

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

A L L A H A D A D

O.A.No.
T.A.No.

515

1987.

DATE OF DECISION Sept. 1988

Shagor Petitioner

S. D. Divakar Advocate for the Petitioner(s)

Versus

U.O.I. & others Respondent

S. V. K. Goel Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, A.M.

The Hon'ble Mr. S. S. Sharma, J.M.

- ✓ 1. Whether Reporters of local papers may be allowed to see the Judgement ?
- ✓ 2. To be referred to the Reporter or not ?
- ✓ 3. Whether their Lordships wish to see the fair copy of the Judgement ?
- ✓ 4. Whether to be circulated to other Benches ?

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 515 of 1987

Jhagru	Applicant.
	Versus	
Union of India & others	Respondents.

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

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

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The applicant in this application, filed under Section 19 of the Administrative Tribunals Act XIII of 1985, has challenged his order of removal dated 4.11.1986 passed by the Assistant Engineer Northern Railway, Prayag, Allahabad. According to the applicant, he has been removed on the charge of unauthorised absence without having been given a charge-sheet or an opportunity to defend his case as laid down in the Discipline & Appeal Rules. The order has thus been passed at his back. At the time of his removal the applicant was working as a Rest House Caretaker (RHC) under the Inspector of Works (IOW). He has, therefore, prayed for setting aside of the order of removal and for a direction to be issued to the respondents to pay his salary and allowances for the period he has been kept out of employment on the basis of the impugned order.

2. Having appointed on 15.2.1961 as a Gangman the applicant became a RHC in 1975. In 1977 he had some family problems inasmuch as his wife fell seriously ill and he found himself, therefore, not able to perform duty as he had to look after her and, therefore, he remained away from duty till 1980. He continued to remaining away from duty till 12.4.1985 because later on he lost one of his sons and also fell sick. In April 1985 he reported for duty to the Assistant Engineer, Prayag. On 10.9.1986 he was given a show-cause notice wherein it was alleged that he had

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admitted in his reply to the memorandum dated 5.12.1978 the charges levelled against him and, therefore, there was no necessity of holding an enquiry against the article of charges which stood proved and, therefore, it was provisionally concluded that he was not a fit person to be retained in service. He was required to submit his reply to this notice within 15 days. The applicant, however, wrote a reply on 17.10.1986 in regard to the notice saying that the allegations made against him were absolutely false, baseless and he requested that he should be supplied a copy of the charge-sheet to enable him to submit his reply and he had also requested that no action should be taken against him until he has submitted his explanation to the charge-sheet, but he was issued the impugned order dated 4.11.1986 removing him from service. He appealed against the order of removal of 6.11.1986 to the Divisional Engineer, Lucknow and his appeal, according to him, has not yet been decided.

3. In the reply the respondents have said that the applicant absented himself unauthorisedly with effect from 1.1.1978 and on account of his unauthorised absence a charge-sheet was issued to him for major penalty vide Memo No. 8/E/IOW-PRG, dated 5.12.78 and was sent to his home address. In spite of the service of the charge-sheet the applicant did not reply and remained absent till 16.4.1985 when he approached for duty. He could not be given duty on account of his long absence. He, however, again disappeared and then returned back after about 8 months.

The respondents have further said that
4. Since the applicant had remained absent for more than 5 years his case was referred to the Divisional Office and DEN vide his letter dated 13.5.1986 gave instructions for finalisation of his case under D&A Rules. Since the applicant had already admitted his guilt of unauthorised absence vide his application a show-cause notice was given to him ^{for} imposing the penalty. He did not

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submit any reply to the show-cause notice and demanded a copy of his own representation. The services of the applicant were ultimately terminated. The respondents have said that the application which he submitted on 15.4.1985 was in English and had been signed in English and, therefore, his demand to give him a copy in Hindi was frivolous. According to the respondents, the impugned order has been passed after considering the entire material on record.

5. In his rejoinder affidavit the applicant has reiterated that his absence from duty was for the reasons beyond his control. He has denied that he received any charge-sheet or sent any representation against the so called charge-sheet and that is why he had demanded a copy of the charge-sheet and its reply. According to the applicant the respondents have also not filed any such document before the Tribunal. When he reported for duty on 15.4.85 he was not allowed to resume duty and he was told that he has to wait for orders from the higher authorities. The applicant has further said that he demanded the relevant papers to enable him to submit reply to the show-cause notice but the respondents passed an ex parte order.

6. We have heard the learned counsel for the parties. The contentions made by the learned counsel for the applicant were that the order of removal is bad because no charge-sheet has been issued, no enquiry was done and no show-cause notice was issued before passing the termination orders. Thus Rule 9 of the Railway Servants Discipline & Appeal Rules has been violated and there was also violation of ID Act, 1947 and lastly the punishment of dismissal was a very harsh punishment keeping in view the fact that the applicant had about 17 years of service before the incident occurred. The learned counsel for the respondents submitted that the applicant has signed his representation in English and his demand

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to serve him a copy of the notice in Hindi was frivolous and that he was removed for his unauthorised absence for more than 5 years under para 2014 of the Indian Railway Establishment Code, Volume II. We have perused the case file also.

