

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1695 of
T.A. No.

1997

DATE OF DECISION 20.9.91

<u>Om Prakash Jain</u>	Petitioner
<u>Shri Umesh Mishra</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. & Ors.</u>	Respondent
<u>None for the respondents</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. R. Venkatesan, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J)).

J U D G M E N T

The applicant is aggrieved by his removal from service. Hence, by this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred as 'Act'), the applicant prays for setting aside the order of removal from service passed on 9.1.86 by the disciplinary authority. He also prays for ^{not} to interfere in the quantum of punishment as it is excessive in relation to the gravity of the alleged misconduct.

2. The applicant joined the service of the Railways on 22.5.65. The applicant while going for duty met with an accident as a result of which his left leg got fractured and he was confined to bed with plaster on his leg and was ultimately declared fit on 9.3.84. While under the plaster and confined in bed, he received the chargesheet dated 12.1.84 in which he was chargesheeted for having unauthorisedly

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abstained himself from duty from 11.4.83 without any intimation and thus he was alleged to have violated the provisions of Rule 3 (1)(iii) of the Railway Servants (Conduct) Rules of 1966. An Inquiry Officer was appointed by the disciplinary authority. The Inquiry Officer sent the chargesheet to the applicant and asked for his written statement, but the applicant, according to him, could not participate in the inquiry because of his physical and mental condition. According to him, during this period, his young son, aged ^{about} 15-16 years, left the home without intimation. Hence, he was perturbed and mentally upset. However, the enquiry proceeded ex-parte under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred as "Rules"). As no written statement was filed, the enquiry proceeded ex-parte and the statements of the witnesses were recorded by the Enquiry Officer in the absence of the delinquent applicant. The Enquiry Officer after concluding the enquiry submitted the report to the disciplinary authority who imposed major penalty of removal from service on 9.1.86. The applicant was intimated of the decision of the disciplinary authority on 10.1.86. According to him, he filed an appeal and also representations, but they remain undecided till today.

3. The respondents on notice appeared and filed their return in which they opposed the contents of the O.A. and inter alia denied that any appeal or representation was filed. They maintain that from 11.4.83, the applicant was absent from duty without intimation and failed to participate in the enquiry, hence he was rightly proceeded ex-parte. The respondents contended that the enquiry was held in accordance with the provisions of the Rules. The respondents have admitted that a representation was received, but not the appeal.

4. A copy of the enquiry report is on the record. Annexure 'F' is the copy of the findings of the Enquiry Officer. In the last page of this document, it is mentioned by the Enquiry Officer that on 5.8.85, the applicant did not attend the enquiry. The enquiry was held ex-parte and the statements of Shri N.M. Daniel and Shri N.D. Pant were recorded. The Enquiry Officer has relied upon their statements and held charges to be proved. The procedure for imposing major penalty is given in Rule 9 of the Rules. Sub-rule (12) of Rule

Remedy

9, which is reproduced below for convenience:

"The inquiring authority shall, if the Railway servant fails to appear within the specified time or refuses or omits to plead, require the 'Presenting Officer', if any, to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Railway servant may for the purpose of preparing his defence give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in sub-rule (6)"

provides that in case ex-parte enquiry proceeds against the delinquent, then the Presenting Officer shall produce the evidence by which he proposes to prove the articles of charge. The Enquiry Officer/inquiring authority is required to adjourn the case to a later date not exceeding 30 days after recording an order that the Railway servant may for purposes of preparing his defence give a notice within 10 days of the order or within such further time for the purpose of enabling the delinquent for producing his defence. From perusal of Annexure 'F', it is abundantly clear that the procedure prescribed in sub-rule (12) of Rule 9 was not followed by the Enquiry Officer, Shri B.L. Joshi. Sub-rule (12) contains only the principles of natural justice that if the enquiry is held ex-parte, and the evidence of those witnesses, produced by the Presenting Officer, is recorded, then a notice be sent to the delinquent returnable in 10 days enabling him to produce his defence. If this provision is not followed by the Enquiry Officer, then it is manifest that the principles of natural justice were not followed by him. This omission on the part of the Enquiry Officer vitiates the entire enquiry.

