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RESERVED.

CENTRAL ADMINISTRARTIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No.671 of 1986

Bhagwan Dass Plaintiff-Applicant.

Versus

Union of India Defendant-Respondent.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this suit received on transfer from the court of Munsif, Jhansi under Section 29 of the Adminisrtive Tribunals Act XIII of 1985 the plaintiff, Bhagwan Dass, ³⁸ was working as a Fitter in the Loco Shed at Bina on the Jhansi Division of the Central Railway, ³⁸ He was served with a charge-sheet in November, 1983 alleging that he was guilty of assaulting and misbehaving with the Fitter-Chargeman on 27.11.1983 at about 13.30 hours. A departmental enquiry was conducted and a verdict of guilty against the plaintiff was submitted. On the basis of these findings the plaintiff was removed from service on 1.2.1984. The plaintiff has alleged that the findings of the enquiry officer were not in accordance with the rules. The enquiry officer was highly biased and prejudiced. He has also said that the order of removal was also not legal or valid on the grounds that the departmental enquiry was not fair and just. He was not given reasonable opportunity. He was not allowed to engage a defence counsel. The charge-sheet did not contain the names of prosecution witnesses. The complainant whom the plaintiff was alleged to have assaulted was not examined, neither was a copy of the complaint given to the plaintiff and there was no other evidence

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on the basis of which the charge was made out. The prosecution witnesses also did not support the prosecution and the enquiry was concluded in one day in a slip ~~shod~~^{shod} manner. He had appealed against the order of removal and his appeal has not been considered and no reply has been given. He has, therefore, prayed that the order dated 1.2.1984 passed by the Senior D.M.E. removing him from service be declared null and void and that he should be considered as continuing to work on the said post with all benefits.

2. In the reply to this plaint filed by the respondents on 14.12.1987 before this Tribunal the respondents have said that the enquiry officer conducted the enquiry after giving full opportunities to the plaintiff but the plaintiff did not avail of the facilities of a defence counsel vide reply to question no.3 and he accepted the charges on 29.11.1983 as his application dated 29.11.1983 shows. There was no prejudice on the part of the enquiry officer. The enquiry officer also examined the prosecution witnesses mentioned in the charge-sheet and recorded their statements. The plaintiff signed these statements accepting the same. The enquiry officer had examined three witnesses in the presence of the plaintiff and he had signed the statements given by these witnesses. Since the plaintiff was himself defending his own case and was present during the entire proceedings, the question of giving any additional time did not arise. The respondents have denied that any appeal has been received by them against the orders of removal dated 1.2.1984. The plaintiff had only sought an interview with the Divisional Railway Manager (DRM) vide his application dated 25.2.1984 and had requested that he should be compulsarily retired. Taking a lenient view DRM modified the order of removal to that of compulsory retirement which was accepted by the plaintiff as indicated in his application dated 18.7.1984 and 9.10.1984.

3. In his rejoinder affidavit the plaintiff has said that he was not given any opportunity to defend himself or to produce any defence witness. The enquiry officer examined three witnesses on behalf of the prosecution, but when they did not say anything they were shown as defence witnesses. The report of the enquiry officer is a non-speaking report and ~~cryptic~~. He has not given any reasons as to why the prosecution version ~~as been~~ ³⁷ has been believed by him. The order of removal is also an non-speaking order and is, therefore, liable to be quashed.

4. We have heard the learned counsel for the parties. The learned counsel for the plaintiff raised the contention that no opportunity was given to the plaintiff to adduce his evidence, that the complainant was not examined, that no reasons have been given for rejecting the defence version and the list of persons examined therein were not mentioned in the charge-sheet. Documents relied on had also not been mentioned in the charge-sheet. While the learned counsel for the respondents had denied that there was any violation of principles of natural justice and has said that it was only after giving reasonable opportunity that the order was passed. The entire file of disciplinary proceedings was also placed before us by the learned counsel for the respondents.

