

Central Administrative Tribunal
Principal Bench, New Delhi

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OA No.1189/91

New Delhi, May 2, 1995

Hon'ble Mr.A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr.S.R. Adige, Member(A)

Madan Lal
Ex-Substitute Cleaner
Locoshed, Moradabad
R/o L-79/B-1, Chiryatola, Line Par
Moradabad

...Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India

1. The General Manager, Northern Railway
Baroda House, New Delhi
2. The Divl.Railway Manager
Northern Railway
Moradabad

...Respondents

(By Advocate: Shri Rajesh)

JUDGEMENT (Oral)

Hon'ble Mr A.V.Haridasan

In this application, Shri Madan Lal, Ex-Substitute cleaner, Locoshed, Moradabad, has challenged the legality, propriety and correctness of the order dated 7.9.90 of the Assistant Mechanical Engineer, Northern Railway, Moradabad, dismissing him from service, finding that his appeal against the impugned order did not evince any response. The penalty of dismissal from service was imposed on the applicant after a departmental proceedings on a charge that the applicant joined the Railway Service by producing a forged working certificate. The impugned order has been assailed by the applicant on various grounds, inter-alia, he has contended that the procedure adopted by the enquiry authority in examining the applicant before evidence in support of the charge was taken has resulted in denial of a reasonable opportunity to him to defend himself.

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2. We heard Shri B.S.Mainee for the applicant and Shri Rajesh for the respondents. We have also perused the pleadings and documents on record with meticulous care.

3. The applicant stated that the enquiry officer on 26.4.90 examined the applicant and it was thereafter that witnesses in support of the charge were examined. This, according to the learned counsel, is opposed to the rules in regard to the conduct of an enquiry as prescribed in Railway Servants (Discipline and Appeal) Rules. This submission of the learned counsel is correct because in accordance with the provisions contained in Railway Servants (Discipline & Appeal) Rules, a delinquent railway employee facing a charge is to be directed to state his defence and to adduce evidence on his side only after the entire evidence in support of the charge is closed. The examination of the applicant before the evidence in support of the charge was recorded has prejudiced his defence and therefore the impugned order is liable to be quashed for that reason alone, argued the learned counsel. Shri Rajesh, on the other hand, argued that even though it is admitted that the examination of the applicant by the enquiry officer before the witnesses in support of the charge were examined is a deviation from the procedure prescribed in the rules, that alone will not render a final order in the disciplinary proceedings invalid if no substantial prejudice is caused to the applicant. He further argued that as the applicant was given a fair and reasonable opportunity to cross-examine the witnesses, it cannot be said that the applicant was not given a reasonable opportunity to defend himself. Though a mere irregularity in the proceedings may not render the order passed in the proceedings invalid, if the irregularity has resulted in miscarriage of justice or denial of reasonable opportunity, then the proceedings have to be held vitiated and the order passed pursuant to the proceedings declared invalid. Now let us examine in this case whether the examination of

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the applicant before the witnesses were examined ~~has caused~~ any prejudice to the applicant. We have carefully gone through the proceedings of the enquiry which revealed that after the evidence in support of the charge was recorded, the applicant was not either examined or questioned by the enquiry officer. It is also seen that the applicant was not asked to state his defence either in writing or orally or whether he wanted to adduce any evidence in defence. This probably was because the enquiry officer thought that the applicant had already been examined by him. However, the denial of an opportunity to the applicant to explain the evidence elicited against him in the testimonies of witnesses ~~who~~ were examined in support of the charge, to state his defence and also to adduce evidence in defence, has undoubtedly resulted in denial of reasonable opportunity to the applicant to defend himself. Therefore we are of the considered view that the impugned order dated 7.9.90 of dismissal of the applicant from service is unsustainable in law.

4. In ~~considering~~ ^{the} of the facts and circumstances as discussed above, we set aside the impugned order dated 7.9.90 (Annexure-I). However, we make it clear that in case the respondents decide to proceed against him on the basis of the same charge, they are at liberty to do so in accordance with law after giving the applicant a reasonable opportunity to defend himself and that in doing so, the applicant shall be deemed to have been placed under suspension as prayed for under Rules 5 (IV) of the Railway Servants (Discipline & Appeal) Rules.

No costs.

S.R. Adige
(S.R. Adige)
Member (A)

A.V. Haridasan
(A.V. Haridasan)
Vice Chairman (J)