

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

(8)

O.A. No. 409/87
T.A. No.

199

DATE OF DECISION 20:11:1990.

<u>Shri Herbert Henry</u>	Petitioner
<u>Shri B.S. Mainee</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Mrs. Shashi Kiran</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? Yes
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 ? ✓


 (AMITAV BANERJI)
 CHAIRMAN

(a)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO.409/87

DATE OF DECISION: 20.11.1990.

SHRI HERBERT HENRY

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

CORAM:

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

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

FOR THE APPLICANT

SHRI B.S. MAINEE, COUNSEL

FOR THE RESPONDENTS

MRS. SHASHI KIRAN, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY

HON'BLE MR. I.K. RASGOTRA)

Shri Herbert Henry has filed this application under Section 19 of the Administrative Tribunals Act, 1985, aggrieved by the order of the respondents, removing him from service on the ground of unauthorised intermittent absence for a total period of 19 days spread over August, 1981 to February, 1982.

The facts of the case in brief are that the applicant while working as Senior Clerk in the grade of Rs. 330-560 in the Biakaner Division of the Northern Railway, remained absent on account of sickness i.e. the following periods:-

- a) 26.8.1981 -1 day
- b) 3.10.1981 to 24.10.1981-7 days
- c) 19.10.1981 to 24.10.1981-6 days
- d) 11.2.1982 to 15.2.1982 -5 days

He claims to have advised the respondents about his sickness, yet the period of absence was treated as leave without pay. He was also served a chargesheet on 19.4.1982. The statement of imputation of misconduct in support of articles of charges framed against

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the applicant is as under:

"Shri Herbert Henry while functioning as Senior Clerk grade Rs. 330-560, Loco Shed, Delhi Sarai Rohilla, Northern Railway was on unauthorised absence from duty on 26.8.1981, 3.10.1981 to 9.10.1981, 19.10.1981 to 24.10.81 and 11.2.1982 to 15.2.1982. From the above it is clear that he is habitual in absenting himself from duty without proper authority.

Shri Herbert Henry was granted LAP from 3.2.1982 to 10.2.1982 and he was due to resume his duty on 11.2.1982, but he did not resume duty on due date and remained absent from duty from 11.2.1982 to 15.2.1982. Being a railway servant it was his responsibility that he should have informed the administration regarding his whereabouts but he failed to do so.

As such Shri Herbert Henry was failed to maintain devotion to duty and acted in a manner which is unbecoming of a Railway servant, Shri Herbert Henry has thus violated Rule 3(1)(ii) and (iii) of Railway Services Conduct Rules, 1966."

The applicant contents that he was neither supplied documents relied upon nor the copies of the statement of prosecution witnesses. He also submits that the prosecution witnesses who deposed before the Enquiry Officer were not allowed to be cross-examined by him, nor were any defence witness allowed to be called for enquiry. He was thus denied a reasonable opportunity to defend himself. He was removed from service vide order dated 1/4.6.1985. The appeal dated 17.7.1985 filed by him was rejected by a

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non-speaking order passed by the competent authority vide page 38 of the paper book. Thereafter he submitted a revision petition to the General Manager, Northern Railway on 11.11.1985 to which despite a reminder he has not received any reply.

2. The broad facts of the case have not been disputed by the respondents in their counter reply. It has however been stated that the period of his absence was not regularised as leave without pay. He has not been paid wages for the period of unauthorised absence as he had been served a chargesheet for major penalty for unauthorised absence. The respondents have also submitted that the documents relied upon were received by the applicant along with the memorandum and the same were acknowledged by him on 30th August, 1982. The respondents have further affirmed that the copies of the statement of the witnesses were supplied by the Enquiry Officer to the applicant and that he was provided all facilities to ensure a fair enquiry. This contention of the respondents is supported by the photo copies of the proceedings attached at Annexure R-3 (pages 64-70 of the paper book) signed by the applicant. The respondents also contend that the Enquiry Officer was appointed by the competent authority. Similarly, they have affirmed that the disciplinary authority who has passed the order of removal from service was competent to do so, being equal in rank with the appointing authority.

3. Shri B.S. Mainee, learned counsel for the applicant submitted that the total period of absence of the employee spread over a period of six months amount to only 19 days, for which the applicant

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has been visited by the most harsh and ultimate penalty for removal from service. The learned counsel submitted that the enquiry was finalised in great hurry, thereby denying reasonable opportunity to the applicant to defend himself. The learned counsel also drew our attention to Rule 9(21) of the Railway Servants Discipline & Appeal Rules, 1968 which is reproduced below:-

"The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him."

The learned counsel contended that the inquiring authority had failed to follow this mandatory provision of the rule. He specifically drew our attention to the orders of the appellate authority dated 17.7.1985 and the appeal filed by the delinquent. The said order reads as under:-

"I have gone through the appeal. Punishment upheld. Appeal is rejected." (emphasis supplied).

The learned counsel contended that not only the order is non-speaking but it clearly reflects the absence of application of mind. To garner support for his case the learned counsel cited the case of Ram Chander Vs. UOI - ATR 1986(2) SC 252 and S.Anthony samy V. The Government of India and Ors-SLJ-1988(1)-515.

