

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration T.A. No. 28 of 1987
(W.P. No. 5021 of 1985)

Shri Mitthoo Applicant.

Versus

Senior Divisional Engineer, II, North
Eastern Railway Izatnagar and another Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as a Painter Khalasi in the North Eastern Railway 6.4.1968 and was posted at Izatnagar. According to the applicant on 6.3.1981, he proceeded on sick leave and was admitted for treatment in the Railway Hospital, where he was confined on 27th March, 1981 and the certificate of his sickness given by the Railway Doctor for the said period has been submitted by the applicant to the Assistant Engineer, N.E. Railway Izatnagar. As there was no improvement, the applicant got himself discharged from the Railway Hospital and ~~he~~ took private treatment ^{under} (Maj) S.P. Arya of Bareilly, and his certificate for the period 28th March, 1981 to 27th April, 1981 has also been submitted and the rest period was extended by the said Doctor till 18.8.1981. On 26.4.1982, the applicant received a letter issued by the Assistant Engineer, N.E. Railway Fatchgarh dated 26.3.1992 purporting to remove the applicant from service with immediate effect. The applicant filed an appeal before the Divisional Engineer, II North Eastern Railway Izatnagar dated 6.5.1982 and when he received no communication with this regard, he sent a reminder to the same on 8.10.1982. Ultimately, he received a letter dated 21.5.1983 from the Senior Divisional Engineer, II Izatnagar requiring the applicant to attend the office of the Sr. Divisional

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Engineer II alongwith his defence counsel if any, on 17.6.1983 for personal hearing. The applicant requested the authorities for supplying ~~him~~ him the copies and extracts of the relevant documents with any other statement on record along with full enquiry report in order to enable the applicant to effectively pursue his appeal. The appeal of the applicant was dismissed vide order dated 4.12.1984, by a non speaking order. The disciplinary proceedings against the applicant were taken on the ground that the applicant did not comply with the orders passed by the Assistant Engineer transferring him to Fatehgarh, and which order according to the applicant was never served to him and the charge-sheet itself indicates that the said order ~~was~~ was posted at his residence but according to the applicant he was residing at Railway Quarter but he has no knowledge about the said order and he was also not made aware of the enquiry proceedings which was also not conducted in accordance with the Railway Board's circular dated 4.2.1966. The disciplinary action against him was taken by the Assistant Engineer, Fatehgarh who was not the disciplinary authority and the Assistant Engineer Izatnagar was the disciplinary authority and that is why he has ~~challenged~~ challenged the ~~entire~~ entire enquiry proceedings.

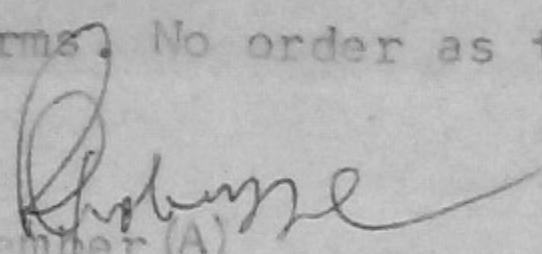
2. The respondents have refuted the claim of the applicant and have stated in their counter affidavit ~~that~~ the applicant was transferred from Izatnagar to Fatehgarh on 5.3.1981 and in order to avoid the service of the Transfer, he reported sick in the Railway Dental Doctor from 6.3.1981. He did not participate in the enquiry inspite of the information being given to him about the dates, ex parte proceedings were taken against him and the applicant was removed from service by the order dated 26.3.1982. The applicant also did not prefer an appeal but requested for the supply of certain documents.

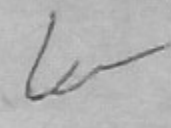
As the applicant himself avoided in participating in the enquiry according to the respondents, he can not now make a complaint against the respondents for not giving him an opportunity of hearing by the respondents. It may be that the applicant deliberately avoiding it, but as he was avoiding it, action against him could have taken. While taking an action against him, a due opportunity of hearing should have been given to the applicant by the respondents. It is possible that the applicant may have avoided for taking the notice but when the rules itself provides that an opportunity of hearing should have given to him, more efforts could have been made by the respondents to effect the service of notice on him although, he was residing in his railway quarter, and it appears that the serious efforts have also not been made by the respondents to effect the service of the notice upon the applicant, ~~who, the applicant, also not interested in taking services of the notice.~~

3. Accordingly, one more opportunity is given to the applicant by the respondents and the respondents are directed to hold a fresh enquiry after giving full opportunity of hearing to the applicant and the applicant shall fully cooperate with the enquiry and let a notice be given to the applicant and an enquiry officer be appointed and a date be fixed in the month of October, 1992 and the applicant shall appear on that date and thereafter he will be ~~intimated~~ ^{intimated} the name of the enquiry officer and in the enquiry ^{if} ~~the~~ applicant is exonerated or a lesser punishment is given, it will be open for the respondents to decide as to how this period is to be treated and in case the punishment order is maintained, that will be the end of the matter. In case the applicant shall not ~~be~~ cooperate with the enquiry, the benefit of this part of the order will not be

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given to him. The application is disposed of with the
above terms. No order as to costs.


Member (A)


Vice-Chairman

Dated: 7.9.1992

(n.u.)