

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 05th day of January, 2004.

Original Application No. 916 of 1995.

Hon'ble Mr. Justice S.R. Singh, Vice-Chairman.

Hon'ble Mr. D.R. Tiwari, Member- A.

1. Smt. Chameli Devi wife of Late Prabhu Nath

2. Ajay Kumar S/o Late Prabhu Nath

Both resident of Vill. Kareha, Post- Karchhana,  
Distt. Allahabad.

3. Smt. Banno Devi wife of Sri Ram Raj, Daughter of  
Late Prabhunath, R/o Vill. Mawaiya, Naini, Allahabad.

4. Sanjay Kumar S/o Late Prabhu Nath,  
R/o Kareha, Post- Karchhana, Distt. Allahabad.

5. Smt. Manju Devi wife of Sri Madan, Daughter of  
Late Prabhu Nath, R/o Vill. Dewari, Bheerpur, Allahabad.

6. Km. Minni daughter of Late Prabhu Nath  
a/a 15 years (Minor).

7. Raj Kumar S/o Late Prabhu Nath  
a/a 13 years (Minor).

8. Km. Savita daughter of Late Prabhu Nath  
a/a 11 years (Minor).

.....All minors represented through their  
mother and legal guardian Smt. Chameli Devi,  
wife of Late Prabhu Nath, R/o Vill. Kareha,  
Post. Karchhana, Distt. Allahabad.

.....Applicants

Counsel for the applicants :- Sri Sudama Ram  
Sri Anand Kumar  
Sri C.P. Gupta

V E R S U S

1. Union of India through the General Manager,  
Northern Railway, Baroda House, New Delhi.

2. The Divisional Railway Manager, Northern Railway,  
Allahabad.

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3. The Senior Divisional Electrical Engineer (G),  
Northern Railway, D.R.M Office, Allahabad.
4. The Assistant Electrical Engineer (G),  
Northern Railway, Allahabad.

.....Respondents

Counsel for the respondents :- Sri Prashant Mathur

O R D E R

By Hon'ble Mr. Justice S.R. Singh, V.C.

The original applicant Late Prabhu Nath was employed under the respondents as Helper Khalasi. It appears that a charge-memo (SF-5) was sent to him for his alleged unauthorised absence from duty since 25.05.1992. The charge-memo was recieved back un-served. Thereafter it was published in local news paper. The applicant submitted no reply to the charge-memo. The enquiry officer submitted the inquiry report holding the applicant guilty of the charge levelled against him. The disciplinary authority by its order dated 03.10.1994 (Annexure- 1) imposed the penalty of removal from service. The applicant then filed an appeal which came to be dismissed by order dated 28.12.1994 (Annexure- 2). Aggrieved the applicant has instituted the present original application.

2. It has been submitted by the learned counsel appearing for the applicant that the applicant was not afforded reasonable opportunity of defending himself at the <sup>stage</sup> ~~time~~ of enquiry ~~stage itself~~ nor was <sup>he</sup> ~~given~~ opportunity of show<sup>ing</sup> ~~cause~~ by the disciplinary authority. The submission made by the learned counsel is that the charge-sheet was never served to the applicant and service through news paper was not <sup>a</sup> ~~the~~ valid service. The charge-memo, it has been submitted by the counsel, was not sent to the official quarter allotted to the applicant and it was rather sent to his in-laws house. The learned counsel for the applicant has further submitted that the points raised by the applicant in his memo of appeal

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were not properly considered and the Appellate Authority mechanically dismissed the appeal without proper self direction to the points raised by the applicant in the memo of appeal.

3. Sri Prashant Mathur, learned counsel for the respondents submits that the whereabouts of the applicant were not known and he had been un-authorisedly absent from duty for a very long time and in the circumstances, therefore, submitted the learned counsel for the respondents, the punishment of removal from service could be said to be shockingly disproportionate to the mis-conduct.

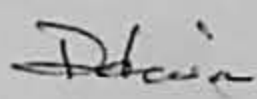
4. The applicant died during the pendency of the O.A and his legal representatives namely the wife and sons have been brought on record vide order dated 01.07.2003. In Union of India and ors. Vs. Deena Nath Santha Kumar and others 1999 (1) SLJ (SC) 180 it has been held that removal from service after exparte proceeding, without proper service of charge-sheet and without show-cause notice would be illegal. The original applicant in his memo of appeal had taken a specific ground that he was admitted to Railway Hospital for treatment from 24.07.1993 to 18.08.1993 for which G-92 was issued on 05.08.1992 by C.E.F/PS/ALD and the controlling Senior Subordinate was very much aware of the applicant's sickness but this aspect has not been taken into consideration by the Appellate Authority nor has the Appellate Authority gone in-to the question as to whether the exparte enquiry in the fact situation of the case was legally justified. All that the Appellate Authority has said is that he did not agree with the employees submission for the reasons that he had been absent from duty for 2 1/2 years. The conclusion arrived at by the Appellate Authority that the employee was 'bluffing with the administration and was un-authorisedly

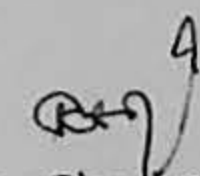
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absent' is un-sustainable having been arrived at without self direction to the pleas taken by the applicant in his memo of appeal and the circumstances in which the applicant could not attend to his duties. The disciplinary authority was not justified in holding that the applicant was given all chances to attend the enquiry by sending registered letter to his known address and by giving advertisement in the local news papers. Having regard to limited scope of the judicial review, we are of the view that the matter needs to be reconsidered by the Appellate Authority.

5. In the facts and circumstances, therefore, the O.A is allowed in part. The Appellate order dated 23.12.1994 is set aside. The Appellate Authority is directed to decide the appeal afresh in accordance with law and in the light of observations made in this judgment within a period of three months from the date of communication of this order.

No costs.

  
Member- A.

  
Vice-Chairman.

/Anand/