

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 11th day of July 1996.

Original application No. 1264 of 1993.

Hon'ble Mr. D.C. Verma, JM
Hon'ble Mr. D.S. Baweja, AMBansh Bahadur Pandey, aged about 36
years, S/o Sri Chokat Pandey, R/o
village Paperathi, P.O. Vijaya-Kap,
District Deoria.

..... Applicant.

C/A Sri G.D. Mukerjee

V

Versus

1. Union of India through Chairman
Railway Board, Rail Bhawan,
New Delhi.
2. General Manager, North-Eastern
Railway, Gorakhpur.
3. Deputy Chief Engineer, North
Eastern Railway, Gorakhpur.

..... Respondents.

C/R Sri Govind Saran

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed for quashing the impugned order dated 8.9.92 imposing penalty of removal of service and reinstate him in service and treat the period of his absence due to illness as sick leave without pay.

2. The applicant has stated his case briefly as follows. The applicant while working as a Khalasi in Group D, North Eastern Railway, Gorakhpur, took leave in 1989 on account of wife's sickness. During the course of treatment of his wife, the applicant himself fell sick and could

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not join duty from 16.1.89 to 4.8.92. The applicant was at his native village and took treatment from the local dispensary. However, the applicant has been sending the medical certificates to respondent No. 3 from time to time (Annexure-A-1, A-2, and A-3).

He received a letter dated 8.9.92 at his home address by which he was informed that he has been removed from service from 2.1.90 (Annexure-A-1). This letter also referred to earlier letter dated 3.9.91 by which he was asked to report to respondent No. 3 for payment of settlement dues but the same was not received by the applicant. He immediately reported to the office of Respondent No. 3 when the letter dated 3.9.91 was handed over to him. He made a representation dated 9.9.92 (Annexure-A-7) stating that he has not been given any chargesheet and he is not aware of any inquiry having been conducted. He was replied vide letter dated 7.12.92, that he has been removed from service from 2.1.90 and his appeal is time barred.

3. The applicant has challenged that the punishment order is illegal and bad in law violating the principles of natural justice on account of :-

- (a) No charge sheet had been received by the applicant and he also did not get any intimation of appointment of inquiry officer.
- (b) Ex parte inquiry has been done violating the provisions of sub-clause 23 of rule 9 of the Railway Servants (Disciplinary and Appeal) Rules 1968.
- (c) The applicant has been regularly communicating with respondent No. 3 by sending the medical certificates from time to time.
- (d) The order of punishment has not been communicated to him and copy of the inquiry report has also not been given even after reporting to the office.

4. The respondents in the counter have submitted that the applicant was absent

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that the applicant was absent from 16.1.89 without any initiation and thus being on unauthorised absence. This amounts to serious misconduct and he was taken up for the same by issuing a chargesheet dated 6.8.89. No reply had been given to the chargesheet within the stipulated period of ten days. Another reminder was sent on 28.9.89 but even then no defence was submitted. Thereafter the inquiry officer was nominated vide order dated 9.11.89. A letter dated 27.11.89 was issued by the inquiry officer to the applicant fixing the date of enquiry on 7.12.89 and to nominate his defence counsel. The applicant did not turn up on 7.12.89 for the enquiry. Next date was fixed as 27.12.89 and the applicant was advised through registered post. However, the applicant did not appear on this date also and the enquiry was finalised on ex parte basis. The disciplinary authority considered the findings of the enquiry officer and passed an order imposing penalty of removal from service. This was conveyed to the applicant through registered letter dated 3.1.90 (Annexure-R-5). After passing the order of punishment the applicant was advised vide letter dated 3.9.91 to report to the office for settlement dues. The applicant wrote a letter dated 9.9.92, that he had not received any chargesheet and was not aware of the ex parte enquiry and the order of removal from service and he also submitted the private doctors certificates. The applicant was advised that the appeal was to be moved within 45 days and since the applicant did not follow the same within the time, his application dated 9.9.92 is time barred.

Respondent

The respondents have averred that several opportunities were provided to the applicant to appear before the enquiry officer but he did not choose to attend the enquiry.

It is also submitted that remedy of filing appeal is available to the applicant against the punishment order of removal from service and this has not been availed by him, and therefore the application is time barred for availing the alternate remedy.

~~The~~ The applicant did not follow the rules for reporting sick under the private medical certificate. He submitted the certificates from the private doctor for the period from 16.1.89 to 9.9.92 along with his application dated 9.9.92. There is no irregularity and illegality in the order of removal from service as the same is passed after following the laid down rules. Therefore the applicant is not entitled for any reliefs prayed for.

5. We have heard the learned counsel for the applicant and respondents. The applicant has filed the rejoinder to the counter affidavit. We have also carefully gone through the material placed on record.

6. The main issues which emerge from the rival contentions made, are whether the chargesheet issued to the applicant for unauthorised absence was served on him?

