

Central Administrative Tribunal  
Principal Bench: New Delhi

(11)

OA No. 2844/91

New Delhi, this the 7th day of February, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)  
Hon'ble Shri S. P. Biswas, Member (A)

Ghasita s/o Shri Man Singh,  
House No. 2661, Raghupura-2,  
Gali No. 6, Gandhi Nagar,  
Delhi - 110 031. ....Applicant  
(By Shri S.S.Tiwari, Advocate)

Versus

1. Union of India through  
General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. Senior Divisional Engineer-I,  
Northern Railway, Moradabad (UP).
3. Assistant Engineer,  
Northern Railway,  
Nazibabad (UP).
4. Inspector of Works,  
Northern Railway,  
Nazibabad (UP). ....Respondents  
(By Shri B.K.Agarwal, Advocate)

O R D E R (Oral)  
Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J):

The applicant in this case was arrested in a criminal case and proceeded for an offence under Section 399/402 IPC and under Section 25 of the Arms Act. After he was arrested on 29/30-05-1977 he was sent to judicial custody. He was released from jail on bail on 05-10-1977 but he was re-arrested on 14.11.1978 and remained in custody till 19.01.1980 as he could not seek bail, and he was released from jail only after the case came to a conclusion i.e.

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acquittal. It is stated in the OA that he approached the respondents with a copy of acquittal order but that fact was denied by the respondents and no documentary proof is available.

2. The respondents issued a chargesheet for unauthorised absence initially on 04.06.1979. After holding an inquiry the said proceedings were abandoned but it was re-started alongwith a fresh chargesheet dated 19.09.1985 for unauthorised absence from 14.11.1978. Thus the total period of absence which was the subject matter of the inquiry was a long period from 14.11.1978 till 19.3.1985. Annexure 'C' at page 16 of the paper book is a report by the Enquiry Officer who stated in the report that alongwith the memo of charge-sheet, unfortunately, there is neither any document nor any witness to sustain the charge and in view of the above situation the charges cannot be proved and the case is retruned therewith for disposal. This report was dated 16.08.1989 addressed to Assistant Engineer, Nazibabad. The Assistant Engineer did not agree with the said report and referred the matter for fresh enquiry. The fresh enquiry started on 11.01.1990.

3. After the report was submitted by the Enquiry Officer on 11.8.1989, the petitioner made a representation on 24.6.89 seeking subsistence allowance. He had also quoted in the said representation the judgement of the Hon'ble

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Supreme Court on subsistence allowance said to have been delivered on July, 1993.

4. During the enquiry the statement of the applicant was taken against the charge of unauthorised absence. The applicant had taken the defence that he was under deemed suspension under Rule 5(2-A) of the Railway Servants (Discipline & Appeal) Rules, 1968. He also stated that he continued to be under deemed suspension and the said suspension order has not been revoked till date. He handed over a photocopy of the judgement by which he was acquitted.

5. The Enquiry Officer recorded a finding that the unauthorised absence of the applicant is proved and on the basis of the enquiry report, the disciplinary authority passed the order of punishment recording that the period of suspension from 14.11.1978 to 19.3.1985 was unauthorised. It was submitted on behalf of the respondents that the enquiry proceedings were in order. All the formalities have been correctly complied with, in accordance with the rules.

6. The learned counsel for the applicant submits that the finding itself is most unreasonable and perverse; and the decision based on that finding and the order of the Appellate Authority both being passed without any application of mind are also perverse and needs to be quashed.

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7. It is not disputed that the charge against the applicant was of unauthorised absence. It is also not disputed that he was rearrested on 14.11.1978 and upon such rearrest under Rule 5(2-A) of the Railway Servants (Discipline & Appeal) Rules, 1968, he should have been deemed to have been kept under suspension. Rule 5(2-A) of the said rules is reproduced herebelow:-

"5(2)A. A railway servant shall be deemed to have been placed under suspension by an order of the competent authority;

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation: The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account".

