

Reserved

Central Administrative Tribunal, Allahabad Bench, Allahabad

O.A. No. 330/00978/2010

This the 5th day of April, 2021.

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)

Mohammad Sabir s/o late Abdul Gaffar aged about 49 years, store Khalasi Helper (in removal) under Senior Section Engineer (Loco) Mughalsarai (District Chandauli), c/o Shri O.P. Dubey, Mohalla-Natwa (Yadav Basti), Mirzapur.

Applicant

By Advocate: Sri Vinod Kumar

Versus

1. The Union of India, Notice to be served upon the General Manager, East Central Railway, Hazipur (Bihar).
2. The Additional Divisional Railway Manager, East Central Railway, Mughalsarai Division, Mughalsarai (District- Chandauli).
3. The Divisional Mechanical Engineer, East Central Railway, Mughalsarai Division, Mughalsarai (District- Chandauli).

Respondents

By Advocate: Sri Atul Kumar Shahi

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The applicant is aggrieved because of his removal from service and by means of the instant O.A., he has challenged the appellate order dated 1.4.2010 whereby, the appellate authority has confirmed the order of removal of applicant from service, passed by disciplinary authority

2. We have heard Sri Vinod Kumar, learned counsel for the applicant and Sri Atul Kumar Shahi, learned counsel for the respondents and have carefully gone through the records.

3. The facts in brief are that the applicant was serving on the post of Store Khalasi/Helper in Railways (East Central Railway). On

11.9.2008, a memorandum of charge for major penalty was issued to him, for his unauthorized absence from 17.12.2007 to 2.9.2008, by the department (Annexure No. A-5 in compilation II).

4. Consequent to the charge memo, enquiry officer was appointed and the date 15.6.2009 was fixed for enquiry proceedings. On 15.6.2009, the applicant appeared before the enquiry officer. The charge memo was read over to him and his statement was recorded. Thereafter, enquiry report was submitted by the enquiry officer, finding the applicant guilty of the charges. The disciplinary authority vide order dated 30.11.2009, confirmed the enquiry report and imposed the punishment on the applicant of his removal from service.

5. The applicant filed departmental appeal on 9.12.2009, which was decided by impugned order dated 1.4.2010. Appellate Authority, after recording a clear finding that the applicant is habitual of absenting himself unauthorisedly and he has absented himself by total number of 801 days unauthorisedly. More so, earlier too, he has been punished for several times for his unauthorized absence, but he has failed to mend his habit, affirmed the, punishment imposed by disciplinary authority.

6. Applicant has challenged the legality and correctness of the aforesaid order, mainly on the ground that Rule 9 of the Railway Servants (Disciplinary and Appeal), Rules, 1968 have not been followed by the enquiry officer, while conducting the enquiry. Learned counsel for the applicant has vehemently argued that Mr. Deena Nath Singh was appointed as Enquiry Officer, but there is no mention as to who appointed Sri Deena Nath Singh. No letter regarding appointment of Enquiry Officer was delivered to the

applicant. It is next contended that enquiry was conducted only on one day i.e. 15.6.2009 and the enquiry report was submitted on 22.6.2009. It is next contended that the enquiry report is non-speaking, vague, cryptic and the relevant considerations have been ignored in the enquiry report. It is further contended that in the charge memo, there is no mention of name of witnesses. No witness was examined during the enquiry proceedings. No documentary evidence was examined and the applicant was not provided any opportunity to cross examine any witness during the enquiry proceedings. It is next contended that the past conduct of the applicant was also illegally taken into consideration while passing the order of punishment. It is next contended that applicant has not been given any opportunity about submitting the defence reply. He was not provided any legal assistance. It is lastly submitted that the punishment order of removal from service is a harsh punishment and disproportionate to the charges levelled against the applicant i.e. unauthorized absence. On the aforesaid grounds, it has been prayed that as all the enquiry proceedings have become vitiated and are liable to be set aside, the OA be allowed and the punishment order be quashed and strictures be passed against the respondents, imposing a penalty of Rs. 10,000/- on respondent No. 3, 5 and 6.

7. In support of his contention, reliance has been placed by the learned counsel for the applicant on the following three judgments of the Hon'ble Apex Court.