(a) Whether he got intimation with regard to the holding of the inquiry and the order of punishment was served on him. The applicant has totally denied the receipt of any of these documents except the letter dated 8.9.92 when he came to know for first time that the order of removal from service had been passed. We have gone through the file concerning the Departmental proceedings brought on record by the respondents. We find that it contains the charge sheet, nomination of the enquiry officer, letters fixing the dates of the enquiry by the enquiry officer, the punishment order, the speaking order of the disciplinary authority and the other correspondence referred to earlier in para 4.

However, the enquiry report is not available on the file. The applicant has denied the receipt of the charge sheet, nomination of the enquiry officer, letters fixing the dates of enquiry and the punishment order etc. Referring Railway Servants Discipline and Appeal Rules 1968", Rule 26 lays down as under for service of orders and notices.

" Every order and other process made or issued under the rules shall be served in person on the Railway Servant concerned or communicated to him by registered post".

The perusal of the file does not show anything in the record that the charge sheet had been ~~had been~~ served on the applicant. The charge sheet carries an endorsement of copy to the applicant through I.O.W. / Workshop, his controlling supervisor. Since the applicant was alleged to be absent, it is not clear as to how the charge sheet was served by I.O.W./Workshop and the acknowledgement of the applicant obtained. There is no such acknowledgement on record. It is not clear whether the charge sheet was sent by registered A.D. post and the same had been received undelivered or A.D. had been received back. The situation is same in respect of the letter nominating the enquiry officer issued after no defence having been received.

First date of enquiry was fixed on 7.12.89 vide letter dated 27.11.89. This letter does not show that it was sent by registered post. It is not clear how this was served. Next date was fixed on 27.12.89 vide letter dated 11/12.12.89. The office copy has an endorsement " Registered A.D. " However, no A.D. is on record to show the service of the same.

7. The respondents have made an averment in para 27 of the counter that the charge sheet had been served upon the applicant. We, however, fail to accept the contention after going through the records and the observations made thereof above. We are convinced that there is nothing on the record to show that charge sheet had been serviced on the applicant or any efforts to ~~serve~~ and the applicant refused the service of the same. We, therefore, are inclined to accept the submission of the applicant.

8. The applicant did not turn up for the enquiry though two notices were sent to the applicant fixing the date of enquiry and on account of applicant failing to appear for the enquiry ex-parte enquiry was conducted. The applicant has denied having received any notices for the enquiry. From the record, we are unable to ~~find~~ the proof on the record that the notice had been duly served on the applicant. Therefore, conducting of the quiry ex-parte is not sustainable.

9. Next is the service of the punishment order. Admitely the order has not been personally served on the applicant. It is submitted by the respondents that the same was sent by registered post at his home address and the acknowledgement of the same is available on the record. On going through the record, we find a Xerox copy of the acknowledgement on file. It is not clear why the original has not been placed on the record. The copy is illegible and ~~difficult~~ to find out the addressee. Further this is receipt for the registration and not the acknowledgement due which ~~were~~ could prove the service on the applicant. It appears that by sending the letter by registered post, the service has been assumed. From the file, we do not find any record of the efforts made by the concerned authority to cause an actual service of the order of removal on the applicant. So considering these facts, we cannot but hold that the service of the order of removal was not made law-fully on the applicant.

10. Further it is also observed that the copy of the enquiry report has not been made available on the file. It is not mentioned that copy of the enquiry report has been supplied to the applicant along the order imposing punishment as there is no endorsement for the same ⁱⁿ the letter. The letter dated 9.9.92 from the applicant where he demanded the copy of the charge sheet, and other documents has been treated as an appeal. The appeal has been rejected by order being barred by limitation as the same has not been filed within 45 days.

To be an order of punishment in the scheme of rules covered under Railway Servants Discipline and Appeal Rules 1968, the same has to be communicated to the concerned servant and only then the order will be effective. It is only against such an order that the employee will be able to file an appeal. Since the punishment order has not been served on the applicant, he could not submit an appeal within the stipulated period. Therefore, the action on the part of the respondents to dismiss the appeal being time barred is arbitrary.

11. From the perusal of the records, we are constrained to observe that all the formalities for conducting of the enquiry have been followed on record but at no stage effort has been made for service as per the rules and the service has been just presumed to proceed to the next stage of the proceedings till the imposing of the punishment.

12. Considering all what has been stated above, we come to the conclusion that the disciplinary proceedings held against the applicant and the penalty of removal from service imposed on him are not sustainable in law and deserve to be quashed.

13. In the result, we allow the application. The entire disciplinary proceedings including the impugned order dated 7.8.92 which ^{Covers} ~~covers~~ the original order of removal dated 2.1.90 imposing the punishment of removal from service are quashed. The applicant will be reinstated in service within two months from the date of judgement. The respondents are, however, given the liberty to proceed afresh against the applicant for the charge of un-authorised absence if they so desire according to rules.

The period of absence will be decided by the respondents as per the extant rules.

No order as to costs.

S. R. H. H.
Member (A)

D. D. D.
Member (J)