

CENTRAL ADMINISTRATIVE TRIBUNAL, ALIABAD BENCH

T.A. No. 1645 of 1987

(Suit No. 1164/1985)

Shri Sushil Chandra Gupta

Petitioner/
plaintiff

versus

Union of India through
Secretary, Ministry of
Railways New Delhi and 3 others

Respondents/
defendants.

Hon. Mr. A. B. Gorthi, Member Administrative
Hon. Mr. S. N. Prasad, Member Judicial.

(Hon. Mr. S. N. Prasad, Member Judicial)

The above original suit No. 1164/85 which
was filed by the plaintiff in the court of Munsif,
City, Kanpur, has been received in this Tribunal
by way of transfer under section 29 of the Administrative
Tribunal Act, 1985 and the same has been numbered as
T.A. No. 1645 of 1987.

2. The above suit has been filed by the plaintiff
for a declaration to the effect that the impugned
order dated 3.9.80 vide communication letter dated
5.5.83 which was received by the plaintiff on
17.5.83 passed by the Assistant Electrical Engineer,
Traction Rolling Stock, Northern Railway, Kanpur,
whereby the plaintiff's services have been removed,
is illegal, ultra vires and ineffective and inoperative

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and the plaintiff still continues to be in service with all consequential benefits.

3. The plaint allegation of the aforesaid suit briefly stated, inter alia, are that the plaintiff was appointed as Khalasi in Northern Railway on 15.11.73 and posted under Assistant Electrical Engineer, Traction Rolling Stock, Kanpur and has been discharging his duties satisfactorily. As per order dated 15.10.77 passed by the Assistant Electrical Engineer, Traction Rolling Stock, Northern Railway Kanpur dated 15.10.77 which was served on the plaintiff on 17.10.77, the plaintiff was suspended and was chargesheeted on 22.3.78 and disciplinary proceedings proceeded with against him. It has further been alleged that during the enquiry proceedings the plaintiff was not supplied with the material in respect of the charge and the charge sheet dated 22.3.78 was issued by the authority subordinate to the appointing authority in violation of Railway Servants (Discipline and Appeal) Rules, 1968 and the papers which were demanded by the plaintiff as per his letters dated 24.3.78 and 23.2.78 were neither supplied to him, nor he was allowed to inspect those papers and the plaintiff was not informed of the date of the disciplinary proceedings with the result that the disciplinary proceedings

proceeded with against the plaintiff exparte, with
ulterior and malafide motives to harm and harass
the plaintiff, ~~not~~ copy of the finding of the
enquiry officer ~~was~~ ^{not} supplied to the plaintiff and
the plaintiff was not afforded the reasonable
opportunity to defend himself during the enquiry
proceedings, in as much as the plaintiff was not
afforded opportunity to cross-examine the witnesses
who were examined against him. During the enquiry
proceedings, the plaintiff was transferred from
Kanpur to Mughalsarai with malafide intention so
that he maynot be able to contest the enquiry and
no information regarding every date fixed in the
enquiry had been communicated to the plaintiff by
the enquiry officer or by any of the competent
authority at the plaintiff's transferred place and
posting; and ~~that~~ the plaintiff was on sick leave
and communication to this effect was made to the
authorities concerned by the railway doctor concerned;
but malafidely, the plaintiff had been treated on
unauthorised absence illegally. The suspension order
has been illegally served on the plaintiff and after
a long ^{allowing} the time of suspension, a charge sheet was
and the said removal order was ~~passed~~ ^{passed}
served on the plaintiff by the authority below the

rank of the plaintiff's appointing authority; and as such there being flagrant breaches of rules, regulations and procedure and also violation of principles of natural justice, ^{and in view of above circumstances,} the impugned order be set aside. The plaintiff has filed the above suit after serving notice under section 80 C.P.C. on the defendants when the defendants did not pay any heed to the requests of the plaintiff.

4. The respondents, in the counter affidavit which has been filed on behalf of respondents, have contended inter alia, that Shri V.P. Sharma Electrical Foreman, ^{as} was appointed Enquiry Officer by the Disciplinary Authority and the suspension order and the charge sheet were issued by the competent authority. It has further contended that the impugned removal order was passed by the competent authority because the appointing authority for Khalasi is Assistant Electrical Engineer or Assistant Personnel Officer and was sent by registered post as the plaintiff was absent. It has further been contended that the plaintiff participated in the disciplinary proceedings in the beginning and thereafter he did not participate wilfully and went on avoiding to participate in the

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disciplinary proceedings, and as such the disciplinary enquiry officer was compelled to proceed with the enquiry proceedings and to complete the enquiry proceedings, as the plaintiff deliberately did not participate in the proceedings despite knowledge of the date fixed in the disciplinary proceedings and as such there has been no violation of any rule, regulation or procedure and there has been no violation of principles of natural justice. It has further been contended that the relevant documents were supplied to the plaintiff and the plaintiff also kept the extracts of the relevant records and the allegation to the contrary is after thought with ulterior motives, and that the transfer of the applicant to Mughalsarai was made in the interest of administration on 11.5.79 and the requisite information was conveyed to the plaintiff at Mughalsarai. It has further been contended that the plaintiff's suit is barred by time and in view of the above ~~circumstances~~, the plaintiff's suit is liable to be dismissed.

5. Rejoinder Affidavit has been filed by the plaintiff wherein he has reiterated almost all those allegations as mentioned in the plaint.

