

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 09/13 DAY OF December, 2010)

Hon'ble Dr.K.B.S. Rajan, Member (J)
Hon'ble Mr. D.C.Lakha, Member (A)

Original Application No.1617 of 2004

(U/s 19, Administrative Tribunal Act, 1985)

Raj Narain, S/o Sri Gajroop,
Resident of Village Kotaha,
Post Uruwa, Hehsil Meja,
District Allahabad.

..... ***Applicant***

Present for Applicant :Shri Shankar Lal Kushwaha, Advocate.

Shri J. M. Kushwaha, Advocate.

Versus

1. Union of India, through General Manager (N.C.R.)
Head quarter, Allahabad.
2. The Divisional Engineer, N.C.R.
D.R.M's Office, Allahabad.
3. The Assistant Engineer/H.Q.'s Officer,
Northern Central Railway, Kanpur.
4. The Mukhya Rail Path Nirikshak,
Ist East, Kanpur.

..... ***Respondents***

Present for Respondents : Shri P. N. Rai, Advocate



ORDER

(Delivered by Hon. Dr. K. B. S. Rajan, Member-J)

The applicant, appointed as Gangman in 1978, was on 09-03-1994 bitten by a mad dog and he had the treatment in the Railway Hospital, Kanpur. He later on came to his native place at Allahabad in January, 1995 and according to him he was again under treatment in Dharmarth Hospital, Meja Road, Allahabad. In May 1995, on his recovering from illness he was traveling in train, but suddenly fell unconscious and he was admitted at a District Hospital Rewa, where he was treated from May 1995 to July 1995 by one Dr. Kamal Singh. On his return to duty, the applicant found that disciplinary proceedings were initiated and conducted *ex parte* and was completed and by order dated 28-02-1996, respondents had passed the dismissal order without giving any charge sheet, much less due enquiry held. Appeal preferred by the applicant did not yield the desired result. On 03-11-1995 the applicant received a copy of the inquiry report. In July 1996, the applicant filed his medical certificate in respect of his treatment at Rewa.

2. As no further action was taken by the respondents, the applicant moved the Tribunal in OA No. 92 of 2002, which was disposed of with a direction to the respondents to dispose of the appeal pending with them. As within the stipulated period the appeal was not disposed, contempt petition was filed which was however, dismissed as the appeal filed was disposed of in June

2002. This application has been filed against the disciplinary and appellate orders vide Annexure A2 and A-9 impugned herein.

3. The grounds adduced are as under:-

- (a) No opportunity was provided to defend the charge sheet.
- (b) Impugned penalty order is wholly illegal and against the provisions of Law. It is also not a speaking order.
- (c) The applicant was initially sanctioned leave by the authorities.
- (d) Dismissal of appeal is also arbitrary.
- (e) The penalty is shockingly disproportionate.

4. Respondents have contested the O.A. According to them, the applicant did not take any treatment from the Railway Hospital at Allahabad. As per records he was on sick leave only for a limited period from 10-03-1994 to 26-03-1994. His absence for the period from 27-03-1994 to 25-07-1994 was marked as absence and the applicant joined on 26-07-1994. From 26-07-1994 to 25-12-1994, the applicant had been absent for 45 days and again w.e.f. 19-01-1995 he was absconding from duty without any leave application or information to the office.

5. Charge sheet was issued to the applicant on 19-05-1995 preceded by a notice dated 18-04-1995 at his home address by which the applicant was asked to be present on duty within a week but the applicant did not turn up. The charge sheet was issued to

his permanent home address through special messenger, which was received by his son as the applicant was not available at his residence. About his whereabouts, the family members were also not aware and when the inquiry officer sent the information on 20-09-1995 to the applicant at his residential address for attending the inquiry on 27-09-1995 through special messenger, applicant's wife gave an application to the messenger stating that her husband has left his home on 23-05-1995 for going to Kanpur but he had absconded on the way and she did not know about his whereabouts. The wife of the applicant also reported the matter to GRP Thana Kotwali, Kanpur and local Kotwali and Senior Superintendent of Police. However, no copy of F.R.R. was enclosed by her.

6. As the applicant did not appear in the inquiry, thus the enquiry proceeded *ex parte* against the applicant and was conducted on 29-10-1995 on the basis of the documents available on records.

7. After receiving the findings of the inquiry officer, 15 days notice was also published in daily newspaper Aaj on 07-02-1996 by which it was again published and informed to the applicant to be present but when he did not turn up on duty upto 26-02-1996, the disciplinary authority passed the order of removal of the applicant. The applicant already preferred the appeal which was dismissed due to lack of merit.

[Signature]

The applicant had filed the rejoinder, denying all the above contentions.