5. A charge-sheet was issued to the plaintiff on 30.11.1983 for the alleged misconduct. In the charge-sheet there is a list of documents and the witnesses ^{37. which} were to be called by for the enquiry. The documents relied on were the report dated 29.1.1983, an application by the plaintiff dated 29.11.1983, the report of the Fitter-Chargeman dated 27.11.1983, and there is a name of Mohan Lal, who was to be called as a witness and the extracts of the diary dated 27.11.1983. On 9.12.1983 the plaintiff had denied the charges. He was thereafter advised of the appointment of the enquiry officer. The plaintiff was asked

on 30.12.1983 to nominate a defence counsel. On 27.12.1983 in his application which is placed at Sl.No.17 of the file the plaintiff has given the name of 4 persons, who could be enquired about the whole incident. He had given the names of YKC 305, Gorey Lal, Boiler Maker Chargeman, and Lakan Lal Pathak. Gorey Lal was examined on 11.1.1984 and the plaintiff had signed the statement given by Gorey Lal. Similarly, Lakan Lal Pathak was also examined on 11.1.1984 and the plaintiff had also signed this statement. Another witness Jagdish YKC no.305 was also examined on the same day. In his own statement the plaintiff had answered to question no.3 whether he was prepared to proceed with DAR enquiry with ^{or not the} defence counsels, since he had failed to nominate one, ~~has said~~ that he was prepared to proceed without the defence counsel and the plaintiff had submitted himself to ^{action} cross examining which was closed on the same day. On 15.1.1984 the enquiry officer submitted his report.

6. It is thus clear that the plaintiff had given the names of four persons as his witnesses. The record shows so and YKC no.305, Gorey Lal and Lakan Lal Pathak were examined by the enquiry officer. The disciplinary authority, Senior DME, passed the removal order on 27.1.1984. His orders read as follows :-

"I have gone through the proceedings of the DAR enquiry and the findings thereof and find that the charges are proved and are of grave nature. He is removed from service."

The enquiry officer had concluded in his findings that the charges had been proved against the plaintiff. On 1.2.1984 the punishment was conveyed to the plaintiff and a copy of the enquiry report and the copies of evidential documents were given to the plaintiff and he was given 45 days to file his appeal. These were received by the plaintiff on 16.2.1984, as his acknowledgement shows. From a perusal of the enquiry proceedings we find that the

plaintiff had been given reasonable opportunity for defending himself. His contention that he was not allowed to engage his defence counsel is also not supported by the answers that he gave during the enquiry proceedings and he had been given all the necessary documents which were material for his defence. We, therefore, reject the plea that the enquiry had been in any case vitiated by non-following of the procedures or by not giving adequate opportunities to the plaintiff. The plaintiff had himself requested for compulsory retirement in lieu of the order for removal from service. The punishment was reduced by DRM, who was the appellate authority, after giving an interview to the plaintiff. Therefore, even at the appellate stage he had been given the opportunities which are required to be given before a person could be removed from service.

7. In view of above we do not find any merit in the application (Suit No.243 of 1985) and the same is dismissed. We make no order as to costs.

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MEMBER (J).

21 March 1988

MEMBER (A).

Dated: March 10th, 1988.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD.

REGISTRATION NO. 5671 of 1986(T)

Bhagwan Dass ----- Applicant.

Versus,

Union of India and others ----- Respondents.

WRITTEN STATEMENT ON BEHALF OF UNION OF INDIA
AND OTHERS

1. That the deponent is the Additional Divisional Railway Manager (Central Railway Jhansi), and as such he is well acquainted with the facts of the case deposed to below.

2. That paragraph 1 of the plaint is admitted. It is further stated that the plaintiff was removed from service w.e.f. 16.2.1984 under DAR.

3. That paragraph 2 of the plaint needs no reply.

*Read & Verified
Today
M.R.D.
4/5/87*

4. That paragraph 3 of the plaint needs no reply except that the stated Sri S.M.Alam was appointed as E.Officer vide Sr.DME(P) L.No.P/62 C/DAR dated 20.12.1984.

5. That paragraph 4 of the plaint is not admitted as stated. The Enquiry Officer submitted findings in which the charges were established against the plaintiff and the same was accepted by the Disciplinary Authority and the plaintiff was awarded punishment of Removal from Service vide Sr.D.M.E. (P) JHS L.No.P/62-C/DAR dated 1.2.1984. The final order was received by the plaintiff on 16.2.1984.

