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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

D.A.NO.1281/91

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 18th day of July, 1995

Shri Suraj Parkash
s/o Shri Ghanshyam Dass
r/o WZ-50, Shiv Nagar
NEW DELHI.

.... Applicant

(By Shri S.K.Sawhney, Advocate)

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Electrical Engineer
Northern Railway
Chelmsford Road
New Delhi.

.... Respondents

(By Shri R.L.Chawan, Advocate)

O R D E R(Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)

The applicant who was working as Semi-skilled Wireman under Senior Electric Foreman (Power), Northern Railway, Shakurbasti was removed from service by the impugned order dated 21.11.1990 by the Assistant Personnel Officer (Signal and Telecommunication), DRM Office, New Delhi. A charge-sheet in Standard Form No.5 (SF-5) was issued on 6.5.1988 and the same was received by the applicant on 31.3.1989. The imputation of misconduct was that he had absented unauthorisedly from duty w.e.f. 28.8.1983 to the date of the issue of the

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Charge-sheet. It appears that the applicant did not submit any reply to the memorandum of charge. Purporting to be acting on the exparte enquiry the disciplinary authority found that the applicant guilty and removing ^{ed} him from service. The appeal filed by him was not disposed off by the ~~maximum~~ appellate authority under these circumstances, the applicant has filed this application seeking to quash the impugned order (Annexure A-1) of the disciplinary authority removing him from service and for a direction to the respondents to reinstate him in service with continuity of service and all consequential benefits. The applicant has alleged that the impugned order is unsustainable in law as the same was not passed after a regular enquiry as provided for in the rules and without due application of mind.

2. The respondents in their reply, have raised a preliminary objection that the application is not maintainable as the applicant has not exhausted the departmental remedies available to him under the rules. They contend that the impugned order of removal from service was issued after holding an exparte enquiry and due application of mind and that therefore, no interference is called for.

3. We have perused the entire ~~and~~ pleadings in this case and have also heard the learned counsel appearing ^{on} for either side. The objection that the application is not maintainable without exhausting the alternative remedy of appeal provided for under relevant service rules, has got to be determined first. According to Section 20 of the Administrative Tribunal Act, 1985 the Tribunals shall not ordinarily admit an application if ~~if~~ the applicant has not exhausted the remedy provided for in the relevant service rules. The ban against admission is not a blanket ban against admission of an application without resorting to alternative remedy because the

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working in the Section "Ordinarily" implies that it confers a discretion on the tribunal to entertain an application in extraordinary cases if satisfied that owing to the urgency of the matter or otherwise it is just, and necessary to entertain the application. In this case the Tribunal has already exercised the discretion and has admitted the application. Once the application has been admitted the same has to be disposed of on merits. Hence the preliminary objection has no significance now.

4. The impugned order is assailed by the applicant mainly on two grounds. First ground is that the impugned order has been passed without holding an enquiry as provided in the Railway Service (Discipline & Appeal) Rules. Though it is mentioned in the impugned order that the disciplinary authority found him guilty on the basis of the report of the enquiry officer, a reading of the enquiry report dated 30.1.1990 would clearly show that the enquiry officer has not held any exparte enquiry at all. It is worthwhile to extract the proceedings of the enquiry authority as well as his findings since these speak for themselves. Therefore, part of the enquiry report which contain the proceedings and findings are extracted belows

"PROCEEDINGS: A Regd. letter along with SF-5 was despatched to Shri Suraj Parkash at his home address WZ-50, Shiv Nagar, P.O. Janak Puri, New Delhi-58 placed at Sr. No.10 of file No.2. The Regd. letter was returned undelivered by P&T Department placed at Sr. No.12 A note was displayed on the Notice Board of SEFO/P/JHI office on 25.11.89 in presence of 5 persons in which SEFO/P/JHI staff was asked to intimate Shri Suraj Parkash to collect SF-5 from the office of the undersigned by 30.11.1989. Till date Shri Suraj Parkash has not attended this office to collect the SF-5.

