

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD  
\*\*\*

THIS THE 11TH DAY OF NOVEMBER, 2003  
Original Application No. 1087 of 1996

CORAM:

HON. MR. JUSTICE R.R.K. TRIVEDI, V.C.  
HON. MR. D.R. TIWARI, MEMBER (A)

Sunder, son of Ghunai, resident  
of village Kakrahia, post office  
Haiderganj, district Gorakhpur U.P.)

( By Advocate : Shri A.K. Srivastava ) ..Applicant

Versus

1. Union of India, through  
the Chairman, Railway Board  
Rail Bhawan, New Delhi.
2. General Manager, N.E. Railway,  
Gorakhpur.
3. Deputy Chief Engineer, N.E.  
Railway, Gorakhpur.

..Respondents.

( By Advocate : Shri A.K. Gaur )

O R D E R ( Oral )

By Hon. Mr. Justice R.R.K. Trivedi, V.C.

After hearing counsel for the parties, by order dated 09.09.2003 learned counsel for the respondents was directed to produce the entire record pertaining to inquiry in which the order dated 17.4.1993 was passed against the applicant removing him from service. The learned counsel for the applicant has produced the record. The applicant was serving as casual labour with temporary status in North Eastern Railway, Gorakhpur. Against applicant a memo of charge dated 06.9.1989 was issued for major penalty for misconduct of unauthorised absence. The applicant's claim is that this memo of charge was never served on him. From record it appears that applicant submitted letter dated 12.10.1989 stating that he has illegally <sup>been</sup> charged for remaining

absent from duty from 22.10.1988. He further submitted that he is lying ill and was admitted in railway hospital from 1.11.1988 about which he informed the authorities through Kharam Khalasi. He further claimed that after he comes out from illness he will submit the certificate. He has also consulted private doctor and he is not in position to give any explanation of the memo of charge. Ultimately, he prayed that he may be given copy of the report and till then he may not be required to submit any explanation. He also stated in the prayer that on account of his illness he is unable to join duty. He was again issued a notice dated 27.11.1989. He submitted another application on 7.12.1989 stating that he could not search defence assistant and he has also not been supplied the copies of the necessary documents on which basis it is alleged that applicant was absent unauthorisedly. He prayed for staying the proceedings until papers are given. He also mentioned that he is still ill. Applicant submitted application on 30.1.1990 and requested that he may be allowed to join duty. A statement of Inspector of Works G.K. Pusthar Mal was recorded on 30.3.1990. In his statement he said that Sundar, applicant has filed sickness certificate obtained from Railway hospital on which he has signed as Sunder Prasad, but to his knowledge he has never signed and he always used to put his thumb impression. This is the total evidence available on record. The Inquiry Officer made a report on 12.4.1990 which is as under :-

“बार-बार बुलाने पर भी श्री सुन्दर आ नहीं रहे हैं। कार्य निरीक्षक कारखाने का स्टेटमेंट § सी/24§ पर देखें एक बार ड्यूटी पर किसी तरह आने के बाद ये पुनः चले गये हैं और कोई सूचना नहीं है। and sick and fit certificate

पर अंगूठे के बजाय हस्ताक्षर है। यह भी इनका नहीं मालूम होता क्योंकि ये अंगूठा ही लगाते हैं। बिमारी के प्रमाण पत्र. अनिश्चित. ....”





This has been treated as enquiry report, then the matter was placed before the disciplinary authority mentioning the major penalty<sup>u</sup> which could be awarded. Then, aforesaid report was placed ~~before~~<sup>before</sup> disciplinary authority with the report dated 17.4.90. The disciplinary authority passed the following order :-

"..On careful consideration of the enquiry officer's report, I agree with the findings of the E.O.

I have come to the conclusion that Shri Sunder son of Ghunai is not a fit person to be retained in service and I have decided to impose on Shri Sunder the penalty of removal from service..."

Only this much is mentioned that Sunder, T.S.Khalasi is absent from duty w.e.f. 22.10.1988. The date 22.10.1988 has been ~~reported~~<sup>written u</sup> by hand after cutting the date<sup>u</sup> 08.10.1988 and 16.6.1989 which are on the form on account of <sup>u</sup> being carbon copy. So far opportunity of hearing<sup>u</sup> concerned, applicant was all along praying that he is ill and hospitalised. He was also claiming that requisite papers have not been supplied to him. In the report from E.O. ~~was~~<sup>was</sup> in the order passed by disciplinary authority, <sup>u</sup> There is no mention of these facts. There is no finding<sup>u</sup> as such in the alleged report of the Enquiry Officer. The alleged copy of report was not served on the applicant. In these circumstances, the disciplinary proceeding against the applicant was sham and only on papers. No opportunity was given to the applicant.

2. Shri A.K.Gaur, learned counsel for the respondents, however, has submitted that order of punishment was passed against the applicant on 17.4.1990, whereas this O.A. has been filed on 09.10.96 without making any application for condoning delay. It is also submitted that no departmental appeal<sup>u</sup> filed by the applicant. In paragraph 3 of the application it has been mentioned that no final order on representation/departmental appeal has been passed though more than 6 months

R - f

period has expired, which shows that the applicant was raising grievance <sup>against</sup> ~~for~~ the order dated 17.4.1990. It shows that applicant had filed representation/appeal against the impugned order of removal from service which has not been denied in the C.A.

Further, on perusal of the original record of the disciplinary proceedings, we are of the view that the delay in filing O.A. should be condoned in the interest of justice. <sup>u</sup> The order of removal has been passed illegally <sup>u</sup> and in arbitrary manner without caring for the legal procedure prescribed under Rules. Such order can not allowed to be sustained on the ground of delay on the part of applicant in approaching this Tribunal. <sup>u</sup> The <sup>u</sup>

*delay is therefore condoned.*

3. For the reasons stated above this O.A. is allowed. The order dated 17.4.1990 removing the applicant from service is quashed. As the alleged charge against the applicant was in respect of 1988, more than 15 years have passed, we do not think it proper to leave it open to the respondents to continue proceeding against the applicant. The ends of justice will be served if the respondents are directed to re-instate the applicant on the post <sup>with continuity in service</sup>. However, he will not be entitled for any backwages.

4. There will be no order as to costs.

*Dean*  
Member A

*[Signature]*  
Vice-Chairman

u.v./-