CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

R.A. NO. 41/94 &
M.A. NO. 290/94 in
O.A. NO. 1242/88

New Delhi this the 25th day of February, 1994

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)
THE HON'BLE MR. B. S. HEGDE, MEMBER (J)

Anil Khanna,
Ex. Senior Clerk,
Security Branch,
Northern Railway,
Panchkaun Road,
New Delhi. ... Applicant

Versus

1. General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. Chief Security Commissioner,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi. ... Respondents

O R D E R (BY CIRCULATION)

Hon'ble Mr. S. R. Adige, Member (A) —

This is an application dated 27.1.1994 filed by Shri Anil Khanna praying for review of the judgment dated 24.12.1993 in O.A. No. 1242/88.

2. A misc. application bearing No. M.A.290/94 has also been filed with this review application praying that the review application be heard in open court instead of deciding the same by circulation. As per Rule 17(iii) of C.A.T.(Procedure) Rules, applications for review of judgments delivered by sitting Members of the Bench are to be decided by way of circulation, and no good reasons have been advanced to warrant

any departure in this case. Under the circumstances, the prayer contained in M.A.290/94 is rejected.

3. The first ground taken is that there has been an error apparent on the face of the record, inasmuch as the Tribunal in its judgment had held that the applicant had been appointed in terms of letter dated 17.5.1976, which had been signed by the Sr. Personnel Officer, Headquarters, but at the end of which it was stipulated that the said letter had the approval of Additional Chief Personnel Officer. It is contended that as the petitioner was appointed with the approval of the Additional Chief Personnel Officer who is the head of department of the Personnel Branch, he could not be removed by an officer such as the Senior Commandant, RPF, New Delhi, who was lower in rank and status. This point has been discussed in detail in the judgment, and we see no error apparent on the face of the record. In the judgment dated 24.12.1993, it was noticed that the applicant in his appeal dated 24.3.1987 made to the DIG, RPF, Northern Railway, against the order of punishment had stated that he was appointed by the Sr. Personnel Officer, Hqrs. vide orders dated 17.5.1976 and the plea that he was appointed by notice dated 21.5.1976 had been raised for the first time in the original application. The Tribunal in its impugned judgment dated 24.12.1993 had categorically held that the applicant had been appointed by the Sr. Personnel Officer, Hqrs. vide letter dated 12.5.76 and the subsequent letter dated 17.5.1976 merely reiterated the contents of that earlier letter. That being the position, and as the Senior Commandant, RPF, New Delhi, who signed the removal order

dated 23.2.1987 was admittedly not inferior in rank or status to the Sr. Personnel Officer, Hqrs. who issued the letterdated 17.5.1976 appointing the applicant, therefore, Article 311 (1) of the Constitution was not attracted in this case. It appears that the applicant has now changed his stand again, and now claims that he was appointed with the approval of the Additional Chief Personnel Officer, and as such the appointing authority of the applicant is the Additional C.P.O. and not the Sr. Personnel Officer, Hqrs. This contention is clearly untenable because in the delegation of powers of General Manager to various subordinate officers occuring in Schedule-C to the Schedule of Powers on Establishment Matters, Northern Railway, it is clearly stated that the Divisional Personnel Officers (DPOs) enjoy full powers to appoint all Class-III staff except in grades controlled by the Headquarters office subject to the terms and conditions prescribed from time to time. The Sr. Personnel Officer is equivalent to a Divisional Personnel Officer, and it is not denied that the applicant's post was a Divisional post and not a Headquarters post. The Additional C.P.O.'s approval was only sought because of the restrictions at that time on ad-hoc appointments, but the appointing authority continued to be the Sr. Personnel Officer, Headquarters. Hence, there has been no error apparent on the face of the record on this point and this ground, therefore, fails.

4. The second ground taken by the applicant is that the inquiry officer had violated Rule 9(12) of the Railway Servants (Discipline & Appeal) Rules, 1968 which was fatal to the disciplinary proceedings as has been held by this Tribunal in two rulings reported in ATR 1987 (1) CAT 190 - Hari Prasad Billore vs. Union of India & Ors and ATR 1989 (1) CAT 54 - Shri Krishna Gupta vs. Union of India & Ors.