8. Even though it was by operation of law that he was kept under deemed suspension, it is an admitted fact that no order to revoke the said deemed suspension has ever been passed. The defence of the respondents was that the applicant did not intimate that he was released from jail after the acquittal order. Therefore, they could not pass any revocation

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of the deemed suspension order. Nor could the applicant show to the court any rule by which there would have been automatic revocation of the suspension.

9. It is understandable that even though the applicant might have not informed the date of acquittal and the fact of acquittal to the respondents, but on the day he gave the statement before the Enquiry Officer, he made it very clear that he was under detention for part of the period for which he is being proceeded against on the charge of unauthorised absence, and for the remaining period he was under deemed suspension under the rules. In spite of the fact that a clear statement of the applicant was available on file, the enquiry officer without paying any attention to these statements of facts, almost mechanically recorded that the charge of unauthorised absence is proved, and the disciplinary authority without reverting to the statement of the applicant concurred with the finding of the enquiry Officer and passed the punishment order. The Appellate Authority as well, without looking into the statement of the applicant and various facts as to why he remained absent, passed the appellate order. In the circumstances, we have no hesitation but to quash the orders of the disciplinary authority as well as that of the

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Appellate Authority on the ground that it was unreasonable and based on perverse finding and the said orders have been passed without proper application of mind.

10. The Respondents' power to proceed in disciplinary matters is unassailable; the authorities have the discretion and the exercise of that discretion cannot be substituted by Courts or by the opinion of the court i.e. to say, the action of the authorities in such circumstances cannot be held to be unreasonable merely because the court thinks it to be unreasonable. The court is not sitting in appeal over the decision of the Administrative authorities. At the same time, the authorities will have to exercise the discretionary power reasonably and the Court can interfere if the said decision is so unreasonable that no reasonable man could have arrived at such inference.

11. The observation of Lord Greene, M.R. in the leading case of Associated Provincial Picture Houses Ltd v. Wednesbury Corp, which is often quoted for the purpose, is reproduced below :

" It is true that the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a

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discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.

12. Hon'ble Hegde J. in Rohtas Industries Ltd Vs SD Aggarwal & Ors. 1969 1 SCC 325 has also expressed similar view.

13. The petitioner is also assailing the impugned orders on the ground of non application of mind.

14. Hidayatulla, J. (as he then was) held the view and observed:

"No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to an inference unless the existence of the circumstances is made out. (AIR 1967 SC 293)".

15. Similarly Sharad J., at page 325 of the same case, observed that the formation of opinion by the Central Government may be through a subjective process but the authorities are required to arrive at such opinion from objective circumstances which should be relevant to the conclusions arrived at. There is no doubt that in the present case there was a total non application of mind and the conclusion arrived at is bad on the ground of unreasonableness.



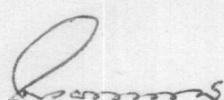
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16. Accordingly, the application is disposed of with the following directions:-

- (a) The orders of the Disciplinary Authority as well as the Appellate Authority are quashed.
- (b) A direction is given to the respondents to pass an appropriate order with respect to the deemed suspension of the applicant within a period of eight weeks from the date of receipt of a certified copy of this order.
- (c) After an appropriate order is passed on the question of suspension, whatever benefits arise out of the said order, such as the subsistence allowance etc. may be paid/given to the applicant in accordance with law.
- (d) It is made clear that the applicant is entitled to the subsistence allowance under the rules during this period.
- (e) With regard to the Disciplinary Authority's order of punishment as well as that of the Appellate

Authority, direction is being issued to reconsider the case alongwith the statement of facts given by the applicant during the enquiry especially the fact that during the said period he was under detention and continued to be under deemed suspension for the remaining period, and after reconsidering the issue, pass an appropriate order and in the event the applicant is aggrieved by the said order, he may file an appeal and proceed with the matter further in accordance with law.

17. With the above directions, the O.A. is disposed of finally. No order as to costs.

  
(S.P. Biswas)

Member (A)

  
(Dr. Jose P. Verghese )

Vice-Chairman (J)

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