- i) **Hardwari Lal Vs. State of U.P. and others decided on 27.10.1999.**
- ii) **Union of India Vs. Mohd. Ramzan Khan, 1991 (1) SCC 588.**
- iii) **Ram Chander Vs. Union of India , SCC 1986 (3) 103.**

8. Per contra, learned counsel for respondents has vehemently opposed the O.A., by contending that the applicant has been given proper opportunity of hearing during the enquiry proceedings. There is no violation of principle of natural justice. The applicant was given ample time and opportunity to give reply to the charge sheet but he did not give any reply. Moreover, in his statement recorded before the enquiry officer, he has admitted the fact that he had gone out of station on 16.12.2007 without informing the senior officers. He had returned on 3.9.2008 and had informed his officers on 16.7.2008. Ld. Counsel for the respondents has vehemently contended that in view of his admission, there was no need to examine any witness or to examine any document and he was rightly punished for his unauthorized absence.

9. In this ground, our attention has been drawn to the statement of the applicant recorded during the enquiry proceedings, which is in question answer form and also to the enquiry report dated 22.6.2009.

10. It is lastly contended that keeping in view the extraordinary long period of unauthorized absence of applicant, the punishment imposed is not disproportionate. On the aforesaid grounds, prayer has been made to dismiss the O.A.

11. We have given our thoughtful consideration on the rival submissions made by the learned counsel for parties and have carefully gone through the written arguments filed by the learned counsel for the applicant along with judgments cited by him.

12. For a ready reference, all the questions asked from the applicant and answer given by him to the enquiry officer are reproduced below in verbatim:-

"M10, Ovkj tkp

Ek0 I kfcj@LVkj [kykl h gYij@ekyl jk; v/khuLFkr ojh; vuHkkx vflk; Urk 1/2dkl 1/2 e/; j0ys ekyl jk; ds mij nh?k vkjki i= 10, e0i0@144@eky0 1/24/ fnukd 11-12-08 ; kW vflk0 1/2kfDr1@eky ea vki fnukd 17-12-07 I s 02-09-08 rd vulf/kdr jgus ds I Ecl/k ea vkt fn0 15-06-09 dks, Q0vkb0d0i0 dk; kly; @eky0 tkp grycyl; k x; k gA

bl vuqkli fud dk; ZefuEufyf[kr ylk "kkfey gq A

- 1- tkp vf/kdkjh Jh nhukukFk fl g 1/2vflk0 vkmVMkj1/2eky0 nhukukFk gA
- 2- ek0 I kfcj@LVkj [kykl h gYij@ydkl@ekyl jk; ek0 I kfcj
- 3- Jh t0i0 i k. M s o vu0 vflk; Urk ydkl@eky0

I Unflkr vkjki i= 10, e0i0@114@eky0 1/24/ e0; k0 vflk0 1/2kfDr1@ekyl jk; fn0 11-12-08 ea vkjki ds mij fuEufyf[kr vkjki yxk; s x; s gA

vkjki & vki fn0 17-12-07 I s 02-09-08 rd vulf/kdr : i I s vuqfLFkr jga bl I s ; g Li 'V gksk gS fd vki dh : fp jy I ok ea ugha gA bl i dkj vki us jy I ok vpkj I fgrk 1966 ds fu; e&3 ds vifu; e A] AA] AAA ds vf/kfu; ekadk mYy?ku fd; k gA

mijkdr vkjki ds I UnHkz ea vkjki h Jh ek0 I kfcj LVkj [kykl h gYij 1/2ydkl@eky0 xyr c; ku nsus dh vki dks pskouh nh tkrh gS fd ; fn I k{; xyr i k; k x; k rks vki ds mij DAR fu; e ds vUrxk vuqkli fud dk; bkh dh tk I drh gA

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Tkp vf/kdkjh }jk ek0 I fcj LVkj [kykl h gYij }jk iNs x; si' u& lk'u& vki ds ds mij tks vulf/kdr : lk I s muqfLFkr gksus ds vkjki yxk; s x; s gS bl ds fy, vki vi us ds nkskh ekurs gS ; k tkp pkgrs gA

mRRkj& ejh iRuh dh rfc; r [kjkc gksus ds dkj .k eSml dk mi pkj djuk mfpf I e>kA ?kj ea dkBZ i q 'k I nL; u gksus ds dkj .k muds ikxyk tS k 0; ogkj ds dkj .k eSml dh ns[k&jS k ea yxk jgk gA ftI dh I e; i j I puk Hkh ugha ns i k; kA ekuf d : i ea fofo= gksus ds dkj .k eS muds NkMoj ugh tk I drk FkhA ftI ds fy, eS vi us dks nkskh ughaekurk gA tkp pkgrk gA

