

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA NO. 386/86

DATE OF DECISION: APRIL 25, 1990

AMAR CHAND

APPLICANT

MRS. - SHEELA GOEL

ADVOCATE FOR THE APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

RESPONDENTS

SHRI O.N. MOOLRI

ADVOCATE FOR THE RESPONDENTS

CORAM:

THE HON'BLE MR. AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member (A))

Shri Amar Chand, the applicant has filed this application on 13.5.1986 under Section 19 of the Central Administrative Tribunals Act, 1985 against the impugned order of Northern Railway, No. 727-E/2/3316/P-7 dated 15.5.1988 rejecting his appeal for 'putting him back to duty'.

2.1 The case of the applicant is that he was reverted from Shunter (Rs. 290-400) to Fireman-B (Rs. 260-350) in a lead-plug fusion case on 18.11.1981 for a period of one year. As there was no vacant post of Fireman-B in Delhi, he was not given any work for a long time and was later transferred vide order No. 758-

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E/18/1/P-7 dated 10.12.1981 to Loco Shed, Ghaziabad. The applicant never reported for duty at Ghaziabad as the said order was not communicated to him. The applicant submitted representations to the various authorities on 20.11.1981, 11.12.1981, 20.1.1982 and 27.2.1982 but the respondents failed to give him work. He came to know about his transfer when the charge sheet dated 6.8.1983 regarding absence from duty was received by him at Kalka on 27.2.1984. In his reply to the charge sheet he denied the charges of "unauthorised absence", as he was never provided with work. Further he was not sent any communication regarding his transfer to Ghaziabad. He has further submitted that during the departmental enquiry the clerk who was on duty during the period relating to the charge sheet was not examined and has averred that DAR proceedings against him were vitiated due to the bias of the enquiry officer. There was also delay in communicating the findings of the enquiry to him. It was only on 22.1.1985 that he was informed about his removal from service with immediate effect. Further he was not given a notice to show cause against the punishment imposed on him. Besides his appeal against the penalty of removal from service was rejected on 15.5.1984 on the ground that it did not constitute an appeal against the order imposing penalty of removal from service, as it was only a request for taking him back on duty. He prayed for the following reliefs:

(a) issue writ, order or direction quashing the order No. 727E/2/3316 Dup.P7 dt. 22.1.1985 imposing punishment of removal from service on the

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applicant.

(b) direct the reinstatement of the applicant with full back wages.

2.2. In the additional affidavit filed by the applicant on 14.8.1986 the applicant submitted that he had filed a Writ Petition No. 10 of 1979 in the High Court of Delhi which on transfer has been registered with the Central Administrative Tribunal as T-57 of 1986. This Writ Petition was filed against the reversion. Subsequent to the Writ Petition a CMP No. 28 of 1979 was also filed by him in Delhi High Court which was disposed of on 24.9.1979 with the following directions:

"CMP 28/79 - Heard. Mr. Jain states that the petitioner had been absenting himself from duty but should the petitioner report for duty he will be allowed to work in his substantive post i.e. the substantive post before he was promoted as a Driver till the disposal of the Writ Petition."

He has pleaded that after the order dated 24.9.1979 was passed by the Delhi High Court, the petitioner reported for his duties but was not given the substantive post as directed by the High Court. After making many representations the petitioner went back to his house in Kalka. He has, therefore, averred that action of charge-sheeting him by the respondents for unauthorised

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absence and subsequent removal from service is "clearly malafide and ought to be set aside."

3. The respondents in their written statement have admitted that the applicant was reduced from Shunter (Rs. 290-400) to Fireman-B (Rs. 260-350) at Rs. 334/- for a period of one year w.e.f. 18.11.1981, in a lead plug fusion case, after holding proper enquiry. He absented from duty unauthorisedly from the very date he was reverted. He was subsequently transferred to Ghaziabad vide orders dated 10.12.1981, as no post of Fireman B was available in Delhi. The transfer orders are not addressed to the employee concerned but <sup>to</sup> the subordinates incharge viz. Loco Foreman Delhi and Loco Foreman, Ghazaibad in accordance with the normal practice. Nevertheless, a copy of the said order was sent to the applicant at his address registered with the Administration. The respondents have submitted that the applicant never worked as Driver Gr. 'C' as he was found unfit in the practical test on 13.6.1978. He was again directed for the qualifying test after one month but he failed to appear in the same without any intimation. Admittedly the communication regarding his transfer did not reach him, but this was due to his shifting residence from Delhi to Kalka without advising the change in his address to the administration. Regarding the departmental enquiry it has been contended that only those witnesses were called who were required to prove the charges. If the petitioner wanted to examine a particular clerk, he could have cited him as defence witness. This was not done by him at any stage of the enquiry. They have denied that the enquiry

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officer was biased and have affirmed that the enquiry was conducted in accordance with the Conduct Rules. It has been further submitted that it was not necessary to issue a second show cause notice to the applicant. The applicant's petition at Annexure-H (page 52 & 53 of the paper book) dated 30.1.1985 did not constitute an appeal against the order of the disciplinary authority as it was merely a prayer to the Hon'ble Minister for Railway for being taken back on duty. Notwithstanding, a suitable reply was given to him vide letter dated 15.5.1985 (page 54/- of the paper book).

