

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 939 of 2001

ALLAHABAD THIS THE 10TH DAY OF AUGUST, 2005.

HON'BLE MR. D.R. TIWARI, MEMBER-A
Hon'ble Mr.K. B.S. Rajan, Member-J.

Banarsi, S/o late Sri Brij Lal, R/o Village Jungle
Manghi, Post Office Jainpur, District Gorakhpur.

.....Applicant.

(By Advocate : Sri S.S. Tripathi)

Versus.

1. Union of India through General Manager/Engineer, N.E.R., Gorakhpur.
2. Deputy Chief Engineer/P&D, N.E.R., Gorakhpur.
3. Secretary/Chief Engineer, N.E.R., Gorakhpur.

.....Respondents.

(By Advocate : Sri D.S. Shukla.)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

Hon'ble Mr. Justice R.C. Lahoti, as the Justice then was had observed in *Lakshmi Ram Bhuyan v. Hari Prasad Bhuyan, (2003) 1 SCC 197*, "An inadvertent error emanating from non-adherence to rules of procedure prolongs the life of litigation and gives rise to avoidable complexities. The present one is a typical example wherein a stitch in time would have saved

nine."

2. This case is a classic example of the above. Law is settled that a copy of the inquiry report should be made available to the delinquent official before imposing any penalty vide **Union of India v. Mohd. Ramzan Khan, (1991) 1 SCC 588, at page 596** : "We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof." and this legal requirement has been given a complete go bye in this case. Again, When appeal has been filed, the appellate order should be a speaking order vide **S. Ramanathan v. Chief Judicial Magistrate, (2002) 10 SCC 473**, wherein the Apex Court has held, as under:-

"The Appellate Authority dismissed the appeal by order dated 16-12-1985, which is extracted hereinbelow:

"The charges are sufficiently established. There is also no reason to interfere with the punishment. Hence the appeal petition of Thiru S. Ramanathan is dismissed."

.....

6. Having considered the provisions of Rule 8(v) of the Rules as well as the appellate order, as has been indicated in Annexure P-15 dated 6-12-1985, we have no hesitation to come to the conclusion that the aforesaid appellate order cannot be held to be a speaking order and, therefore, the same cannot be sustained in law.

In fact, the Inquiry Authority is expected to dispassionately consider the prosecution brief on the one hand and the defence brief on the other and weigh the same with reference to the statement of witnesses and the documents relied upon by either side to arrive at a clear finding whether charges stood proved or not; similarly, the Disciplinary Authority is expected to dispassionately consider the report of the Inquiry

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Authority on the one hand and the representation against the same furnished by the delinquent official on the other; when the appellate authority considers the appeal, it has to dispassionately consider the order of the disciplinary authority on the one hand and the appeal preferred by the delinquent authority on the other. It is only then, that the quasi judicial function of the respective authorities. Again, Law requires that when an appeal is considered, the order must manifestly exhibit that the appellate authority has applied its mind; that it has considered at length the facts of the case and that it has also considered the grounds raised in the appeal and after considering the facts of the case, it has come to a particular conclusion.

3. In the instant case, even as per the words of the respondents, the inquiry report was not furnished to the applicant and it was stated that as the same could not be delivered, a publication was made in a local daily asking the applicant to join duties. This cannot be a substitute to the service of the inquiry report. Again, when the appeal had been filed, the appellate authority had dismissed the appeal in a mono-syllable style:

“श्री बनारसी म0 पु0 प्र0 चपरासी की अपील दिनांक 28.8.2000 एवं मिसिल में उपलब्ध जांच रपट एवं अन्य सभी सम्बंधित दस्तावेजों को गौर पूर्वक अवलोकन किया गया । तत्पश्चात मैं इस निष्कर्ष पर पहुंचा हूँ कि श्री बनारसी पर अनुशासनिक अधिकारी द्वारा अधिशेषित दण्ड उचित है ।”

4. A Vignette of the facts of the case at this juncture: The applicant, a group D employee of the Railways, absented for a substantial period which according to him, was on account of the fact that he had almost an incurable skin disease - a social prejudice - and he had been undergoing treatment under a Railway Doctor, who had given him a fitness certificate. This certificate was not entertained by the authorities, which had subjected the

applicant to a charge sheet and according to the applicant, he was not provided adequate opportunity of hearing and in illegal manner the enquiry was conducted by the Enquiry Officer and the report was submitted and thereafter neither any show cause notice was given to the petitioner, nor the copy of the inquiry report was given to the petitioner.

