

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1357 OF 2004

ALLAHABAD THIS THE 11TH DAY OF JULY, 2007

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J
HON'BLE MR. K. S. MENON, MEMBER-A

Lal Mani Mishra S/O Late Hoob Narain Mishra,
R/O Village Bhausaria Kala, Post Nahwai,
District- Allahabad.

..... .Applicant

By Advocate : Shri A. Srivastava

Versus

1. Union of India,
through its General Manager,
North Central Railway,
Allahabad.
2. Divisional Operative Manager (M)
North Central Railway, Division Allahabad.
3. Assistant Operative Manager (M),
North Central Railway Division Allahabad.
4. Senior Divisional Operative Manager,
North Central Railway, Allahabad.

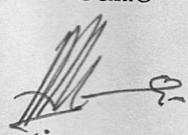
..... .Respondents

By Advocate : Shri S. N. Gaur

O R D E R

HON'BLE MR. ASHOK S. KARAMADI, MEMBER-J

This Original Application is filed against the order dated 29/30.08.2001 passed by respondent no.3 and order dated 08.03.2007 passed by respondents no.2. By the said order the applicant was removed from service. The learned counsel for the applicant submits that in absence of proper enquiry and without giving fair chance to the applicant for the enquiry conducted as he has got grievances regarding the same



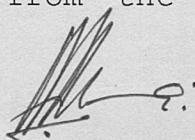
to put forth before the Enquiry Officer with regard to the charges framed against him as having failed to get the material before the Enquiry Officer the order came to be passed as ex-parte one. The respondents have submitted in their counter affidavit that they have followed the rules and have stated that the opportunity is given to the applicant to make his defence or to participate in the enquiry proceedings but he has failed to do so for the reasons best known to him and, therefore, the impugned order does not call for interference. On perusal of the impugned order it reveals that it is unsustainable in the eye of law. Applicant has also preferred an appeal against the same but the Appellate Authority has rejected the same. As an opportunity was given to him to make available to participate in the enquiry either by himself or by defence counsel but he has not cooperated with the Enquiry Officer, hence request for dismissal of the OA.

2. We have heard the learned counsel for the applicant. There is no representation on behalf of respondents even in the second call. The counter affidavit is filed, therefore, we have gone through the pleadings of the parties and the materials on record and the counter affidavit filed by the respondents. The learned counsel for the applicant has contended that the order, which is impugned, is a one affecting the interest of the applicant as the same was passed without giving any opportunity suffers of dismissal.

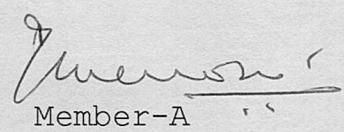


On perusal of the contention taken by the applicant and by reading the impugned order, we are *prima facie* satisfied that the applicant has granted the relief sought for, as the impugned order is an *ex parte* order. If an opportunity is given for the applicant it will not cause prejudice to the respondents, as the learned counsel for the applicant and the applicant present in the court assured that he will cooperate in the enquiry to be held only request for opportunity to place his case. Having regard to the facts and circumstances and the submissions made, we are of the view, that if an opportunity is given to the applicant it will not prejudice the interest of the respondents, on the other hand as the impugned order was passed by the respondents removing from service has resulted in the civil consequences which seriously affected the applicant as the impugned order is *ex parte* one, if the opportunity is given to the applicant it will not result in the miscarriage of justice, on the other hand justice will be met by giving an opportunity to the applicant to substantiate his grievances. In that view of the matter, we thought just and proper to set aside the impugned order by accepting the contention of the applicant rejecting the contention of the respondents.

3. Accordingly, this OA is allowed and the impugned order is set aside with a direction to the respondents to hold a fresh enquiry in the matter, and shall be completed within a period of four months from the



receipt of the copy of this order, consequently the respondents are directed to reinstate the applicant in service immediately on the receipt of the copy of this order, and further we made it clear that the applicant shall cooperate with the Enquiry Officer and should not indulge in taking time in the enquiry proceedings, if the applicant fails to cooperate with the Enquiry Officer in that event the Enquiry Officer is free to pass appropriate orders in the matter, no costs.



Member-A



Member-J

/ns/