4. The learned Counsel for the applicant in his argument pleaded that the applicant was not given a show cause notice nor was he provided a copy of the enquiry report before imposition of the penalty as required under the law. He was thus denied a reasonable opportunity to defend himself in accordance with the Article 311 (2) of the Constitution. The findings of the disciplinary authority were, therefore, bad in law and would deserve to be quashed. To support his argument he cited the judgements pronounced by Central Administrative Tribunal in the case of Mamraj Z. Parcha etc. etc. Vs. General Manager and others New Bombay, ATR 1989 (1)CAT 577 and CAT, New Bombay, Full Bench in the case of P.K. Sharma Vs. Union of India and others.

5. The learned Counsel for the respondents stressed the fact that the applicant after being reverted from 18.11.1981 from Shunter to Fireman-B absented from duty without any intimation and chose not to advise the address of new residence to the

respondents. The respondents were, therefore, handicapped in contacting the applicant. The letters sent at his address were from time to time received back undelivered. If the applicant was interested in joining the duty, he would have at least left his new address with the land lord in Delhi so that he could redirect his letters to his new address. Normally the applicant should have continued to report for duty to the Loco Foreman, Delhi, till he had received the orders posting him to Ghaziabad. Under these circumstances the efforts of the respondents to reach him did not succeed. His transfer orders were pasted on the notice board at Delhi Loco Shed. If he had contacted the Loco Foreman's office, he would have come to know about his transfer to Ghaziabad. In any case the applicant participated in the enquiry held on the charges of unauthorised absence and was given full opportunity under the rules to defend himself. The learned Counsel further submitted that a second show cause notice is not required to be served on the applicant as this requirement was dispensed with vide 42nd Amendment of the Constitution. He further submitted that the plea of non-furnishing of the copy of the enquiry report cannot be allowed at this stage, as it is not part of the pleadings of the applicant.

6.1 We have heard the learned Counsel of both the parties and perused the record carefully. We find that the applicant was absent from duty from 18.11.1981. He changed his residence without intimation to the respondents after he was reverted to the post of Fireman-B. In these circumstances he placed himself beyond the reach of the respondents. There is no material before us to substantiate the plea that enquiry officer was biased or

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vindictive.

6.2 The applicant participated in the DAR enquiry and at that stage, his whereabouts were fully known to the respondents. The applicant should have therefore been furnished a copy of the Enquiry Officer's report before the disciplinary authority passed the order imposing the penalty, to give him an opportunity to make a representation to the disciplinary authority. Admittedly the service of a second show cause notice before the imposition of penalty is not necessary in view of the 42nd Amendment of the Constitution. However, service of a copy of the enquiry report on the delinquent to enable him to make a representation, if any, before the finding about his guilt is recorded by the disciplinary authority is altogether a different matter. In our view it was necessary to furnish a copy of the Enquiry Officer's report to the applicant to meet the requirements of natural justice. The failure to furnish a copy of the findings of the Enquiry Officer to the delinquent before the disciplinary authority decided to impose the penalty on him is tantamount to denial of reasonable opportunity to the applicant to have a say in regard to this critical material. Accordingly, the order removing the applicant from service passed by the disciplinary authority is held to be bad in law and in violation of Article 311 (2) of the Constitution.

6.3 During the pendency of this case, the applicant died on 24.3.1989 and his legal representatives were allowed to be substituted as prayed in MP-1389/89 vide order dated 9.8.1989. We also find that CWP-10/79 filed by the applicant in Delhi High

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Court against his reversion registered on transfer in the Tribunal under No.T-57/86, was dismissed on 19.4.1988, as lacking merit.

7.1 In the facts and circumstances of the case we quash the order issued by the respondents vide No.727-E/2/3316 Dup 9/7 dated 22.1.1985 imposing the penalty of removal from service on the applicant.

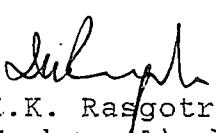
7.2 We further order and direct that:

(i) the applicant should be deemed to have been in service upto the date of superannuation or the date of his death, whichever is earlier.

(ii) the period of unauthorised absence from 18.11.1981 onwards should be regularised under the normal rules as leave on average pay, extraordinary leave, leave without pay etc.

(iii) any amount due to the applicant in consequence of the directions at (i) and (ii) above including terminal benefits should be paid to his legal heirs in accordance with the rules within a period of three months from the date of communication of this order.

There will be no orders as to the costs.

  
(I.K. Rasgotra)  
Member (A) 25/4/14

  
(Amitav Banerji)  
Chairman 25/4