

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.535 of 1992

15th day of November, 1993.

Shri J.P. Sharma, Member (Judl.)

Shri B.K. Singh, Member (A)

Shri Bane Singh Meena,
s/o late Shri N.R. Meena,
r/o Block No.69,
Quarter No.C1, Motia Bagh,
Railway Colony, Delhi.

Applicant

By Advocate Shri B.K. Batra.

Versus

1. Union of India through
General Manager,
Western Railway, HQ Office,
Church Gate, Bombay.

2. Chief Works Manager,
Carriage Workshop,
N.M. Joshi Marg,
Lower Parel,
Bombay-400013.

Respondents

By Advocate Shri K.K. Patel.

O R D E R (Oral)

Shri J.P. Sharma

The applicant was working as a Khalasi in the Western Railway, Carriage Workshop. He remained absent from duty w.e.f.26.5.1988. In spite of the letter sent to him to resume duty, he did not turn up. He was served a major penalty and charge-sheet under Rule 5 and a disciplinary enquiry was held under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The memo. of charge-sheet was sent to him which

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he had received on 1.2.1989 but did not turn up to join the enquiry, nor did he file any reply. He was sent another letter dated 25.2.1989 at his residential address in the village informing him about the date of enquiry fixed on 23.3.1989, but this letter was not received by him and was returned unserved. The Enquiry Officer, Shri R. Ram, having been satisfied that he had already received the memo. of chargesheet, held the enquiry in his absence and examined the witnesses of the department. The Enquiry Officer gave his findings on the basis of which the disciplinary authority passed the impugned order of punishment dated 14.7.1989, imposing the punishment of removal from service. The applicant preferred an appeal in August, 1989 which was rejected by the order dated 24.3.1990 and is reproduced below:-

"Western Railway

Registered Post A.D. Chief Works Manager's Office,
No.E.308/CW/BMM/192 Carriage Workshop,
N.M. Joshi Marg,
Lower Parel,
Bombay-400013.

To

24 March, 1990

Shri Sanisingh Naharuram Meena,
Village: Bersinglipura,
P.O. Bersingli Pura,
Via - Khandela,
Dist. Sikur (Raj.).

Sub: DAR

Ref.: Your appeal dt. 31.8.89

The AA & WM(R)/PL has considered your above quoted appeal and has passed the following orders:

"I have gone through this case and the entire proceeding available and consider that the procedure laid down in the rules has been followed and complied with in conducting this DAR. The finding of DA are fully warranted by the evidence on the record and the penalty imposed upon the defaulter is adequate and needs no revision."

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You are, therefore, informed that your above quoted appeal is rejected and the penalty imposed by DA & AWM(R)/PL vide NIP of even No. dt. 14.7.89 stand good.

Please acknowledge receipt.

Sd/-
For W.M.(R)/PL "

2. The applicant is said to have filed a revision also but he had not been conveyed any result and the respondents have denied having received any such revision against the impugned order of the appellate authority.

3. A notice was issued to the respondents, who contested the application and stated that the applicant is to blame himself for not joining the departmental enquiry proceedings after having received the memo. of charge-sheet and further having been informed of the date fixed by the Enquiry Officer about the proceeding in the enquiry. It is further stated in the reply that the applicant was unauthorisedly absent from May, 1988 and could not join duty till the order of punishment was passed. It is said that the applicant has no case.

4. We have heard the learned counsel for the parties at length and perused the records.

5. The first contention of the learned counsel for the applicant is that the applicant was bed-ridden due to illness and in the memo. of appeal submitted by him, he has given the specific dates when he has informed Under Postal Certificate the extension of leave and that he was under the treatment of a private doctor. It is further contended that the Enquiry

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Officer himself had admitted that the information about fixing a date in the enquiry sent through a letter, was received back undelivered to the applicant at his own address. In the circumstances, the ex parte enquiry was not justified and the applicant should have been given adequate opportunity to defend himself to bring on record his illness and treatment by a private doctor where the services of the prescribed Medical Attendant could not be procured. He also argued that the appellate authority had not at all applied its mind and the order passed by it is only paraphrasing para.2 of Rule 22 of the (Discipline & Appeal) Rules, 1968. The appellate authority has not considered the points raised in the memo. of appeal that the applicant had informed the authorities about his illness time and again through U.P.C. and that he was not given an opportunity to place his defence before the Enquiry Officer.

6. Shri K.K. Patel, learned counsel for the respondent as regards the proceedings of the enquiry, defended the order passed by the disciplinary authority, argued that the Enquiry Officer had taken every step to inform the applicant to join the proceedings and the applicant did not cooperate, with the result that he had no alternative but to proceed ex parte. He further highlighted that before taking that extreme step of drawing ex parte proceedings, the applicant was also informed.


7. Regarding the order passed by the appellate authority of March, 1990, he could not substantiate and left it for judicial review to find the correctness in the light of the decided cases.


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8. As regards the proceedings having been taken ex parte, we do not want to enter into the merits at this stage in view of the reason that we are satisfied that the appellate authority cursorily, without even going through the records and unmindful of the grounds taken in the memo. of appeal, passed cryptic order paraphrasing clause (2) of Rule 22 of the Rules. The order has been quoted in the earlier part of this order. It does not discuss anything. Since in the case of Ram Chander Vs. Union of India, A.I.R. 1986 S.C.1371, the Hon'ble Supreme Court held that after the constitutional amendment in para.2 of Article 311 of the Constitution, where second opportunity to the delinquent has been taken away, the appellate authority has more onerous responsibility to consider the averments made in the memo. of appeal against the order of punishment and observed that a personal hearing, even though not called for, be given to the employee. After the aforesaid authority, nothing has been pointed out by the counsel for the respondents to distinguish the case from that of Ram Chander (supra.). We are convinced that the appellate order is not a speaking order and has to be quashed and set aside, and at the same time, we are not entering into the merits of the rival contentions whether the holding of the ex parte enquiry was justified or not, as we leave it to the appellate authority to consider this aspect in the light of the records of the departmental enquiry. The appellate authority will take into account whether the applicant has been duly served and had sufficient time to join the enquiry and the Enquiry Officer has taken sufficient pains to procure the attendance of the applicant to join the said enquiry.

9. In view of the above facts and circumstances, the application is partly allowed. The order of the appellate authority dated 24th March, 1990 is ~~quashed~~^{le} and set aside. The matter is remitted to the appellate authority to consider in the light of the observations made in the body of this order. The order passed by the disciplinary authority dated 14.7.1989 in the light of the memo. of appeal preferred by the applicant and also to appreciate the observation of the Enquiry Officer whether he was justified in proceeding ex parte and there was due intimation to the applicant to join the proceedings before him or not. He will pass the final order and if he thinks it in the interest of justice on the basis of the record of the disciplinary authority, may remand the case to the disciplinary authority to direct the Enquiry Officer to give an opportunity to the applicant.

10. The application, therefore, is disposed of with the above direction, leaving the parties to bear their own costs. The appellate authority shall consider and dispose the appeal as expeditiously as possible.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

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