

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 20TH DAY OF NOVEMBER, 2001

Original Application No. 1279 of 1998

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Balram Singh, son of Late
Shri Bhagwan Singh, posted as
Vid�ut Khalasi, Ticket No.18444
Armechar Section, in the office
of T.M.S,Northern Railway, Kanpur.

... Applicant

(By Adv: Shri Sudhir Agrawal)

Versus

1. Union of India through the
Secretary, Ministry of Railways
New Delhi.
2. The General Manager, Northern
Railway, Baroda House, New Delhi.
3. The Divisional railway Manager,
Northern Railway, Allahabad.
4. Assistant Electrical Engineer
T.M.S, Northern Railway,
Kanpur.
5. The Senior Divisional Electrical
Engineer, T.M.S, Northern Railway
Kanpur.
6. The Additional Divisional Railway
Manager, Northern Railway,
Allahabad.

... Respondents

(By Adv: Shri A.K.Gaur)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has
challenged the order of punishment dated 6.4.1995(Annexure
1) by which he has been removed from the post of Helper
Khalasi on conclusion of the disciplinary proceedings. The
aforesaid order of punishment has been maintained by the
Appellate Authority and by the Revisional Authority vide

:: 2 ::

orders — dated — 16.9.1995 — and — 21.8.1998(Annexure 1 and 3)respectively.

The facts in short giving rise to this application are that the applicant was served with the memo of charge dated 18.10.1994. The first charge against the applicant was that he is a habitual absentee from duty and he is not discharging his duties faithfully. The second charge against the applicant was that the applicant absented himself from duty on 22.8.1994 and remained absent till the preparation of the memo of charge sheet. The Inquiry Officer concluded inquiry and submitted report on 5.1.1995. The Disciplinary Authority ~~agreed~~ ^{agreed} with the order and passed impugned order of punishment dated 6.4.1995 which has been maintained in appeal and revision. Shri Sudhir Agrawal has challenged the impugned orders on following grounds:

The first submission is that Enquiry Officer fixed 3.1.1995 for proceeding with the inquiry. On that date applicant appeared and his statement was recorded. It is submitted that till that date the evidence of the respondents was not recorded though in memo of charge three witnesses were mentioned. It is also submitted that no document was filed to the knowledge of the applicant. It is further submitted that the Enquiry Officer closed the inquiry on 3.1.1995 and submitted his report on 5.1.1995. The learned counsel has submitted that the procedure adopted was thus wholly illegal and arbitrary.

The second submission is that the inquiry report was not served on the applicant and order of punishment was passed straight away. The inquiry report was sent to the applicant alongwith order of punishment on 6.4.1995.

Shri A.K.Gaur learned counsel for the respondents on the other hand submitted that as the applicant was absenting himself from duty w.e.f. 25.2.1995 continuously the inquiry

:: 3 ::

report could not be served on him and it was sent to him alongwith the letter of punishment dated 6.4.1995. It is submitted that no prejudice has been caused to the applicant by non service of the inquiry report and the impugned orders are legal and valid.

We have carefully considered the submissions of the counsel for the parties. It is not disputed that the inquiry report was not served on the applicant before the order of punishment was passed against him. The respondents have tried to explain it by alleging that applicant absented from duty from 25.2.1995, even assuming it to be correct, we find no reason as to why the inquiry report could not be served on the applicant between 5.1.1995 to 24.2.1995 during which period admittedly applicant was serving on the post. Paragraph 11 of the counter affidavit is also vague and uncertain. It is being reproduced below:

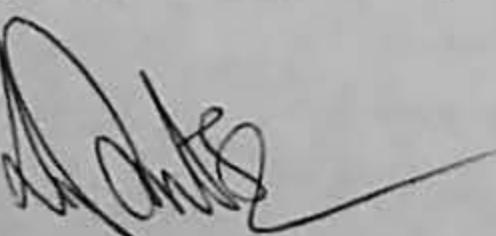
"The contents of para 4(13) of the application are not admitted and are denied. It is submitted here that the applicant again unauthorisedly absented himself from 25.2.95 onward continuously. As such the inquiry report and punishment letter dated 6.4.95 was sent by postal service through regd. post on 15.4.95 at his residential address."

There is not a word that any attempt was made by the respondents to serve the inquiry report on the applicant before 6.4.95. In our opinion, the alleged absence of the applicant has only been taken as excuse for the serious lapse committed by the respondents in passing the order without serving the inquiry report on the applicant. For the aforesaid reason in our opinion the impugned orders cannot be sustained. Learned counsel for the applicant invited our attention towards the procedural lapse on the

:: 4 ::

part of the Enquiry officer that without examining the witnesses of the employer and without taking their evidence ~~concluded the~~ he ~~started~~ with inquiry with the examination of the applicant. However, we do not think it necessary to deal with this aspect of the matter as we are remitting the case back to the authorities for deciding afresh from the stage of serving of the inquiry report on the applicant. It shall be open to the applicant to raise this plea before respondents in his explanation. It shall also be open to the respondents to reconsider the matter and if they are advised so, start the inquiry from the stage of serving of the charge sheet.

For the reasons stated above, this OA is allowed. The impugned orders dated 6.4.1995(Annexure 1), Appellate Order dated 16.9.1995(Annexure 2), and Revisional order dated 21.8.1998(Annexure 3) are quashed. The Disciplinary Authority, respondent No.5, Senior Divisional Electrical Engineer shall proceed with the inquiry as indicated ~~XXXXXX~~ in the earlier part of this order. The applicant shall be reinstated on the post. However, there will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: 20.11.2001

Uv/