

Af2 / 12

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

DATED: THE 20<sup>th</sup> SEPTEMBER, 1994

Original Application No. 919 of 1987

HON. JUSTICE B.C. SAKSENA, V.C.

HON. K. MUTHUKUMAR, MEMBER (A.)

1. Bachanu Dubey, son of Sri Har Murat Dubey, resident of village Bedmanpur, P.O. Parsipur, P.S. Chauri, District Varanasi.

..... APPLICANT

By Advocate Shri G.D. Mukherji

Versus

1. Union of India, Ministry of Railways, Rail Bhawan, New Delhi- 110001
2. D.R.M. Eastern Railway, Moghal Sarai Division, Moghal Sarai, District Varanasi.
3. Senior Divisional Operating Supdt, Transportation, Eastern Railway, Moghal Sarai, Division Moghal Sarai, District Varanasi.
4. Shri B.N. Shukla, Divisional Operating Supdt. Transportation, Eastern Railway Moghal Sarai Division, Moghal Sarai District Varanasi, at present posted as D.C.S.T Dhanbad, Eastern Railway.
5. Station Supdt, Eastern Railway, Gaya (Bihar)

..... RESPONDENTS

By Advocate Shri G.P. Agrawal

ORDER ( ORAL )

JUSTICE B.C. SAKSENA, V.C.

We have heard the learned counsel for the parties.  
Through this O.A. the applicant challenges an order

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dated 11.11.1985 removing him from service. He preferred an appeal against the said order which was also dismissed. Surprisingly, the order passed by the Appellate Authority has not been questioned under relief sought for. Copy of the order passed by the Appellate Authority is Annexure 11. It appears during the pendency of the O.A, the Tribunal by an order dated 17.1.92 directed the applicant to file a review petition and the Divisional Railway Manager has rejected the review petition by an order passed dated 24.12.92. In the amendment application this order was shown to be annexed as Annexure 12 and quashing of the said order has been sought for by the amendment application which was allowed. The amendment has been incorporated.

2. On the record it appears that though reference to the said order was made in the amendment application and it was indicated that copies are annexed as Annexure 12, but in the amendment application no such copy was annexed.

3. The learned counsel for the applicant urged that the order for removal from service has been passed on the basis of an exparte <sup>enquiry</sup> ~~query~~. The learned counsel, at the bar, submitted that the order of punishment was passed for the unauthorised absence from duty. The enquiry was held exparte and no opportunity of hearing was afforded to the applicant. However, we find that there is no averment of fact that the applicant <sup>was</sup> ~~did~~ not served with any charge-sheet and afforded any opportunity of defending himself. The submission, therefore, is not supported by

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any averment of fact made in the O.A.

4. In the Counter affidavit, however, the respondents have indicated that in contemplation of the enquiry for unauthorised absence from duty w.e.f. 1.1.84 to 10.6.85 ~~in defence of~~ the applicant was placed under suspension from 9.10.85. A major penalty charge-sheet was sent to his village address which was returned by the postal authority un-delivered with the remark that 'out of station'. It has also been indicated <sup>that he</sup> by letter dated 25.10.85, the Station Supdt. Gaya intimated the applicant to receive the major penalty charge-sheet at place of his working. The said letter was sent by regd. post. The applicant was not traceable at the place of his working. Therefore, the charge-sheet was sent to his permanent home address at village Rotaha, P.O. Parsipur, District Varanasi. The same was received unserved with the remark of the postal authority "Out of station". The respondents case further is that they then pasted the charge-sheet on the notice board. The applicant did not respond despite several notices. He <sup>was</sup> also informed to appear before 30.10.85 to face the DAR inquiry. He did not ~~pay~~ any heed to the notice placed at the notice board. In the circumstances, an ex-parte enquiry was held. The Enquiry officer found the applicant guilty of the two charges and the Disciplinary Authority ~~agreeing~~ <sup>agreeing</sup> with the Enquiry Officer's findings <sub>Bel</sub>

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passed the order for removal from service. The respondents have also indicated that by letter dated 10.10.85 addressed to the Senior Divisional Operating Supdt., Eastern Railway, the applicant had mentioned that what ever order <sup>are</sup> passed may be communicated to him at his Head <sup>^</sup> <sup>bel</sup> quarter. The letter was written in Hindi and the purpose <sup>for</sup> of the same has been indicated hereinabove. The words in the letter have been translated <sup>iter</sup> <sup>^</sup> <sup>bel</sup> into Roman and have been reproduced in the Counter affidavit. On the basis of this letter, it is urged that the applicant was fully aware of the DAR inquiry against him. He deliberately did not participate it. A Rejoinder affidavit was filed but the specific averments of facts indicated hereinabove which have been made in the counter affidavit have not been squarely answered much less controverted <sup>ed.</sup> <sup>bel</sup>. In the circumstances, we are satisfied that the respondents took ~~xxx~~ all the necessary steps within their power to have the charge-sheet served on the applicant. It was sent to his place of posting. Thereafter it was sent by regd. post to his permanent home address and then it was pasted at the notice board. We are therefore, not satisfied that the applicant's plea that he had not been afforded reasonable opportunity to defend himself has any merit.

5. The learned counsel for the applicant has, however, ~~tried~~ to show on the basis of averments in the pleadings of the applicant that the finding on the charge of unauthorised absence from duty is contrary to record <sup>ed.</sup> <sup>bel</sup>. It is well settled that this Tribunal does not act <sup>as</sup> ~~as~~ <sup>bel</sup> the court of appeal and it cannot analyse the evidence

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and reach its own conclusion. The decision in respect of the allegations and the proof thereof is exclusively in the domain of Disciplinary Authority. The ~~all other~~ <sup>order of</sup> punishment thus ~~has~~ <sup>been</sup> passed by the Disciplinary Authority on being satisfied that the charges against the applicant stood proved as noted hereinabove. The order passed by the Appellate Authority is not under challenge and no relief has been sought for against the same. The Appellate Authority also has given its own reasons to confirm the findings of the Disciplinary Authority. The order passed on the review petition has no doubt ~~been~~ <sup>been</sup> challenged and the relief against the same has been prayed for.

6. As noted hereinabove, alongwith the amendment application copy of the order passed by the D.R.M on the review petition though found to be as Annexure 12 has actually not <sup>been</sup> ~~annexed~~ <sup>been</sup> alongwith the amendment application. From the amended paragraph of the petition it appears that the Divisional Railway Manager refused to modify the order of punishment <sup>of</sup> removal from service to <sup>one of</sup> compulsory retirement. In the absence of the copy of the order passed by the DRM being on record, we are not in a position to adjudicate on the validity of the order passed by the D.R.M.

7. The learned counsel for the applicant also made no submissions to indicate that the order passed by the D.R.M on the review petition suffers from any

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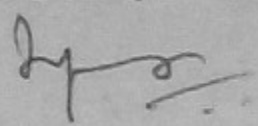


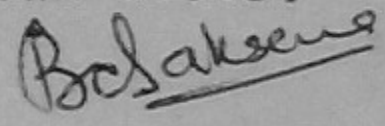
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illegality.

8. In view of the discussion hereinabove,  
there is no merit in the O.A. The O.A. is accordingly  
dismissed. The parties shall bear their own costs.

  
MEMBER (A)

  
VICE CHAIRMAN

Dated: Sept. 20, 1994

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