

Central Administrative Tribunal

Allahabad Bench, Allahabad.

Dated: Allahabad, This The 31st Day of July, 2000.

CORAM:

Hon'ble Mr. Rafiq Uddin, J.M.

Hon'ble Mr. M.P. Singh, A.M.

Original Applicant No. 1553 of 1999.

M.Z.A.B. Khan,

S/o M.S.A.B. Khan,

R/o B-291 Krishna Nagar,

Izatnagar- Bareilly..

. . . . Applicant.

Counsel for the Applicant: Sri T.S. Pandey, Adv.

Versus

1. Union of India through its Ex-officio
Secretary and Chairman Railway Board,
Rail Bhawan, New Delhi.
2. General Manager,
North Eastern Railway,
Gorakhpur.
3. Divisional Railway Manager (Personnel),
North Eastern Railway, Izatnagar, Bareilly.
4. Divisional Mechanical Engineer,
Diesel Shed, N.E. Railway,
Izatnagar, Bareilly.

. . . . Respondents.

Counsel for the Respondents: Sri A.K. Gaur, Adv.

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ORDER (Oral)

(By Hon'ble Mr. M.P. Singh, A.M.)

The applicant is aggrieved by orders dated 12.3.1991 and 03.09.1999 passed by respondents.

2. Brief facts of the case are that the applicant was appointed as Khalasi in N.E. Railway, Bareilly. He fell sick on 17.04.1990 and got himself treated at Meerut, Lucknow, Kanpur and Sanjay Gandhi Post Graduate Institute of Medical Sciences. Ultimately the applicant continued his treatment of a reputed Ayurvedacharya Sri Hari Shankar Mishra, whose medicine could effect the applicant disease after two years. The Medical Fitness Certificate was issued by Sri Hari Shankar Mishra to resume duty on 23.6.1993.

3. The father of the applicant vide his letter dated 25.6.1990 did inform the respondent No. 4 that the applicant was under treatment. It appears that the applicant was issued a charge-sheet dated 17.8.1990. After receiving the letters dated 19.11.1990 and 12.12.1990 for attending the inquiry, the father of the applicant informed the respondent No. 4 vide his letters dated 26.11.1990 and 12.12.1990 respectively that the applicant was ailing and was, therefore, unable to attend Office. The respondents passed the order dated 12.3.1991 imposing the penalty on the applicant of removal from service. This order was passed without affording the opportunity of being heard to the applicant in gross violation of principles of natural justice. On 26.3.1999, the Divisional Railway Manager(P) forwarded an inquiry report which was held ex-parte inasmuch as the applicant was laying ill and could not attend the inquiry. The application sent by the applicant for taking him back to the work was treated as an appeal and was rejected on the ground that it was time barred.

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4. Aggrieved by this, the applicant filed an O.A.No. 693/94 in this Tribunal. The Tribunal disposed of the O.A. with a direction to the applicant to file a memorandum of appeal within a period of four weeks from the date of receipt of the judgement and allowed the respondent authorities to decide the said appeal in three months from the date of receipt of the said memorandum of appeal. The applicant filed his appeal on 15.6.1999 which was rejected by respondents No. 4 vide letter dated 03.9.1999. The case of the applicant is that inquiry report was received by his brother as he was getting treatment at places away from his residence. Since the actual service of charge memorandum and inquiry report was not furnished to the applicant as per rule 12 of R(DA) Rule 1968, hence imposition of final penalty violates the constitutional provisions and Railway Board's directive in which it is emphasised that inquiry under D&A rules can be held ex-parte only if after delivery of the charge memorandum. Accordingly, the order of removal dated 12.3.1991 and consequently the rejection of appeal dated 03.9.1999 deserve to be struck down.

5. According to the applicant the respondent No. 4 while disposing of the appeal relied upon the letters dated 19.11.1990 and 12.12.1990. On the basis of these letters, he concluded that the reasonable opportunity was given to the applicant but failed to consider ~~it~~, the replies to these letters which clearly speak that the applicant was not in a condition to attend the inquiry. The respondent No. 4 did not consider the irregularities that inquiry report was sent to the applicant on 26.3.1991 while the applicant was removed from service on 12.3.1991. The applicant

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deemed to have been removed from service w.e.f. 12.3.1991 and there is no meaning to send any inquiry report on 26.3.1991. The applicant has also stated that in a judgment rendered by the apex court in Ramjan's case it has categorically been laid down that unless the inquiry report has been served upon the person, no major penalty of removal from service can be passed. After the appeal of the applicant has been rejected by respondents No. 4, he has filed this Ø.A. seeking directions to quash the removal order dated 12.3.1991 and order of rejection of appeal dated 03.9.1999 and has sought further direction to the respondents to restore the services of the applicant from retrospective effect with all consequential benefits available to him on the post of Khalasi.