5. The Inquiry authority gave its finding holding that the charge was proved but it is the case of the applicant that he was not served with a copy of the inquiry report. As stated earlier, the respondents have not made available the inquiry report to the applicant. It is appropriate to quote verbatim the averments of the respondents in para 8 of the counter, which reads as under:-

Out of the four documents demanded by the defence Asstt., the Enquiry Officer supplied the copies of three documents vide letter dated 25.8.99 and the forth document which was attendance register, the defence Asstt. Can inspect the Attendance Register in W-10 Section. The Defence Asstt. Was also informed that the enquiry will be held at 10 A.M. on 10.9.99. The applicant alongwith his Defence Asstt. Were present on 10.9.99 before the Enquiry Officer and a question was put to the petitioner as to whether earlier also he was absent from duty without any information and petitioner admitted that earlier also he was absent from duty without any information to the department and the next date fixed for enquiry was 8.10.99, but on that date, enquiry could not be held and 25.10.99 was fixed and written information was given to the Defence Asstt. Vide letter dated 12.10.99 which was served on the same date. The Defence Asstt. informed in writing on 25.10.99 that due to the absence of the applicant (Banarasi), the proceeding is not possible and some other date may be fixed and, therefore, the proceeding was adjourned and 10.11.99 was fixed and the applicant as well as Defence

Asstt. Were informed vide letter dated 2.11.99 but neither the Defence Asstt, nor the applicant were present on the date fixed i.e. on 10.11.99. It is relevant to mention here that the applicant left the office in the afternoon of 12.10.99 without any information and did not come to the office since then and, therefore, the enquiry proceedings were adjourned. The Enquiry Officer vide his registered letter dated 2.12.99 informed the applicant that within three days from the receipt of the letter present yourself on you duty and also present before the Enquiry Officer. The said letter was delivered to the applicant on 3.12.99 and the next date 24.1.2000 was fixed in the enquiry. But the petitioner in spite of receiving the letter on 3.12.99 did not attend the office and therefore, a notice was published on 19.1.2000 in the Danik Jagran regarding absconding from duty and he was asked to be present on his duty, but the petitioner did not give any information in the office, therefore, an ex parte decision was taken and the petitioner has been dismissed from Railway Service w.e.f. 18.8.2000."

6. The first serious legal flaw lies on the above fact that inquiry report was not served upon the applicant. The next is the way the Appellate authority has applied its mind in dealing with the appeal, as explained above.

7. In view of the above, the OA is allowed. The under-mentioned orders impugned are quashed and set aside:-

- (a) Order of the D.A dated 23.8.2000.
- (b) Order of the A.A dated 01.11.2000.
- (c) Order of the R.A. dated 30.01.2001.

The applicant is entitled to be reinstated into service and the respondents are at liberty to proceed ahead with the proceedings from the stage of handing over a copy of the Inquiry Report to the applicant and arrive at a just

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Report to the applicant and arrive at a just conclusion. In that event, the period of absence from the date of removal from service till the date of reinstatement shall be treated as period of deemed suspension and the applicant is entitled to the subsistence allowance as admissible under the Rules. However, if the authorities decide not to proceed with the inquiry further, the applicant shall be entitled to half the wages for the period from the date of removal till the date of his reinstatement. Decision in this regard should be taken as expeditiously as possible and in so far as reinstatement is concerned, the same shall be within a period of four weeks from the date of communication of this order while other actions could be taken within a period of three months thereafter.

8. Under the above circumstances, there shall be no orders as to cost.


MEMBER-J
MEMBER-A

GIRISH/-