6. That paragraph 5 of the plaint is not admitted as stated. The Enquiry Officer has conducted enquiry and given full opportunities to the plaintiff for defending his case but he did not avail the facilities of ARE vide reply to question to Answer no.3. The plaintiff himself accepted the charges on 27.11.1983 vide his application dated 29.11.1983. Therefore the question of Enquiry Officer being prejudiced does not arise.

7. That paragraph 6 of the plaint is denied.

4. That paragraph 3 of the plaint needs no reply except that the stated Sri S.M.Alam was appointed as E.Officer vide Sr.DME(P) L.No.P/62 C/DAR dated 20.12.1984.

5. That paragraph 4 of the plaint is not admitted as stated. The Enquiry Officer submitted findings in which the charges were established against the plaintiff and the same was accepted by the Disciplinary Authority and the plaintiff was awarded punishment of Removal from Service vide Sr.D.M.E. (P) JHS L.No.P/62-C/DAR dated 1.2.1984. The final order was received by the plaintiff on 16.2.1984.

6. That paragraph 5 of the plaint is not admitted as stated. The Enquiry Officer has conducted enquiry and given full opportunities to the plaintiff for defending his case but he did not avail the facilities of ARE vide reply to question to Answer no.3. The plaintiff himself accepted the charges on 27.11.1983 vide his application dated 29.11.1983. Therefore the question of Enquiry Officer being prejudiced does not arise.

7. That paragraph 6 of the plaint is denied.

8. That with regard to paragraph 6(i) of the plaint it is stated that the enquiry Officer asked the plaintiff during the enquiry vide question No.3 that Are you prepared to proceed in the DAR enquiry without ARE. Since you failed to nominate ~~you are~~ he replied that he was prepared to proceed DAR enquiry without ARE.

9. That with regard to paragraph 6(ii) of the plaint it is stated that the Enquiry Officer examined the P.Ws mentioned in ~~S/F-5~~ and recorded the statement during the enquiry. The plaintiff also signed on the statement of Shri Mohan Lal SKR T.No.2123 Bina accepting the same.

10. That with regard to contents of para 6(iii) of the plaint is stated that the Enquiry Officer also examined the following witnesses (1) Shri Gorey Lal SKR T.No.2040 Bina Loco (2) Shri Lakhman Lal Pathak YKC No.209 Loco Bina (3) Shri Jagdish YKC T.No.303 Loco Bina in presence of the plaintiff and he signed on the statements of the above employees during the course of enquiry accepting the same.

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11. That with regard to contents of paragraph 6(iv) of the plaint it is stated the findings of the Enquiry Officer were not perverse because of the reasons stated.

12. That with regard to paragraph 6(v) of the plaint it is stated that what is stated is incorrect. In this connexion what is stated in para 6(i) above is pertinent and is referred to.

13. That with regard to paragraph 6(vi) of the plaint it is stated that what is stated is incorrect. Since the plaintiff was himself defending the case and was available in entire proceedings, the question for giving additional time does not arise.

14. That para 7 of the plaint is denied.

15. That para 8 of the plaint is not admitted. Even if the notice has been sent it is not legal and valid.

16. That para 9 of the plaint is not admitted. No appeal has so far been received against the orders of Removal from service vide Sr.DME (P) JHS L.No.P/62-C/DAR dated 1.2.84. which was received by him on 16.2.1985.

The abovenamed had sought an interview with DRM JHS vide his application dated 25.2.1984. On 26.2.1984 the plaintiff had requested DRM for compulsory Retirement or voluntary retirement during ~~lent~~ ^{lent} the course of interview. Taking ~~lent~~ view by the DRM Jhansi, the request of the plaintiff was considered and the DRM modified the order of Removal from Service to compulsory retirement which has been accepted by the plaintiff as indicated in his applications dated 18.7.1984 and 9.10.1984.

17. That paragraph 10 of the plaint is denied.

The suit of the plaintiff is undervalued and the court fee paid is insufficient.

18. That paragraph 11 of the plaint needs no reply.

19. That the plaintiff is not entitled to the relief's claimed and they should not be granted to him.

ADDITIONAL PLEAS

20. That the plaintiff was given full opportunity to defend himself.