6. We have heard the learned counsel for the parties at length and have thoroughly gone through the records of the case.

7. The learned counsel for the plaintiff(petitioner) while advertizing to the pleadings of the parties and papers annexed thereto, has argued that the chargesheet dated 22.3.78 was issued by the authority subordinate to the appointing authority in violation of Railway Servants (Discipline & Appeals) Rules, 1968; and has further argued that the plaintiff was not supplied with the material in support of the charge; and has further argued that the plaintiff(petitioner) was not supplied copies of papers which formed the basis of the charge and which were filed in support and in proof of charge; and has further argued that during the enquiry proceedings and during suspension period, the plaintiff had been transferred from Kanpur to Mughalsarai with malafide intention; and has further argued that the plaintiff was not informed of the enquiry proceedings and all the proceedings which proceeded with against the plaintiff(petitioner) ex parte stand vitiated, as the plaintiff(petitioner) was not afforded reasonable opportunity to defend himself; and has further argued that no show cause notice or findings of the enquiry officer was supplied to the plaintiff; and has further argued that the removal order has been passed by the Assistant Electrical Engineer, an authority subordinate to the appointing authority of the plaintiff, and as such the impugned order of removal is illegal, invalid and ineffective and in violation of provisions contained

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under Article 311 of the Constitution of India and in violation of principles of natural justice as well, and as such the impugned order be set aside and the relief sought for be granted to the plaintiff (petitioner).

8. The learned counsel for the respondents, while drawing our attention to the pleadings and the papers annexed thereto, has argued that the chargesheet as well as the suspension order were issued by the competent authority, and has further argued that the demanded papers were supplied to the plaintiff (petitioner) and the plaintiff (petitioner) also inspected, and has further argued that the plaintiff was transferred in the interest of administration and all requisite information were conveyed to him at Mughalsarai. He has further argued that the removal order was passed by the competent authority because the appointing authority for Khalasi is Assistant Electrical Engineer or A.P.O. He has further argued that since full disciplinary enquiry was conducted, the plaintiff participated *in the beginning* and thereafter, he did not participate *willingly* and deliberately being fully aware of the dates of the proceedings of the disciplinary enquiry and as such no other option was left with the enquiry officer but to proceed ex parte against the plaintiff. He has further argued that all the relevant documents were supplied to the plaintiff and the plaintiff also copied the extracts of the relevant records and as such it would

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be evident that the plaintiff was afforded reasonable opportunity and there has not been any violation of the provisions contained under Article 311 of the Constitution of India and there has also not been any violation of principles of natural justice and as such the plaintiff is not entitled to any relief.

9. This is significant to point out that Paper No. 5 (of Departmental file ~~dated~~ 'Theft case, Major, Name Shri S.C. Gupta) which is original application of the plaintiff and which is dated 24.3.78 and through which the papers, as specified therein, were demanded, were supplied to him, as would be obvious from the perusal of the endorsement of the plaintiff himself dated 30.3.78 appearing thereon to this effect. Thus, this being so, the contention of the plaintiff to the effect that the documents demanded by him, were not supplied to him, stands falsified.

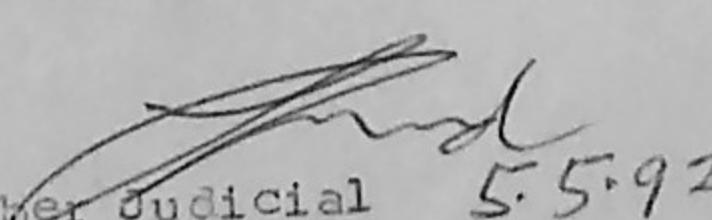
10. It is also pertinent to make mention of this fact that Paper No. 44 of the aforesaid departmental file shows that the plaintiff (petitioner) Shri Sushil Chandra Gupta, was informed by registered post dated 2.1.80 by the enquiry officer about ensuing date as 23.1.80 fixed in the disciplinary enquiry proceedings and by this registered letter, the plaintiff was specifically directed to appear before the enquiry officer on 23.1.80, and it was also specified therein that since the enquiry has already been inordinately delayed, further enquiry

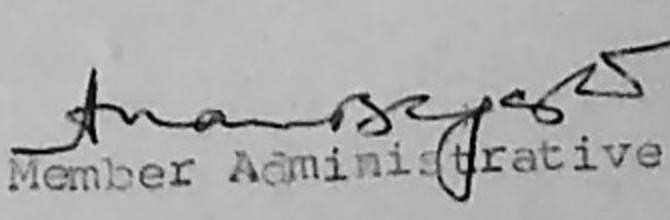


proceedings shall be started from 23.1.80 at 10.30 hours on all working days, day today. This paper No. ~~544~~ ~ 44 ~ of the Departmental file further shows that a copy of that registered letter was sent to other officers/ ^{~ Context ~} authorities concerned also. In this ~~case~~, it is also noteworthy that a perusal of paper No. 45 of the aforesaid departmental file shows that when the plaintiff did not present himself on the aforesaid date i.e. 23.1.80 a telegram was also sent on 24.1.80 impressing upon him to attend the enquiry proceedings on 29.1.80 and in case if he did not turn up on that date, the enquiry proceedings shall proceed ~~exparte~~ against him.

11. We have scrutinized the entire material on record and we find that the plaintiff was afforded reasonable opportunity to defend himself and we find that the chargesheet in question was issued by the competent authority and the impugned order dated ^{~ validly ~} 3.9.80 was passed by the competent authority and we find no violation of the provisions contained under Article ^{~ 311 ~} ^{~ of India; ~} 21 of the Constitution and there has been no violation of the principles of natural justice.

12. Consequently, we find no merit in the case of the plaintiff and the plaintiff's aforesaid suit No. 1164 of 1985 is dismissed. No order as to costs.


Member Judicial 5.5.92


Member Administrative

Allahabad, Dated: 5.5.92