8. Counsel for the applicant stated that the applicant being on medical treatment it was expected of the Railways to consider the case for grant of medical leave. The inquiry was conducted even without a charge sheet much less any notice to attend the inquiry.

The penalty imposed is shockingly disproportionate.

9. Counsel for the respondent submitted that all attempts were taken to serve the notice upon the applicant, including the newspaper publication. As such, there is no legal lacuna in the conducting of enquiry.

10. Arguments were heard and documents perused.

The applicant being a Railway employee was supposed to have except in emergent and exceptional situations medical treatment only from the Railway Hospital. Initially, when he was bitten by a mad dog he, did take such treatment from the Railway Hospital. Thereafter on reaching Allahabad he could have approached the Railway Medical Authorities for further treatment but he had chosen of his own volition to take the alleged medical treatment from Dharmarth Hospital, Meja Road Allahabad. The case of the applicant further is that on his way to Kanpur he fell down unconsciously and he was taken to Rewa where he had



medical treatment. If the averments of the respondents are to be taken on their face value, when a messenger was sent to the residence of the applicant, the applicant's wife stated that there was no information about the applicant. The applicant did not reveal as to the person who was so kind enough to take him to Rewa for treatment and retained him for a few months even without the family of the applicant being informed. Curiously when the applicant stated that he was suffering from some mental disturbances, the certificate he produced is from the doctor who was a District T.B.Officer and he claims to have treated the applicant from 23.5.1995 to 06.7.1996 for "Mental Disturbance" and certified that applicant's mind was clear then. The credibility of this certificate is certainly questionable.

11. As regards conducting of the inquiry, if principles of natural justice were not duly followed to a substantial extent, the inquiry has to fail. The Tribunal within its jurisdiction could only verify and ascertain whether the procedure for conducting the inquiry has been duly followed. The decision making process should strictly be according to law. Viewed from this angle it is found that the department, prior to issue of charge sheet sent a notice to the applicant to report for duty and as the applicant did not turn up, charge sheet in the formal SF-5 was issued which was sent to the permanent home address through special messenger and the same was received by the applicant's son as the applicant was not available at his residence. When the Inquiry Officer sent



intimation as to the date of hearing, the wife of the applicant who was present in the house stated that her husband had left the house on 23.5.1995 for going to Kanpur but had been absconding since then. On subsequent dates of hearing also, the Inquiry Officer sent intimation through registered letter and special messenger but the applicant did not respond. Thus, there was no option for the Inquiry Officer except to render his finding in the absence of the applicant's presence on the basis of the documents available on records. After receiving the findings of the Inquiry Officer news paper publication was also made on 7.2.1996 and the applicant was informed to be present but then again there was no response from the applicant. It was thereafter that the applicant's services were terminated by issuing the penalty order vide order dated 28.2.1996. And in the wake of the dismissal order, the applicant filed an appeal and also approached this Tribunal but since the appeal was not decided, the OA was disposed of with the direction to the respondents to dispose of the appeal.

12. In the appeal after giving the details of the applicant's ailment contended that no charge sheet etc was served upon the applicant and the order of removal from service was passed ex parte on the ground of unauthorized absence from duty w.e.f 19.1.1995 to 19.5.1995. The applicant is stated to have sent a representation on 6.9.1996 which remained without any consideration.



13. The above appeal was disposed of by the Appellate Authority vide order dated 2.6.2003. The said order reads as under:-

मण्डल रेल प्रबन्धक कार्यालय
उत्तर मध्य रेलवे, इलाहाबाद ।

नं० डब्लू०९/लिट०-इंजी०/कैट/इला०/कानपुर
दिनांक : 10-6-2003

श्री राज नरायन पुत्र श्री गजरूप
भूतपूर्व ट्रैक मैन,
ग्राम-कोटहा पोस्ट-उरुजा
थाना व तहसील-मेजा,
जिला-इलाहाबाद ।

विषय: ओ०८०नं० ९२/०२ राज नरायन बनाम भारत संघ आदि में न्यायालय कैट/इला० का आदेश
दिनांक ०५-२-०२ के अनुपालन के सम्बन्ध में ।

माननीय कैट, इलाहाबाद के फैसला आदेश दिनांक ०५-२-०२ के अनुपालन में आपके केस
में सहानुभूति पूर्वक विचार किया गया और निम्नलिखित तथ्य प्रकाश में आये :-

यह कि आप दिनांक १९-०१-०२ से गैर हाजिर चल रहे थे जिसके बारे में आपको
एस०एफ०-५ जारी दिनांक १९-५-९५ को किया गया उसे आपके निवास पर भेजा गया आपके न
मिलने पर आपके लड़के शिव सरन को प्राप्त कराई गई जिसकी जानकारी आपको रही ।

