

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 1306 OF 2004.

ALLAHABAD THIS THE 28th DAY OF Debata, 2009

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J
HON'BLE MRS MANJULIKA GAUTAM, MEMBER-A

Hinchu aged about 54 years son of Late Satai, Ex. Gang Man
Under Chief Permanent Way Inspector, Northern Railway (Now NCR),
Chunar R/o Village – Bihasara, P.O. Bihasar, Distt. Mirzapur.
.....Applicant

By Advocate : Shri Sudama Ram.

Versus

1. Union of India, through General Manager, North Central Railway, Headquarters Officer, Allahabad.
2. Additional Divisional Railway Manager North Central Railway, Allahabad
3. Sr. Divisional Superintending Engineer (I), North Central Railway, Allahabad
4. Assistant Engineer, Northern Railway (Now NCR), Chunar Distt. - Mirzapur

.....Respondents

By Advocate Shri A.K.Pandey.

ORDER

DELIVERED BY HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A

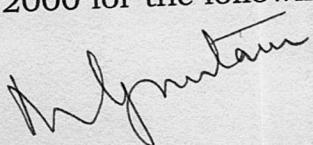
The applicant who was working as Gang Man at Chunar, was served charge sheet for major penalty dated 25.02.1996 on the ground of absence from 16.08.1995 to 12.01.1996. There was no list of relied upon documentary alongwith charge sheet. The applicant submitted his reply on 09.02.1996 stating that on account of his wife's serious illness with effect from 16.08.1995 he could not perform his official duty. In support he submitted P.M.C from 16.08.1995 to 11.1.1996 from registered private medical practitioner.



02. Disciplinary Authority appointed Enquiry Officer on 19.02.1996 and the applicant was asked to attend the enquiry proceedings on 11.03.1996. The applicant appeared for the enquiry on the above date and the enquiry was closed on the same date. The impugned order of removal was passed 04.07.1996 and served on the applicant on 13.08.1996. The Applicant submitted his statutory appeal against the order of removal on 09.09.1996. The applicant again submitted reminder appeal dated 1.10.1996 through Registered post. The appellate authority vide letter dated 10.03.1997 asked the applicant to appear in person on 21.03.1997 in D.R.M. Office. The appeal was rejected vide order dated 04.04.1997.

03. Being aggrieved the applicants submitted the revision on 20.5.97 to the Additional Divisional Railway Manager Northern Railway, Allahabad which was not decided hence the applicant filed the original application No. 400/2000 on 29.3.2000. In which the Hon'ble Tribunals vide order dated 20.3.2004 directed the Revisionary Authority to consider and dispose of the review petition by means of a reasoned and speaking order under intimation to the applicant within a period of 4 months from the date of receipt of a copy of this order.

04. The applicant submitted the representation dated 18.5.04 with a specific request for personal hearing. The applicant also submitted a reminder of the same on 28.4.2004 by registered post. The Revisionary Authority i.e. Additional Divisional Railway Manager, Allahabad rejected the revision petition vide order dated 20.9.04 without allowing personal hearing to the applicant. Aggrieved by this applicant has filed present OA 400/2000 for the following relief/s:-

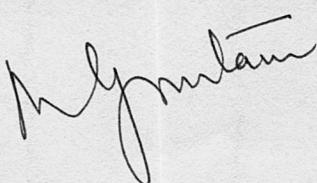


Relief sought:-

- (i) *The Hon'ble Tribunal may graciously be pleased to quash the impugned order of Memorandum of Major Penalty charge sheet. (SF-5) dated 25.01.1996 (Annexure A-1), Order of removal from service passed by the Assistant Engineer, Northern Railway (now NCR), Chunai vide NIP No. CA/AEN. Chunai/Hinchhu/DAR/96 dated 24.7.1996 (Annexure A-2), impugned appellate order dated 4.4.1997 issued by the Divisional Superintending Engineer (I), Northern Railway, Allahabad (Annexure A-3) and Impugned Revisionary Order passed by Addl. Divisional Railway Manager, N.C. Railway, Allahabad vide letter No. CA/DSE-I/Appeal/Hinchhu/96 dated 20.9.2004 (Annexure A-4) and direct the respondents to reinstate the applicant in service with full back wages and with all other consequential benefits.*
- (ii) *Any other writ or order or direction which the Hon'ble Tribunal deems fit and proper; in the circumstances of the case may also kindly be issued in the interest of justice.*
- (iii) *Cost of the Application may also be awarded.*

05. We have heard both the parties and perused the record on file. Learned counsel for the applicant argued vehemently that on several grounds the applicant has not been proceeded against as per prescribed procedure and orders passed against him are non-speaking and do not answer the issue raised by him. The various grounds cited are as follows:-

- (i) The charge sheet does not contain list of relied upon documents nor list of witnesses.
- (ii) In the enquiry itself he was not given any document nor was any witnesses produced or cross examined.
- (iii) The applicant was not permitted the defence assistant by the Enquiry Officer
- (iv) No copy of the Enquiry Report was supplied by the Disciplinary Authority before awarding penalty.

