

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No.728/92

Date of decision:- 9.9.92

Sh.J.R.Sachdeva

...

Applicant

versus

Union Of India
through Chairman, Railway Board
and others.

...

Respondents

CORAM: THE HON'BLE SH.T.S.OBEROI, MEMBER(J)
THE HON'BLE SH.P.C.JAIN, MEMBER(A)

For the Applicant ... Sh.J.K.Bali, Counsel.

For the Respondents ... Sh.P.S.Mahendru, Counsel.

- 1.Whether reporters of local papers may be allowed to see the Judgement? *yes*
- 2.To be referred to the reporter or not? *yes*

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI, MEMBER(J)

The facts giving rise to the filing of the present OA, briefly stated, are that the applicant, presently serving as Senior Civil Engineer, Drawing Office Track, SEN/DOT in short), in the Northern Railway, Broda House, New Delhi while posted as Assistant Engineer, Aligarh, during the relevant time, was ordered to be proceeded against, for minor penalty charge, vide Memorandum dated 26.6.89(Annexure A-2), and was called upon to make such representation, as he may wish to make, against the said proposal. He was also given 10 days' time, on receipt of the abovementioned Memo, for the said purpose. However, after receiving the said communication, contained in a sealed courier, instead of submitting reply within the time allowed, the applicant found fault

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with the same, not being in the proper format, nor the statement of imputations received along with the said Memorandum, being legible and bearing the signature the then General Manager. He communicated these objections, in his reply dated 3.8.89, by also sending an advance copy thereof, sent through proper channel, to the concerned. Thereafter, he received a confidential letter dated 10.3.1990 (Annexure A-6), from Divisional Railway Manager, Ferozpur, desiring the applicant to submit his defence statement, to the disciplinary authority concerned. The applicant, however, vide his letter dated 15.3.90 (Annexure A-7), pointed out certain other shortfalls, and also demanded copies of certain documents, being furnished to him. He persisted in his demand for documents being furnished to him, in several subsequent communications, though the respondents only allowed him inspection of two of several such documents, copies of which were asked for by the applicant. Inspection of the said documents allowed by the respondents, was carried out by the applicant on 8.8.91, and in spite of being asked to furnish his defence statement, the applicant still persisted in several other documents being furnished to him and thus having not submitted his defence statement, to the disciplinary authority concerned, the latter,

by an ex-parte order on 26.11.91(Annexure A-1) under Rule 11 of the Railway Servants(Discipline & Appeal)Rules,1968 imposed upon the applicant, the minor penalty of withholding of all the sets of privilege passes and P.T.Os for the year,1992, against charge No.1 only,while no punishment was imposed against charge No.2, on the ground that the applicant was already being proceeded against, for retaining Government accommodation, beyond the permissible period, in Chandigarh Bench of this Tribunal. Thus the applicant's case for not being able to submit his defence statement rests upon two main grounds, i.e. non-issue of an appropriate chargesheet, being dim and not legible, and non-supply of relevant documents.

2. In counter filed on behalf of the respondents, the applicant's case has been opposed. Their main contention is that the charge against the applicant being only for a minor penalty, and the statement of imputations of misconduct/misbehaviour having been furnished to him, it was in the proper form, though not in printed form but was only typed, and as such, the objections raised by the applicant were frivolous. Moreover, the applicant having acknowledged receipt of the sealed cover, containing the chargesheet and the statement of imputations, and having failed to submit his defence statement/reply within the time allowed, and in spite of several reminders

thereafter, even after having been summoned by a senior officer of the rank of the Chief Engineer, and impressed upon the desirability of submitting his defence statement, but the applicant having failed to do so, the only conclusion that could be drawn from his conduct was that he was either not interested to submit such statement, or was deliberately indulging in dilatory tactics, so as to mark time for his superannuation which was approaching fast. Thus, it was contended on behalf of the respondents that the respondents were well within their rights to proceed against the applicant, by way of passing the ex-parte order dated 26.11.91 (Annexure A-1).

3. In the rejoinder filed on behalf of the applicant, his submissions in the main OA were broadly reiterated.

4. ^{also} We have/ heard the learned counsel for the parties and have perused the material on record carefully. It was at the outset contended by the learned counsel for the applicant that though an appeal has been filed by the applicant in the case on 14.1.92, and in spite of directions on the subject to decide the appeals as early as possible, particularly in a case of withholding of P.T.Os and passes, to avoid inconvenience to the Railway Servant, to be decided in a month, the same has not been decided so far. However, in view of the impending retirement of the applicant, due on 31.10.92, as agreed by both the sides, we proceed to decide the OA at the admission stage itself, without any directions to the respondents to first decide the appeal, filed by the applicant.