5. It is also observed that while submitting his ^{report} defence to the disciplinary authority, the Enquiry Officer did not furnish a copy of his report to the delinquent applicant. The order passed by the disciplinary authority is at Annexure 'G'. On perusal of this document, it does not appear that before imposing of the penalty, the applicant was afforded an opportunity of being heard on the proposed penalty of removal from service. Law is crystalised in the case of Union of India & Ors. vs. Mohd. Ramzan Khan (JT 1990 (4) S.C. 456) in which the apex court has observed:

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(ii) Deletion of the second opportunity from the scheme of Art. 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art. 311 (2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position... We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.... We would clarify that this decision may not preclude the disciplinary authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment."

Thus, the apex court has laid down the law that disciplinary proceedings are quasi-judicial proceedings and attract the principles of natural justice that enquiry report submitted by the Enquiry Officer holding the delinquent guilty must be supplied to him. Non-compliance of this renders the entire enquiry against the applicant, by which he was removed from service, a nullity and an illegal order of removal from service cannot be maintained.

6. From the perusal of the record, it appears that the applicant filed the appeal on 13.1.86. The applicant has filed Certificate of Posting by which he preferred the appeal on 13.1.86. He has also filed a copy of the statement showing details of the appeal given by the delinquent after punishment. According to this document, the main appeal was filed on 13.1.86 and subsequently 7 reminders were sent till 3.3.87. It is also evident from the record that he

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has filed a representation, but neither the appeal nor the representation was decided by the respondents.

7. In the return, the respondents have contended that this O.A. is barred by limitation. On calculation, it is found that on 10.1.86, the applicant received the order from the disciplinary authority removing him from service against which he preferred an appeal on 13.1.86. He had limitation in his favour till 10.7.87. The appeal remained pending, yet he filed a representation, thus the applicant gets a period of limitation of 18 months. This O.A. was filed on 20.11.87. The period of limitation thus expired on or about 13.7.87 and this O.A. appears to be barred by limitation by three months and a few days. Though no application has been filed for condoning the delay, but on persual of the record and in the facts and circumstances of the case and also looking to the illegalities committed during the enquiry, the applicant is going to suffer irreparably for no fault on his part. Though not prayed for, yet we consider that sufficient cause for filing his O.A. after a delay of 3 months and a few days can be condoned in the interest of justice. We are ~~away~~^{persuaded} that this Tribunal is not vested with the inherent powers, yet on the face of the contravention of sub-rule (12) of Rule 9 of the Rules, and contravention of Article 311(2) of the Constitution has persuaded us to condone the above noted delay in the interest of justice exercising our powers under Section 21(3) of the Act. We intend to administer substantial justice in the case in hand. We, therefore, allow this O.A. and set aside the impugned order of removal from service of the applicant. But, we would clarify that this judgment shall not preclude the Enquiry Officer or the disciplinary authority from reviving the proceedings from the stage of sub-rule (12) of Rule 9 of the Rules within a period of three months from the date of receipt of a copy of the judgment. They shall issue a notice to the applicant as required under sub-rule (12) of Rule 9 and if the applicant does not examine any witnesses of defence, then the Enquiry Officer may conclude the enquiry and supply a copy of the Enquiry Report. Thereafter, the disciplinary

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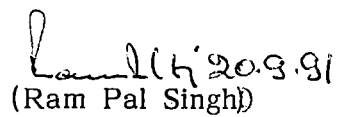
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authority after following the procedure laid down in law can award the punishment, if the applicant is found guilty of the charges.

8. On the face of the judgment of the apex court, rendered in Parmanand's case (1989 (10) A.T.C. p. 30), we refuse to interfere on the question of the quantum of punishment. Parties are directed to bear their own costs.



(R. Venkatesan)
Member (A)



(Ram Pal Singh)
Vice-Chairman (J)