FINDINGS: Shri Suraj Parkash has received the SF-5 on 31.3.1989 dispatched by SEFO/P/JHI under regd. post placed at Sr. No.6. The SF-5 was despatched by the undersigned under Regd. Post which was returned undelivered and received by him and not sending the reply of SF-5 received by him on 31.3.1989 sent by SEFO/P/JHI. Clearly shows that his deliberate unwillingness ... The charges framed against Shri Suraj Parkash vide above mentioned SF-5 are proved."

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5. On a carefull reading of proceedings and findings recorded by the enquiry officer, it is evident that, apart from putting up a notice on 25.11.1989 calling upon the applicant to collect the SF-5 (Charge-sheet) by 30.11.1989, no further enquiry has been held at all. The finding that the applicant was unwilling for duty was arrived at by the enquiry officer on the ground that the applicant, though received the SF-5 as early on 31.3.1989, did not submit any reply. There is no averment that any enquiry was held and the findings is not based on any documents or oral evidence brought on record in an enquiry, ~~as no enquiry was held at all.~~ The enquiry officer after putting the notice on 25.11.1989 did not hold any exparte enquiry at all but submitted a report with a finding that the applicant was guilty basically on the ground that the applicant did not come even to collect the SF-5 Charge-sheet. We requested the learned counsel for the respondents to show us any document which would show that an exparte enquiry was held. He produces a letter written by the enquiry officer to the Senior Electrical Foreman Officer (No.CEFO/DE&P/SSB) to spare the applicant for attending an enquiry on 15.11.1989, but from the averment in the proceedings of the enquiry contained in the enquiry report, it is evident that no enquiry ~~conducted~~ took place on 15.11.1989, because on 25.11.1989 a notice was put on notice board calling upon the applicant to come and collect the SF-5 on 30.11.1989. It is on the basis of this enquiry report that the Assistant Personnel Officer has issued the impugned order terminating the services of the applicant. Hence it has been established that the impugned order has been passed without holding an enquiry as required under the rules and therefore, the requirement of Article 311 of the Constitution has not been complied with. We are of the considered view that the impugned order is liable to be struck ~~out~~, ~~down~~

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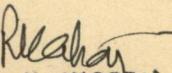
The learned counsel for the applicant argued that the impugned order passed by Assistant Personnel Officer is without jurisdiction, since the disciplinary authority in the case of the applicant is the Assistant Electrical Engineer who issued the Charge-sheet. The learned counsel for the respondents in reply did not contest the position that Assistant Electrical Engineer is the competent disciplinary authority but argues that the impugned order was passed by Assistant Electrical Engineer, but was only communicated by the Assistant Personnel Officer. But a reading of the impugned order does not show that the order was passed by the Assistant Electrical Engineer. The order suffers from the infirmity. *also* *this*

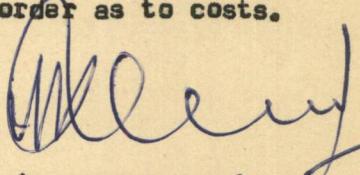
In the light of the foregoing discussions, we are of the considered view that the impugned order is wholly unjustified, incompetent and unsustainable. Therefore, we set-aside the impugned order of the removal of the applicant from service.

The prayer in this application is for setting-aside the impugned order of removal from service and to direct the respondents to treat the applicant to have continued in the service or in the alternative, to accept the voluntary retirement offered by the applicant on 28.5.1990. Since we set-aside the impugned order of removal of the applicant from service, we are of the considered view that the respondents have to be given an opportunity if they so choose to hold a proper departmental *law* *enquiry* against the applicant in accordance with and on the basis of the same memorandum of charge. If they choose to hold an enquiry the same shall be completed within the period of four months from the date of the communication of copy of this order.

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If it is decided to hold an enquiry, the applicant shall be deemed to have been suspended w.e.f. the date of his removal from service. On the other hand, if the respondents don't want to hold enquiry, but to accept the voluntary retirement w.e.f. 28.5.1990, they are free to do so and pass appropriate order in that behalf and give to the applicant all the terminal benefits including DCRG and arrears of pension within the aforesaid period of four months. There shall be no order as to costs.


(R.K. AHUJA)
MEMBER(A)


(A.V. HARIDASAN)
VICE-CHAIRMAN(J)

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