5. The learned counsel for the applicant next pleaded that by not supplying the copies of the

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documents asked for by the applicant, or at least by making the same available to him for inspection, the requirement of meeting the call of natural justice, has not been complied with, by the respondents, in this case. It was also urged by the learned counsel for the applicant that the respondents have taken unnecessary affront to the applicant's pointing out in his earlier communications/representations to them that the statement of imputations was not duly authenticated by the competent officer, besides being dim and not legible, and, instead of readily complying with the requirement, they chose to keep mum for considerable period, resulting in the delay in finalisation of the present case, and thus causing avoidable harassment to the applicant. The learned counsel for the applicant also cited a few rulings*, in support of his contentions, that supply of the copies of documents, asked for by the applicant was necessary for complying with the requirements of natural justice.

6. The learned counsel for the respondents while meeting the above contentions, put forth by the learned counsel for the applicant, pleaded that, in the Memorandum dated 26.6.89, it was explicitly stated that the applicant was proposed to be proceeded against under Rule 11 of the Railway Servants (Discipline & Appeal) Rules, 1968, and he was given an opportunity to make such representations, in that regard, as he may wish to do. It was further pleaded by the learned counsel for the respondents that being a case of minor penalty, not covered under sub-rule(2) of Rule 11 ibid, no formal enquiry was intended to be held against the applicant, in this case, and in spite of inspection of only relevant

* AIR 1965 Rajasthan 32 (Jiwa Ram vs. The State);
1967 SLR 759 (Trilok Nath Vs. U.O.I. & Ors.);
AIR 1986 SC 2118 (Kashinath Dikshita Vs. U.O.I. & Ors.)
(1987) 3 ATC 927 (Ram Pravesh Mahato vs. U.O.I.)

documents, having been ensured to him, he did not submit his defence statement with the avowed intention of delaying the proceedings against him, and thus the respondents rightly proceeded against him, after allowing him sufficient time and opportunities for the purpose.

7: We have considered the rival contentions, as briefly discussed above and have also perused the relevant provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. Admittedly, the chargesheet against the applicant is for minor penalty charges. The applicant himself has enclosed an extract of Railway Board's letter No.E(D&A) 77 RG 6-20 dated 12.6.78(NR 7039)(Annexure A-30, page 68 of the paper-book) wherein it has been inter-alia, stated:-

"It is felt that delay is occurring primarily because of facilities for defence prescribed for major penalty proceedings, other than oral enquiry, being given even in minor penalty proceedings although such facilities need be afforded only in the types of causes referred to in sub-rule(2) of Rule 11. Therefore requests for inspection of documents etc. before submitting representation should not be accepted as a matter of routine unless specifically considered by the disciplinary authority as essential for the charged employee to make representation against the action proposed to be taken against him.....

It is reiterated that the time limit of 10 days prescribed in the Standard Form of Memorandum of chargesheet for minor penalties should be strictly adhered to. In case the Railway Servant does not submit the representation within this time limit, it should be presumed that the employee has no representation to make and final order should be passed against him ex parte....."

As against these provisions, which lay down the desirability of restricting only 10 days' time to

the applicant for filing defence statement, the applicant did not submit the said statement for years together, and under one or the other pretext, succeeded in lingering on the case for a considerable period. He was also provided an opportunity to inspect only the relevant documents, considered necessary for the purpose of preparing his defence statement, whereas the applicant went on enlarging the list of such documents, to be made available to him. After carefully considering this aspect, we are of the view that with the action taken by the respondents, to the extent as mentioned above, no violation of the requirement of the natural justice was involved in this respect, in this case. We are also of the view that the citations referred to by the learned counsel for the applicant in support of his / ^{contentions} do not help the case of the applicant, in any manner. AIR 1965 RAJ.32(Jiwa Ram Vs. The State) concerns a criminal case, and a perusal thereof, leaves us in no manner of doubt that the findings therein do not help nor do they apply to the applicant's case, in any manner. Similarly, 1967 SLR 759(Trilok Nath Vs. U.O.I & Ors.) relates to the case of ^a police officer, who was proceeded against under the Punjab Police Act, providing for special procedure for trial under the said Act, whereas the instant case is that under the Railway Servants(Discipline & Appeal) Rules, 1968, and that too for a minor penalty, as against the case in the cited authority, which was one of removal from service. Similarly, other two rulings cited by the learned counsel for the applicant also do not apply to the facts and circumstances of the present case as the same also

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concern much graver charges, as against the minor penalty charges, involved in the present case.

8. In result, we do not find any force or merit in the present OA, which is, accordingly, dismissed without any order as to costs.

(Jan 9/92)
(P.C.JAIN)
MEMBER(A)

(Jan 9/92)
(T.S.OBEROI)
MEMBER(J)