7. The applicant has submitted a copy of his letter dated 15.4.1985 by which he had requested for duty after long sickness. This is placed as Annexure 'I' to his application. In this application he has said that his wife was seriously ill and became ³²insane and he could not leave her in that condition and could also not inform the administration properly as he was badly disturbed. He has further said that in the meantime his young son also expired and, therefore, he was so baffled and mentally disturbed that he himself fell sick and remained under treatment upto 12.4.1985. He, therefore, requested for being taken back on duty after being declared fit by the Doctor. On this AEN had asked IOW for particulars of the case in order to enable him to refer to higher authorities. In this application the applicant has related the ³¹some facts which led to his absence which he has also mentioned in his application filed before us.

8. Annexure '8' to the application is a copy of the memorandum dated 10.9.1986 issued to the applicant saying that the articles of charges communicated to him vide memorandum dated 5.12.1978 have been admitted in his representation in reply to the above memorandum and whereas there is no necessity of holding an enquiry into the article of charges and having carefully considered the relevant records etc. the disciplinary authority had come to the conclusion to remove him from service. He was given an opportunity of making the representation. In this notice no copy of the representation sent by the applicant had been attached and it was this reply which he had requested. ~~for~~ to enable himself to reply to the show-cause notice. The disciplinary authority had, however,

not supplied him any copy of the memorandum of 10.9.86 or the reply

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not supplied him any copy of the memorandum of 1978 or the reply sent by him to the memorandum. The applicant has denied that he ever received the charge-sheet and sent any reply to the same. The respondents have also not produced or attached a copy of the explanation on which they came to the conclusion that he has admitted his fault. The only paper that is available is the letter dated 15.4.1985 which the applicant gave when he came to report for duty after his long absence. Thus the averments made by the respondents that a reply was received by them to the charge-sheet of 1978 and after considering the same they came to the conclusion that he should be removed from service is not supported by any documentary evidence and in the face of flat denial of the same by the applicant it will be difficult to accept the conclusion arrived at by the respondents that the applicant had admitted the articles of charges communicated to him on 5.12.1978. The impugned order of removal also does not mention anything about the charge-sheet or the reply given by the applicant. It reads as follows :-

"As per extant rules the person who was unauthorised absence for a period of more than 5 years deemed to be terminated from the service.

Since you are unauthorised absence for a period of 8 years i.e. 1.6.78 till date 4.11.86 your services are hereby terminated with immediate effect.

This is for your information please.

Sd/-

Asstt. Engineer."

It is thus clear that the respondents have only relied on certain rule which says that for unauthorised absence for a period of more than 5 years a person should be deemed to be terminated from service.

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9. Para 2014 of the Indian Railway Establishment Code, Volume II, which is analogous to F.R. 18 is in respect of general conditions of service. It reads as follows :-

"2014. (F.R. 18). - No Railway servant shall be granted leave of any kind for a continuous period exceeding five years.

(2) Where a railway servant does not resume duty after remaining on leave for a continuous period of five years, or where a railway servant after the expiry of his leave remains absent from duty, otherwise than on foreign service or on account of suspension, for any period which, together with the period of leave granted to him, exceeds five years, he shall, unless the President, in view of the exceptional circumstances of the case, otherwise determines, be removed from service after following the procedure laid down in the Discipline and Appeal Rules for railway servants."

This para clearly lays down that for such unauthorised absence the person who remains so unauthorisedly ^{or absent} be removed from service after following the procedure laid down in D&A Rules for Railway servants. These rules have laid down elaborate procedure in respect of imposition of any major penalty. They lay down that no order imposing any of the penalties specified in clauses (v) to (ix) of Rule 6 of D&A Rules, 1968 shall be made ^{or except} ~~accepted~~ after an enquiry has been held in the manner provided in Rule 9 & Rule 10. In para (ii) this procedure further lays down that a statement of imputations of misconduct or mis-behaviour in support of each articles of charge shall contain a statement of all relevant facts including any admission or confession made by the Railway servant, a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained. According to the respondents they sent him a charge-sheet at his home address in 1978, but as we

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have observed above they have failed to file a copy of the charge-sheet or of the reply on which they have relied in regard to the admission of the charges. In view of the same there is no doubt to the fact that the procedure laid down in Rules 9 & 10 of D&A Rules has not been properly followed. Even Rule 2014(2) which has been quoted above demands that the proper disciplinary procedure should be followed before the services are terminated when a person is unauthorisedly absent beyond 5 years. In the applicant's case he had reported back to duty, no doubt, after a long period but he had explained the reasons why he was not able to report back during the period. It would have been proper for the respondents to have carried out a proper enquiry and taken into consideration all the aspects of the case ^{as to quantum of punishment} before they arrived at the conclusion. Unfortunately this has not been done. The applicant has filed an appeal against the order of termination which is pending disposal before the respondents. This appeal is dated 6.11.1986. The application before this Tribunal was filed by the applicant on 28.5.1987 so the appeal lay with the respondents for quite sometime awaiting disposal and now it has not been disposed of because the application has been filed before us. The respondents have taken unduly long time ^{by even} in disposing of the appeal. Considering the fact that the impugned order of terminating the services has been issued without following proper procedure and is in violation of the rules. It is liable to be set aside.

10. In conclusion, therefore, we allow the application and quash the impugned order of removal from service dated 4.11.86. The applicant will be entitled to consequential benefits from the date he reported back for duty after his long absence. The respondents

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will be at liberty to take action de novo, if they so desire, under the rules according to law. Parties will bear their own costs.

[Signature]
MEMBER (J).

[Signature]
MEMBER (A).

Dated: September 29th, 1988.

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