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 yfdu eS 15-12-08 dks Mq Vh dj j@V i j x; k FkA tgkWn@k fd o ikxyks
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 dkj .k eS m@gh dh n@k j@k es yx x; kA

Ik'u&3&vki us vi uh vui fLFkr dh I puk ojh; vu@kx v@h; Urk yks dks ds
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 mRRkj & eS vi uh vui fLFkr gksus dh I puk o0vu@v@h 1yks dks ds i kI
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 vui fLFkr ugh gksk gA

Ik'u 5& vki vi uh i Ruh dk bykt jyos gkfLi Vy x; k@ekyI jk; e@D; ks
 ugh djk; sA
 mRrj & ?kj e@Nk/s & Nk/s cPps gksus dks dkj .k e@mudk bykt jyos
 gkfLi Vy e@ugh djk; s@Fk e@jyos gkfLi Vy nj gksus dks dkj .k
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13. The issue to be determined in this O.A. is whether the entire enquiry proceedings have been vitiated due to the reason that several provisions of Rule 9 of Railway Servants (Disciplinary and appeal) Rules, 1967 were not followed by the enquiry officer as quoted by Id. Counsel for the applicant in the written submission?

14. In the written arguments, learned counsel for applicant has stated that provision of Rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 were not followed by the enquiry officer. The sole witness named in the charge sheet, Sri J.P. Pandey was not examined and opportunity was not given to the applicant to cross examine him, whereas in the case of **Hardwari Lal Vs. State of U.P. and others**, cited above, it has been held by the Hon'ble Apex Court that non-examination of named witness shall vitiate the

entire enquiry proceedings. Like-wise, copy of the enquiry report was not supplied to the applicant. Therefore, as per law laid down by Hon'ble Apex Court in the case of **Union of India Vs. Mohd. Ramzan Khan (supra)**, the entire enquiry proceeding stands vitiated.

15. We are not convinced with the arguments advanced by Id. Counsel for the applicant and the judgment cited above are not applicable in the present case because the facts are entirely different. A perusal of the questions and answers put to the applicant during enquiry, clearly shows that the applicant has admitted that he had gone to his home station at Gaya (Bihar) from his place of posting (Mughalsarai) on 16.12.2007 and had returned to his place of posting on 3.9.2008. He has also admitted the fact that he had informed his senior officer about his absence on 16.7.2008. Thus, admittedly, he has informed his senior officer about his absence after 7 months, whereas he was required to inform to his senior officer within 3 days, as per rules.

16. The applicant He has also admitted that he had left station without taking any leave. When he was asked that he is habitual of becoming absent unauthorizedly, he admitted this fact also, but stated that due to illness of his wife, he has to be absented repeatedly. He has also admitted the fact that he did not make any effort to consult any doctor of Railway hospital for treatment of his wife. Thus, a perusal of statement of the applicant clearly shows that he himself has admitted all the charges levelled against him.

17. The basic principle of law is that "**facts admitted need not to be proved**", The requirement to prove or examine any documentary or oral evidence, could have arisen in case the

applicant had not admitted the charges levelled against him. Therefore, if he was not given any opportunity to cross examine the witnesses or witness was not produced, it will not make any difference in view of his admission.

18. The applicant has not denied from the truthfulness of his statement given during enquiry and he himself has filed the copy of statement as Annexure No. 1 to the O.A.

19. In view of the above, we do not find any illegality or irregularity in the enquiry proceedings. The judgments cited by the learned counsel for applicant are not applicable in the present case, because in the present case, the applicant himself has admitted the allegations that he had left the station without any leave application and he had informed the higher officer after 7 months from that. He has also admitted that he did not consult any doctor from Railway Hospital and he often use to become absent unauthorizedly without giving any information to the higher officer. Although, he has stated that he has to do all this, because of illness of his wife.

20. In view of the above, we do not find any good ground to interfere in the impugned affirmation or punishment order passed by the appellate authority.

21. The O.A. is devoid of merit and is liable to be dismissed. It is accordingly, dismissed.

22. There shall be no order as to costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

HLS/-