5. In Hari Prasad Billore's case (supra), it was held that "All that is required by rule 9(12) is that in case where the delinquent railway employee initially participated in the enquiry by replying to the charge-sheet etc. but subsequently for any reason he failed to appear, he should be given at least 10 days time after the Presenting Officer has produced his evidence. It is to give him time to consider if he would participate in it and prepare his defence." This ruling cited by the applicant has no application in the case before us, because admittedly in the present case the applicant at no stage participated in the inquiry, whereas in Hari Prasad Billore's case that individual had at least participated initially in the inquiry and had replied to the chargesheet. Similarly the case of Shri Krishna Gupta (supra) is also distinguishable on facts from the present one, inasmuch as in that case, admittedly, the applicant's defence counsel had made a specific plea for certain documents, but no such prayer was made in the case before us, and hence, this judgment also does not help the applicant. As pointed out in paragraph 7 of our judgment dated 24.12.1993, the objective of

rule 9(12) is to afford an opportunity to the railway servant to indicate any document other than those listed in sub-rule (6) of rule 9 which he requires in his defence to reply to the charges framed against him, and the railway servant has to indicate the relevance of these documents. The applicant had at no stage contended in his reply to the show cause notice dated 22.1.1987, or in his appeal against removal from service dated 24.3.1987, that there were any documents in possession of the railway administration other than those mentioned in the list referred to in Rule 9(6) which were relevant to his case and which were not produced, resulting in prejudice to him, and even in the grounds taken in the O.A. also no mention of any such documents has been made.

6. In this connection, in (1993) 25 ATC (SC) 704, a Constitution Bench of the Hon'ble Supreme Court in Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors. decided on 1.10.1993 has been pleased to observe as follows :-

> "If the totality of circumstances satisfied the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures."

Again, in the said case, their lordships have been pleased to observe as follows :-

> "The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to

> vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact prejudice has been caused to the employee or not.....has to be considered on the facts and circumstances of each case. Where, therefore,.....no different consequences would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which itself is antithetical to justice."

7. In the light of what has been stated above, we are satisfied that the applicant, at no stage was denied reasonable opportunity, and the principles of natural justice were fully observed in this case. That being so, the fact that the proceedings were not adjourned under rule 9(12) is not fatal to its conduct, and the two rulings cited by the applicant, viz., ATR 1987 (1) CAT 190 - Hari Prasad Billore vs. Union of India & Ors. and ATR 1989 (1) CAT 54 - Shri Krishna Gupta vs. Union of India & Ors. are clearly distinguishable from the present case and, therefore, do not help the applicant and are not binding upon this Bench. Hence, this ground taken by the applicant fails.

8. The next ground taken is that this Tribunal has erred in holding that the petitioner had not denied that he was unauthorisedly absent from duty from 8.7.1985. In the judgment it has been made clear that the fact that the applicant was absent from duty from 8.7.1985 onwards is not disputed. The applicant's

defence is that he was unwell and he furnished certain medical certificates from private doctors in support of the same. The respondents having certain doubts about the bona fides of these medical certificates directed the applicant to get himself medically examined by the railway doctor which they were fully empowered to do, but the applicant insisted that the medical certificates of the private doctors should be accepted, which the respondents were not obliged to do, if they had any doubts about the same. No doubt, the Railway Board's instructions permit a railway servant to get himself treated from a private doctor, but rule 1474 of the Indian Railway Establishment Manual lays down that when a railway servant is under treatment of a doctor other than a railway doctor, the competent authority may at its discretion instruct the railway doctor to examine the railway servant and report on his fitness or otherwise for duty. The reading of this rule nowhere prescribes that in each and every such case the railway doctor has to examine the railway employee at his residence and without the railway doctor examining the applicant at his residence, the inquiring officer could not have come to the conclusion that the applicant was not genuinely sick. There is documentary evidence available on the record to show that the railway doctor did not accept the medical certificate of the private doctor and restricted his counter-signature put on the P.M.C. only for one day. In spite of clear instructions, the applicant failed to report sick with the railway doctor when so many railway

dispensaries exist in the Delhi area and the applicant was residing at Doriwala, New Rohtak Road, New Delhi. The disciplinary authority has observed that the railway dispensary at Kishanganj was barely one kilometre from the applicant's residence and he could have gone there easily. If at all he was so badly ill that he could not move from his bed, he could have intimated this fact to the railway doctor and requested him to come and see him at his residence, but there are no materials to show that the applicant took any such action. Furthermore, it is well settled that mere despatch of a medical certificate in support of one's claim to be unwell, does not automatically authorise one's absence from duty. Till the application for leave on grounds of illness, with or without a medical certificate, is accepted by the competent authority, the applicant has to be treated as absent from duty, and till such time as the absence is authorised by the competent authority, it can only be considered to be unauthorised absence from duty. Under the circumstances, this ground also fails.