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4. The learned counsel for the respondents, Mrs. Shashi Kiran relied on the counter affidavit filed by the respondents to the effect that the applicant was removed from service for unauthorised absence following the due process of law as provided in the Railway Servants Discipline & Appeal Rules, 1968. Further the orders of removal from service were passed after fully meeting the requirement of Rule 22(2) of Discipline and Appeal Rules, 1968. As the case against the applicant was fully proved on documentary evidence, the disciplinary authority did not consider it necessary to give the applicant a personal hearing before taking a decision in the matter. The respondents have admitted that no decision has been taken on the Revision Petition filed by the applicant dated 11.11.1985, by the competent authority.

5. We have heard the learned counsel and considered the material before us. We find that there are some serious and grave infirmities in the process and conduct of the enquiry which cannot be ignored. The foremost among them is that while the enquiry was in progress, the defence counsel and the delinquent prayed in writing for minimum time of 15 days to enable them to prepare defence statement. This request was turned down on the plea that the "delinquent employee had earlier requested for a week's time from 23.12.1982 and that asking for 15 days time from 9.2.1983 is not at all justified, which indicate that he was delaying the enquiry unnecessarily as he had no proof to defend the case."

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The Enquiry in this case was appointed on 26.11.1982 and the case was assigned to him on 13.12.82. The enquiry was commenced on 14.12.1982 and the order of removal from service was passed by the disciplinary authority on 13/4.6.1985. Since the prayer of the delinquent official to grant him 15 days' time to submit defence statement was not granted, no defence on behalf of the delinquent find place in the Enquiry Officer before he finalised the findings. In these circumstances it does not seem to be fair to us to draw the conclusion:-

"Shri Herbert Henry cannot save himself for remaining unauthorisedly absent from duty during the period as indicated in the SF-5 in question. For the serious offence which tantamounts to serious misconduct inasmuch as violation of Rule 3(1) - (iii) of Railway Service Conduct Rules, 1986."

"Apart from the above, Shri Herbert Henry remained absent for 165 days during the year 1980 and was also unsatisfactorily working as indicated by LF/DEE in answer to Q.No.8 at S.No. 182 confirms that the employee is habitual offender."

The absence of Shri Herbert Henry in the year 1980 reckoned to by the Enquiry Officer is extraneous to the charges under investigation and obviously seems to have been brought in to justify findings arrived at.

Secondly, the order of the appellate authority conveyed to the applicant on 28.8.1985 reads as under:-

"I have gone through the appeal. Punishment upheld. Appeal is rejected".

To say the least the above order seems to have been passed mechanically without application of mind. It is the duty of the appellate authority to martial the evidence on record with a view to determine if the findings of the disciplinary authority are sustainable. The appellate authority exercises the quasi-judicial functions in accordance with the principles of natural justice when sitting as appellate authority. It is, therefore, incumbent on the appellate authority to give reasons for confirming, enhancing, reducing or setting aside the penalty imposed by the disciplinary authority. The order passed by the appellate authority does not meet the requirement of law as prescribed in Rule 22(2) of the Railway Servants Disciplinary and Appeal Rules, 1968. Even the order of the disciplinary authority does not give adequate reasons for the ultimate penalty visited on the applicant. It was, therefore, all the more necessary for the appellate authority to give a cogent and reasoned order duly appraising the evidence on record.

Thirdly, a Class-III Railway servant has been given the right to file a revision petition as is obvious from the following extract of the order passed by the appellate authority dated 28.8.1985

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"A Class-III Railway servant including a skilled artisan who have been dismissed, removed or compulsorily retired may after his appeal to the appellate authority has been disposed of and within two months thereafter apply to the General Manager for a revision of the penalty imposed on him...."

The applicant filed a revision petition as earlier said on 11.11.1985 exercising his right in terms of rule 25 of the Railway Servants Discipline and Appeal Rules, 1968, the revision petition is still to be disposed of. In the meantime the applicant has attained the age of superannuation on 31.12.1985. Ordinarily we would be averse to interfere with the findings of the Enquiry Officer and the punishment visited on the delinquent employee. We are aware that we have no appellate jurisdiction in the matter. (UOI Vs. Parma Nand - AIR 1989 Supreme Court 1185).

Normally the Tribunal does not interfere with the quantum of punishment except where the findings of the Enquiry Officer or the competent authority are perverse or arbitrary and inconsistent with the rules and not in accordance with the principles of natural justice. In such a case we cannot but help in interfering in the matter.

We are, therefore, of the view that the denial of reasonable time asked for by the applicant for preparing and filing his defence statement by the Enquiry Officer was not justified and offends the principles of natural justice. We also hold that the appellate authority did not pass the appellate order after due consideration and application of mind in accordance with Rule 22(2) of the Railway Servants Discipline and Appeal Rules, 1968. To

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our great distress, the Revisionary Authority has also failed to dispose of the revision petition of the applicant. There has, therefore, been failure all along in carrying out the enquiry, awarding punishment, rejection of the appeal without application of mind in terms of Rule 22(2) of Railway Servants Discipline and Appeal, Rule, 1968. Further the Revision Petition also remained undisposed of.

In the circumstances of the case we have no alternative but to set aside the orders at Annexures E and G i.e. order of the Disciplinary Authority and the order of the appellate authority dated 1/4.6.1986 and 28.8.1985 respectively. We further order and direct that the applicant shall also be entitled to all consequential benefits till the date of his attaining the age of superannuation. He shall also be entitled to retirement benefits in accordance with the rules.

There will be no orders as to the costs.

I.K. Rasgotra
(I.K. Rasgotra)

Member (A)

AB
(Amitav Banerji)

Chairman