यह कि उपरोक्त एस०एफ०-५ की, जांच अधिकारी दवारा कराई गई । इस बावत भी
आपको सूचित किया गया लेकिन आपने किन्हीं भी तारीखों पर जो अधिकारी के समक्ष उपस्थित
नहीं हुए । मजबूरन जांच कार्यवाही एक तरफा की गई जांच कार्यवाही के उपरान्त दिनांक
०७-२-९६ के दैनिक आज से प्रकाशित कराया गया कि १५ दिन के अन्दर डियूटी हेतु आप
उपस्थित होते लेकिन आप उपस्थित नहीं हुए । तदोपरान्त सक्षम अधिकारी ने आपके निष्कासन का
आदेश दिनांक २८-२-९६ को निर्गत किया ।

यह कि आपने अपनी अपील में यह लिखा है कि धर्मार्थ होम्यो मेडीकल हाल, मेजा रोड,०
इला० में दिनांक १९-०१-९५ से २९-४-९५ तक इलाज के बाद मेजा रोड से डयूटी स्थल के लिए
रवाना हो जाने पर बेहोशी हालत में रीवा पहुचाना और दिनांक २३-५-९५ से ०५-७-९६ तक इलाज
कराया जाना अपने आपमें भ्रामक और सन्देहास्पद मालूम पड़ता है क्योंकि मेजा रोड से कानपुर
(आपके डयूटी स्थल) सीधी ट्रेन है और डाइरेक्ट रूट है और इस रास्ते में रीवा नहीं आता है रीवा
यहां से काफी अलग रास्ता है और रीवा आपकी रेलवे के जोन में भी नहीं आता था ।

यह कि उल्लिखित तथ्यों को ध्यान में रखते हुए सक्षम अधिकारी तत्कालीन मण्डल अभियो
(मुख्य) इला० ने आपकी अपील दिनांक २७-१०-९७ पर जो दिनांक २६-४-९९ को निर्णय लिया
गया है वह प्रशासन हित में न्याय संगत व उचित है ।

ह०अस्पष्ट
मु०अधी०अभियो/३
उ०म०र०, इला०
२-६-०३

ह०अस्पष्ट
मण्डल अधीक्षण अभियन्ता ३
उ०र० इलाहाबाद ।

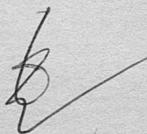
14. The question for consideration at this juncture is whether the Appellate Authority's order fulfils the requirement in deciding the appeal as per the law laid down by the Apex court in the case of '**Narender Mohan Arya Vs. United India Insurance Company, 2006 (4) SCC 713** read with '**Ram Chander Vs. Union of India, 1986 (3) SCC 103**'. In Ram Chander Vs. Union of India the Apex Court has held that in terms of Rule 27 (2) the Appellate Authority is required to consider :-

- (i) Whether the procedure laid down in the Rules has been Complied with and if not whether such non compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice;
- (ii) Whether the findings of the Disciplinary Authority are warranted by the evidence and record;
- (iii) Whether the penalty imposed is adequate;

and thereafter, pass orders confirming, enhancing etc or remit back the case to the Authority which impose the same.

The Rules thus imply due application of mind, and reasons for the decision must be given by the Appellate Authority.

15. The order of the Appellate Authority as extracted above indicates that the Appellate Authority has dealt more with the applicant's absence from 23.5.1995 to 5.7.1996 but not with reference to the period 19.1.1995 to 19.5.1995. There has been no reference to confirm that the Disciplinary Authority had followed



the Rules and regulations and there is no violation of principles of natural justice. Reference to a communication dated 06.9.1996 stated to have been made by the applicant has also not been dealt with in the appeal. While prima-facie we are of the view that the Disciplinary Authority and the Inquiry Authority seem to have followed the rules and regulations (which aspect has to be considered and ascertained from the original records) in so far as the Appellate Authority's decision is concerned, certainly it does not reflect proper application of mind. As such, the matter may have to be referred back to the Appellate Authority for reconsideration so that he may verify the entire records of Disciplinary proceedings and deal with which and every contention of the applicant in his appeal to arrive at a judicious decision. The applicant in his O.A. has stated that the penalty is highly excessive and disproportionate to the charge leveled. This aspect though not referred to in the appeal, we are of the considered view that it is for the Appellate Authority to consider this aspect also while reconsidering the appeal.

16. In view of the above, the order dated 4.7.2003 of the Appellate Authority vide Annexure 9 of the OA is quashed and set aside. The matter is remitted back to the Appellate Authority for reconsideration of the appeal keeping in view the law laid down by the Apex court in 'Ram Chander (Supra). The Appellate Authority may arrive at the decision within a period of three months from



the date of receipt of a copy of this order. The O.A. is disposed of
on the above terms.


(D.C.LAKHA)
Member (A)


(Dr.K.B.S.RAJAN)
Member (J)

Uv/