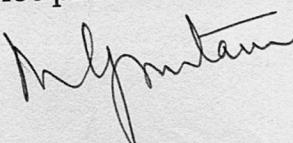


- (v) Divisional superintendent Engineer was not a proper appellate authority and in this case appellate authority was Divisional Engineer.
- (vi) Revisionary Authority rejected the applicant's petition without granting personal hearing which had been asked for.
- (vii) On the other hand Revisionary Authority levelled fresh charges which were not mentioned in the charge-sheet and rejected the petition without considering the points raised by the applicant.

06. In the counter affidavit filed by the respondents, it has been categorically stated that OA 400/2000 as well as present OA, are highly time barred and, therefore, liable to be dismissed. It is also stated that the proceedings against applicant were conducted as per rules and procedure prescribed in Railway Servant (Discipline and Appeal) Rules, 1968.

07. Counter Affidavit clarifies that during the course of the enquiry all relied upon documents and the leave record of the applicant was shown to him. And this is mentioned in the proceedings of the enquiry.

08. The proceedings of the enquiry also show that the applicant was shown his leave record and that in the year 1993 he remained absent unauthorizedly for 197 days in the year 1994 for 266 days and in the year 1995 for 256 days. The proceedings also show that the applicant himself did not produce his defence assistant.



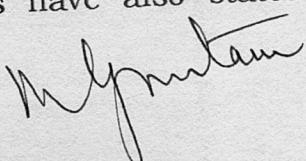
09. In the enquiry itself the applicant produced medical certificates of his own and of his wife for the period 29.7.1993 to 17.4.1993, 3.5.1993 to 19.5.1993, 20.11.1995 to 31.09.95 and 05.09.1994 to 02.01.1995. The applicant did not produce any document to show illness of his wife or his absence.

10. Enquiry Report dated 11.03.1996 was sent on the last known address of the applicant by registered dak but the acknowledgment due never came back. As such it was deemed to have been received by the Applicant.

11. The Respondents have also filed Annexure CA-2 which shows the receipt signed by the applicant on 26.06.1996 and according to them the enquiry report was received by the applicant himself on that particular date. But in the rejoinder filed by the Applicant it has been stated that applicant cannot write or sign but can only put his thumb impression, therefore, Annexure CA-II is a manufactured document. In the rejoinder the applicant has clarified that he received only the copy of the enquiry proceedings dated 11.03.96 and not enquiry report.

12. Rule 10, however, prescribes that disciplinary authority has to give a show cause notice with a copy of enquiry report to the applicant before imposing the penalty of removal.

13. The counter affidavit states that the appellate authority passed the order after hearing the applicant. In the Rejoinder filed by the applicant he has denied that any personal hearing was given. The respondents have also stated that in view of past record of the



applicant regarding unauthorized absence, it was clear that he was not interested in performing his duty and he was rightly removed from Railway Service.

14. In support of his stand counsel for the applicant has given a list of relevant Judgments, which are as follows:-

- (1) **O.A.No. 43 of 1996 decided on 16.12.98,
Shree Kishan Vs. U.O.I. & Ors. by C.A.T.
Allahabad.**
- (2) **O.A. No. 1084 of 2002 decided on 27.3.2007
Bhuneshwar yadav vs. U.O.I & Ors., by CAT,
Allahabad**
- (3) **O.A. No. 310 of 1998 decided on 02.7.1999
Sheoji Lal Vs. U.O.I. & Ors. by CAT,
Allahabad.**
- (4) **K.N.Prakasan Vs. U.O.I. & Ors. CAT
(Bombay); (A.I.S.L.J. 1992 (2) Page-74**
- (5) **Sawai Singh Vs. State of Rajasthan 1986 SCC
(L&S) 662**
- (6) **Latoor Singh Vs. U.O.I. & Ors. (Page 32-35)
2003 (1) A.T.J. 105 CAT Lucknow Bench.**

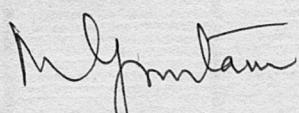
15. Having heard parties and perused the record, we are of the opinion that there is no doubt that the applicant was absent from duty for long periods approx of 200 days in one year for several years. There is also no evidence on record to prove that he informed his employers in writing regarding his own illness and his wife's illness and the fact that he was not able to perform his duties. As such, the case against him has been fully made out. The fact stands out is that as per Rule 10 Railway Servant (Discipline and Appeal) Rules, 1968 before passing order of removal, a show cause notice alongwith copy of the enquiry report should have been given to the applicant. Annexure CA-II filed by the respondents is not convincing. This is the only document on which the applicant's signature is shown whereas on all the relied on document there is thumb impression of the applicant. He has categorically denied himself receiving a copy of the Enquiry Report. On



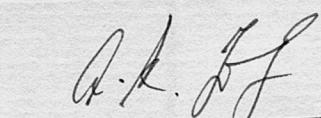
account of this, proceedings against him stand vitiated and cannot be sustained.

16. Therefore, in the end of justice, impugned order of removal dated 24.7.1996, impugned order dated 4.4.1997 and impugned reversionary order are quashed and set aside with direction to the Respondents to ensure that show cause notice and copy of the enquiry report are served upon the applicant and then necessary orders are passed in the matter within a period of two months from the date of receipt of this order.

17. With the above direction O.A. is allowed. No costs.



Member (A)



Member (J)

/Shashi/