

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 2nd day of April 2002 .

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. No.677 of 1994.

Lalta Prasad s/o Sri Baba Deen r/o Village Unchdeeh, P.O.  
Sirsa, Distt. Allahabad..... Applicant.

Counsel for applicant : Sri S. Dwivedi.

Versus

1. Union of India through the Divisional Railway Manager,  
Eastern Railway, Dhanbad.
  2. Divisional Engineer (IV), Eastern Railway, Dhanbad.
  3. The Assistant Engineer, Eastern Railway, Renukoot.
- ..... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

ORDER (ORAL)

BY HON. MR. S. DAYAL, A.M.

This O.A. has been filed for setting aside order dated 7.8.93 passed by Assistant Engineer, Renukoot and to reinstate the applicant on his post with all consequential benefits.

2. The applicant has claimed that he was appointed as a permanent gangman w.e.f. January 1962. He claims that he fell ill and was confined to bed and could not attend duty w.e.f. 23.10.85. He received order dated 7.8.93 passed by Assistant Engineer, Eastern Railway, Renukoot on 9.9.93 when he came to know that he had been removed from service, from the date of passing of the order. The finding annexed to the order showed that the applicant was charged with unauthorised absence from 23.10.85 to 11.4.87 and thereafter till passing of the punishment order i.e. 7.8.93. The applicant claims that no charge-sheet was served on him. He had no knowledge of the enquiry till he received order of

punishment. He claims that he had been given no opportunity to defend himself. He claims that he preferred appeal dated 21.9.93 in which he had stated the correct facts and made request for setting aside the order of removal. He claims to have annexed copies of medical certificate, fitness certificate and other certificates along with his appeal. He claims that the order of punishment was passed without any regular enquiry. The appeal has still not been decided.

3. We have heard Sri S. Dwivedi for applicant and Sri A.V. Srivastava for respondents.

4. Counsel for applicant has drawn attention to the decision of the disciplinary authority annexed to order dated 7.8.93 in which the disciplinary authority has mentioned that all efforts to serve SF-V on the delinquent had failed and, therefore, it was not reasonably practical to hold the enquiry in manner as provided in D.A. rules and, therefore, an ex-parte decision has been taken to remove the applicant from service. The respondents have <sup>brought</sup> the original file of enquiry against the applicant which has been seen by us. The file contains standard form of charge-sheet in form No.5 in which the applicant was charged with absenting himself unauthorisedly since 23.10.85 till the date of issuance of charge-sheet dated 11.4.87. The charge-sheet was displayed on the notice board of Permanent Way Inspector, Renukoot and at the residence of the applicant which was Railway Qr. No.194/C Type-I in the presence of witnesses. However, thereafter without following the procedure laid down in Rule 9 of D.A. Rules, the disciplinary authority passed the order under Rule 14(ii) of D.A.R. 1968 concluding that it was not reasonably practicable to hold an enquiry in the manner provided in the rules. This conclusion of disciplinary authority is faulty on account of the fact that Rule 9(23) of D.A.R. 1968 provides for holding an enquiry ex-parte.

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This has clearly not been done in the case before us.

5. We, therefore, set aside the order of punishment dated 7.8.93. The applicant shall be reinstated in service in case he has not crossed the age of superannuation. The respondents may hold enquiry against the applicant as per rules from the stage of service of charge-sheet. The applicant shall remain present in the Hqrs. of the disciplinary authority till the enquiry <sup>is</sup> concluded against him. This is necessary in view of the past behaviour of the applicant who was not available even for the service of the charge-sheet. The respondents shall decide the entitlement of the applicant after the conclusion of the enquiry as per rules.

There shall be no order as to costs.

  
J.M.

  
A.M.

Asthana/  
4.4.02