9. Lastly, it has been argued that the fact that no personal hearing was given to the applicant at the appellate stage, vitiates the entire proceedings. In this connection, the Hon'ble Supreme Court's judgment in Ram Chander vs. Union of India & Ors. (ATR 1986 (2) SC 252) has been relied upon. A perusal of that judgment makes it abundantly clear that the material evidence in Ram Chander's case are entirely different

from the present one. The said Ram Chander was removed from service under rule 6 (viii) of Railway Servants (Discipline & Appeal) Rules, 1968 by the order of the General Manager, Northern Railway dated 24.8.1971 on the charge of having assaulted his immediate superior. A departmental inquiry was instituted against Ram Chander, and the inquiry officer fixed the date of inquiry on 11.5.1970 at Ghaziabad. The inquiry could not be held on that date due to some administrative reasons and was then fixed for 11.7.1970. The appellant was duly informed of the date but he did not appear on the date of inquiry. The inquiry officer accordingly proceeded ex parte and examined the witnesses. By his report dated 26.5.1971 the inquiry officer found the charge proved. The General Manager, Northern Railway agreed with the report of the inquiry officer and provisionally concluded that the penalty of removal from service should be inflicted and issued a show cause notice dated 26.5.1971. In compliance, the appellant showed cause but his explanation was not accepted by the General Manager who by his order dated 24.8.1971 imposed on the appellant the penalty of removal from service. The appellant preferred an appeal before the Railway Board under rule 18(2) of the Railway Servants (Discipline & Appeal) Rules, 1968, but the Railway Board by the impugned order dated 11.3.1972 dismissed his appeal. Thereafter, the appellant moved the Delhi High Court under Article 226 of the Constitution and a learned single Judge by his order dated 16.8.1983 dismissed the writ petition holding that since the

Railway Board agreed with the findings of the General Manager, there was no duty cast on the Railway Board to record reasons for its decision. The appellant thereafter preferred a letters patent appeal which was dismissed by a Division Bench in limine. Thereafter, the matter was taken to the Hon'ble Supreme Court who in their judgment cited above noted that it was not th requirement of Article 311 (2) prior to the Constitution (42nd Amendment) Act, 1976 or of the rules of natural justice that in every case the appellate authority should in its order state its reasons except where the appellate authority disagreed with the findings of the disciplinary authority. However, after the amendment of clause (2) of Article 311 by the Constitution (42nd Amendment) Act, 1976 and the consequent changes brought about in rule 10(5) of the Railway Servants (Discipline & Appeal) Rules, it was no longer necessary to afford a second opportunity to the delinquent servant to show cause against the punishment and the right of the delinquent servant to make a representation having been taken away, the requirement of clause (2) would be satisfied by holding an inquiry in which the Government servant had been informed of the charges against him and given a reasonable opportunity of being heard. Their lordships went on to add that "since the majority in Tulsi Ram Patel's case unequivocally lays down that the only stage at which a government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence

adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal."

10. It is clear that these observations were made in the specific context of Ramchander's case (supra) where the appellate authority (Railway Board) dismissed the appeal without recording any reasons for its decision. In the present case, however, the appellate authority has recorded a reasoned order, after discussing the points raised by the applicant in his appeal, and under the circumstances the observations of the Hon'ble Supreme Court extracted above in Ramchander's case (supra) cannot be extended to imply that the entire departmental proceedings are vitiated merely because no personal hearing was given by the appellate authority to the applicant which in any case was not asked for. In the result, this ground also fails.

11. In the light of what has been stated above, there are no good grounds to warrant review of the judgment dated 24.12.1993. This review application is accordingly dismissed.

(B. S. Hegde)
Member (J)

(S. R. Adige)
Member (A)

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