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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

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Registration T.A. No. 1007 OF 1987
(W.P. No. 1127 of 1982)

Raghunath Singh ... Petitioner
versus

Union of India and others... Respondents

Hon' K. Obayya, A.M.

Hon' S.R. Sagar, J.M.

(By Hon' S.R. Sagar, J.M.)

The petitioner Raghu Nath Singh was a permanent Gangman in the Northern Railway. After disciplinary proceeding against him, he was ordered by the impugned order dated 24-12-81 not to be taken on duty from the said date. The petitioner being aggrieved filed the Civil Misc. Writ Petition No. 1127 of 1982 on 28-1-1982 in the High Court of Judicature at Allahabad against the said impugned order for a direction to the respondents to treat him in continuous service as a 'Gangman'. On establishment of the Central Administrative Tribunal, the said writ petition was received in the Tribunal by transfer as required by Section 29 of the Administrative Tribunals Act, 1985.

2. In short campass, the petitioner's case is that he had put in about 25 years service as 'Gangman'. He was appointed and confirmed by the Assistant Personnel Officer, D.R.M. Office, Allahabad. A fabricated and false

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complaint was made by one Maujam Khan to the Assistant Engineer to the effect that on 21-2-1975 the petitioner assaulted the said Maujam Khan Permanent Way Mistry and one Ramakant ~~Mate~~. The disciplinary proceeding were started against the petitioner and he was placed under suspension by the P.W.I. vide his order dated 23-2-1975. The suspension order was, however, subsequently, revoked by the P.W. I vide his order dated 26-7-1975. During the course of inquiry under the Railway Servants' Discipline and Appeal Rules, 1968 (hereinafter mentioned as Rules), the reasonable opportunity was not allowed to the petitioner and the impugned order dated 24-12-1981 (Annexure-I) was passed arbitrarily.

3. The petition has been contested by the respondents. It has been mainly contended that the petitioner has since been removed by an order dated 26-4-82, He has only his remedy in departmental appeal, which he has not availed. With respect to the impugned order dated 24-12-1981, it has been submitted that it was communicated to the petitioner by P.W.I. because the petitioner was called to attend the Office of Assistant Engineer Etawah vide letter dated 19-12-1981 ~~and the petitioner~~ ~~vide letter dated 19-12-1981~~ and the petitioner duly attended the office of the Assistant Engineer Etawah, but, he went back to join his duties for which the Office of the Assistant Engineer had not ordered him to go back and thus, he absconded from duty since 23-12-1981. In view of this irregularity and insolent behaviour of the

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petitioner he was not allowed to join without any authority from the Assistant Engineer. It has been further contended that this order dated 24-12-1981, does not amount to punishment, but was only to ensure his presence in the Office of the Assistant Engineer, Etawah. With respect to the charge of assault it has been contended that the charge was proved and penalty was imposed on the petitioner, but the petitioner has not availed the remedy of appeal. The petition is, therefore, liable to be dismissed.

4. We have heard the arguments of the learned counsel of the parties and have gone through the ~~records~~ ^{records} ~~recruitment~~. ✓

5. It will not be out of point to mention here that a 'Gangman' is a labour and is not expected to know about the detailed procedure for disciplinary proceedings as laid-down under the Rules. Admittedly, he was a permanent 'Gangman'. Admittedly, he was charged for assault on the said Mauzam Khan and Rama Kant, Mate. Admittedly, the petitioner was simultaneously placed under suspension which order was subsequently revoked which means that after the suspension order had been revoked, the petitioner continued in his service as a permanent 'Gangman' until the impugned order dated 24-12-1981 was passed. The respondents have vehemently challenged this impugned order stating that this is not the punishment order and that the punishment order was passed subsequently on 26-4-1982 against which no appeal had been preferred by the petitioner. ✓

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6. It is peculiar note that the Annexure-I which is the impugned order dated 24-12-1981 is quite clear whereby the petitioner was ordered not to be taken on duty since 24-12-1981. This impugned order for all practical purposes amounts to removal order. Once this order was passed and the petitioner once prohibited from doing his work, subsequent order dated 26-04-1982 ^{not required} was ~~passed~~. The learned counsel for the respondents has not been able to show us that irrespective of the order dated 24-12-1981, the petitioner performed his duties till 26-4-1982 and that ^{for} ~~from~~ that period he was paid his wages.

7. It may also be pointed out that the petition against the impugned order dated 24-12-81 was filed by the petitioner on 28-1-1982, whereas the subsequent ~~order~~ ^{alleged termination} order was passed on 26-4-1982 which is ^{indicative} ~~indicative~~ of the fact that the said order was passed during the pendency of the petition.

8. Although the respondents have contended that the order dated 24-12-1981 was communicated to the petitioner to enforce his attendance in the Office of the Assistant Engineer, Etawah but the impugned order does not even slightly indicate to such meaning. In any case, the record shows that prior to the filing of the writ petition, a notice was also served upon the respondents on behalf of the petitioner. If position as has been asserted by the respondents in respect of the impugned order dated 24-12-1981, the same would have been clarified by them to the petitioner in reply ^{to} ~~without~~ his notice.

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9. It is pertinent to note that a copy of the inquiry report, if any, was not supplied by the respondents to the petitioner, before imposition of penalty of removal either by the order dated 24-12-1981 or 26-4-1982.

10. In this connection attention may be drawn to A.I.R. 1969 SC 1302, State of Maharashtra vs. ^{Shankar} Shankar, B.A. Joshi. Their Lordship of the Hon'ble Supreme Court observed that the High Court held that the failure on the part of the competent authority to provide the plaintiff with a copy of the report of the Inquiry Officer amounts to denial of reasonable opportunity contemplated by Article 311 (2) of the Constitution. It seems to us that the High Court came to the correct conclusion. The petitioner was not aware, whether the Inquiry Officer reported in his favour or against him.

11. In Railway versus Murugan & Alkondan (1984 WLR 307) it has been held that when the disciplinary authority is not the inquiring authority and when it ^{should} ~~has~~ rendered its own finding after the receipt of the report and findings of the inquiring authority, it shall give every reasonable opportunity to the Railway servant to make his representations in ^{other} ~~every~~ words to give him all reasonable opportunities to ~~all~~ the finding of the inquiring authority. "..."

12. Thus non-supply of a copy of the report to a delinquent official was held to be fatal to the disciplinary proceedings.

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13. In view of the peculiar facts of this case as narrated above and the fact that copy of the inquiry report was not supplied to the petitioner before passing the impugned orders dated 24-12-1981 ^{as well as} ~~and two~~ subsequent order dated 26-4-1982 and that no reasonable opportunity as required by Principle of natural justice was given to the petitioner, ~~the~~ impugned order dated 24-12-1981 as well as, the subsequent removal order dated 26-4-82 are hereby quashed.

13. The petitioner shall be reinstated in the same position in which he was prior to the impugned order dated 24-12-1981 with all consequential benefits. This order does not, however, preclude the disciplinary authority to proceed against the petitioner, if he so likes, in accordance with the procedure laid-down under the 'Rules'. In case the disciplinary authority decides to proceed against the petitioner, all reasonable opportunities shall be afforded to the petitioner to defend himself, and that the proceedings shall be completed within a period of three months ^{from the} ~~from the~~ date of institution of ^{the} ~~of~~ proceedings, if any.

14. The petition is disposed of accordingly with no order as to costs. The respondents are hereby directed to comply with the above directions within a period of two months from the date of receipt of this order.

Member (S) 19.10.90

Member (A)

(sns)

October , 1990.

Allahabad.