for answering it. The investigation body, is however, the master of its own procedure. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only. Moreover, it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But in the end, the investigating body itself must come to its own decision and make its own report."

His Lordship concluded:

"Courts must be tempered by the the thought, while compromise on principle is unprincipled, applied administrative law in modern complexities of government must be realistic, not academic. The myriad maybes and the diverse urgencies are live factors. Natural justice should not destroy administrative order by insisting on the impossible."



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12. In an ex parte enquiry the procedure has to be followed as per the rules prescribed in the Railway Servants (Discipline & Appeal) Rules, 1968. In this case, the due procedure has been followed and reliance had to be placed on the available records and evidence ~~available~~ in the relevant files pertaining to the charged employee. Findings of the enquiry proceedings were arrived at after taking a synoptic view of all the facts and circumstances of the case. It is true that the demand of fair play in action ~~and~~ on the part of good administrator is the very basis of the principles of natural justice. The applicant was given the right to be heard so as to enable him to state his case but he himself refused to associate himself with the enquiry proceedings for the reasons that he does not expect justice from them and because he has filed an OA in the Tribunal. This kind of behaviour on the part of the applicant will paralyse the process as envisaged in the Railway Servants (Discipline & Appeal) Rules, 1968 and will defeat the very purpose of the safeguards provided under Article 311(2) of the Constitution. Law cannot be divorced from life. Where a delinquent employee himself decides not to cooperate with the enquiry proceedings alleging bias on the part of the departmental officers, the principles of natural justice will stand excluded. Bias is easy to allege but difficult to prove. Mere accusations, allegations and petitions against the officers cannot prove malice or bias. In order to establish malice or bias on the part of the respondents, there must be concrete instance and evidence and averments in the O.A. to prove it. These are not

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there and as such no bias or malice is proved against any of the respondents. Within the given circumstances of this case, the respondents have acted fairly and justly and there is no violation of the principles of natural justice and the allegation of bias is completely disproved.

13. In view of the foregoing observations the application is dismissed as devoid of any merit or substance. There ^{however,} will be no order as to costs.

(B.K. Singh)
Member (A)

Jomane
(J.P. Sharma)
Member (J)

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