

18

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No.1011/86

Date of decision: 6.7.93.

Shri Narendra Kumar ... Petitioner

vs.

Union of India through
Secretary.
Ministry of Railways.
New Delhi & ors. ... Respondents

CORAM:

THE HON'BLE MR.JUSTICE S.K.DHAON.VICE-CHAIRMAN(J)
THE HON'BLE MR.B.N.DHOUNDIYAL.MEMBER(A)

For the Petitioner ... Sh.B.B.Raval.Counsel.

For the Respondents .. Sh.H.K.Gangwani.Counsel.

JUDGEMENT(ORAL)

(BY HON'BLE MR.JUSTICE S.K.DHAON.VICE-CHAIRMAN)

On 19.11.1979. the petitioner was employed as Khalasi, a class-IV post. ^{b/} Disciplinary proceedings had been initiated against him, the charge being that he remained absent from duty without any leave. He pleaded guilty before the Inquiry Officer and gave an assurance that in future he will not do so. The matter was placed before the Disciplinary Authority but the said authority passed an order removing the petitioner from service. On 10.10.85, the appellate authority in the appeal preferred by the petitioner passed an order which deserves to be quoted in extenso:-

"... I have considered your appeal dated 5.12.84 against the order of punishment of Removal from Service imposed vide No.P/1861-A/DAR dated 6.10.1984/23.10.1984, owing to certain Technical irregularities, I have decided to withdraw the order without prejudice to take fresh action. Accordingly a fresh S.F.5 Memo.No P/2232-A/DAR dated 10.10.1985 is sent herewith..."

Thereafter, a fresh order was passed on

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30.9.86 removing the petitioner from service.

1. The orders dated 23.10.84 and 10.10.85 passed by the Punishing Authority and the Appellate Authority respectively are impugned in the present Original Application.

2. A copy of the order dated 30.9.86 has been annexed to the reply filed on behalf of the Respondents. It appears to be an admitted position that a copy of the said order was not served on the petitioner. The record shows that instead of being served on the petitioner it was pasted on the Notice Board. We, are, therefore, satisfied that the petitioner was justified in not seeking the quashing of the order dated 30.9.86. Furthermore, the failure on the part of the petitioner to make a formal prayer for the quashing of the said order will not necessary in this case as apparently the said order is purely consequential upon the order dated 10.10.85 passed by the Appellate Authority.

3. The powers of the Appellate Authority are circumscribed in Rule 22 of the Railway Servants(Discipline & Appeal) Rules.1968. It provides, *inter alia*, that the Appellate Authority may pass orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case. We turn with the order of the Appellate Authority again. He has surely jurisdiction to withdraw the order of punishment in the sense ^{that} he should annul

84

it or rescind it. He has also jurisdiction for the reasons being different, as in this case, he has given the reason that there were technical irregularities. However, the Appellate Authority has no jurisdiction to reserve a right for fresh action. Furthermore, it has no jurisdiction whatsoever to issue the charge memo itself. He could remit it to the competent authority and it should have been in the discretion of that authority to initiate fresh proceedings or give a charge memo to the petitioner. The order, in our opinion, is not within the jurisdiction of the Appellate Authority. It has, therefore, to fall on account of the infirmity indicated above.

4. It is an admitted position that in view of the said order dated 10.10.85 a charge memo was issued to the petitioner and on that basis the order dated 30.9.86 was passed. Since the principal order has disappeared, the consequential order dated 30.9.86 must also fail. We, therefore, quash the order dated 10.10.85 passed by the Appellate Authority as well as the order dated 30.9.86 passed by the Disciplinary Authority removing the petitioner from service afresh.

5. The question still remains is as to what should be the proper order to be passed in this case. We have given our thoughtful consideration to the matter. The matter relates to the year 1984. The petitioner has been out of employment ^{for} all these years. Therefore, we feel that the interest of justice requires that the normal procedure of allowing the Appellate Authority to pass fresh orders in accordance with law should not be adopted in this case. We take note of the fact that the petitioner is not free from guilt altogether

as he has, according to his own admission, remained absent from duty for a period of 573 days. We, therefore, feel that this is not a case where the petitioner should be awarded any back-wages.

6. The petitioner has suffered more than necessary. We, therefore, direct the respondents to give a suitable employment^{to him} as a Class-IV employee within a period of one month from the date of production^{of} of a certified copy of this order to the Divisional Railway Manager (Central Railway).

7. With these directions, this OA is disposed of finally. There shall be no order as to costs.


(B.N.DHOUNDIYAL)


(S.K.DHAON)
VICE-CHAIRMAN(J)

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