6. The respondents have contested the case and have stated that the applicant was removed from service on 03.5.1991. He gave an application for taking him back on duty vide letter dated 23.7.1993 and also enclosed documents relating to his sickness for the period from 11.2.1991 to 23.6.1993. According to them most of the certificates were given to them after the issue of notice of imposition of penalty. They have stated that although the applicant claimed that his condition was serious but it was surprising that still he was not hospitalised by the Railway Doctors. Moreover, the applicant could go to various places for treatment like Railway Hospital which were quite far away but, he could not come to Diesel Shed and apply for leave. The applicant vide his letter dated 26.11.1990 and para 2.2 of his revision petition dated 18.10.1993 had accepted that the charge-sheet dated 26.8.1990 had been received by him. The information regarding

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nomination of Inquiry Officer was sent to the applicant by registered post. Again letter from Inquiry Officer dated 19.11.1990 was sent to the applicant, which has been accepted by the applicant vide letter dated 26.11.1990 and his revision petition dated 18.10.1993. The inquiry report was sent to the applicant on 26.3.1991. He was given 15 days time for furnishing a written reply. No reply was sent by the applicant. After issue of major penalty charge-sheet first letter dated 23.7.1993 was received in the office of respondents from the applicant i.e. after a lapse of around three years. The applicant submitted his resignation on 18.3.1991 wherein he had stated that he was unable to attend his duty due to unavoidable circumstances. From the documents enclosed vide applicant's letter dated 23.7.1993, it is clear that at the time when the inquiry was in progress, the applicant was not even hospitalised anywhere during the period 27.8.1990 to 03.5.1991, He was treated as out door patient in N.E.Railway Hospital on 11.4.1991. A memorandum of appeal dated 15.6.1999 was received in the office of respondents. After indepth study of the applicant's appeal and the entire case, the applicant was given a personal hearing on 20.7.1999. The applicant was given full opportunity to explain his case for around two hours. Only after careful scrutiny of the appeal and whole records available on file, the decision on the appeal was taken by the Appellate Authority vide letter dated 03.9.1999 rejecting his appeal. Applicant has failed to make out any ground for interference of the Tribunal.

Hence O.A. deserves to be dismissed.

7. Heard, the learned counsel for the rival contesting parties at length and perused the record.

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8. It is seen from the records that charge-sheet dated 27.8.1990 was served on the applicant for unauthorised absence from duty. He was also informed vide letters dated 19.11.1990 and 12.12.1990 to participate in the inquiry. On both the occasions the father of the applicant vide his letters dated 26.11.1990 and 17.2.1990 respectively requested the respondents to postpone the said inquiry as his son was seriously ill and he was not in a position to participate in the inquiry. It was mentioned in the letter dated 26.11.1990 that the father of the applicant had personally met the respondents and informed them about the illness of his son. Despite the illness of the applicant, further time was not given to the applicant to participate in the inquiry. *Inquiry* officer proceeded to conduct the inquiry ex parte. Based on the findings of inquiry officer, the disciplinary authority passed the order of removal from service on 12.3.1991.

9. The respondents have also stated that inquiry report was sent to applicant on 26.3.1991 and he was removed from service on 03.5.1991 but the documents placed before us, we find that the order of removal of service has been passed by the disciplinary authority on 12.3.1991 itself i.e. even before sending a copy of the inquiry report to the applicant and without affording him an opportunity to make representation against the findings of the inquiry ^{officer.} report. The respondents have not filed any document in support of their contention that the order of removal from service was passed on 03.5.1991. The Hon'ble Supreme Court in its judgment dated 20.11.1990 in the case of U.U.I. Vs. Md. Ramjan Khan 1990(2) scale 1094 (J.T. 1990(4) S.C. 456) has held that wherever there has been an inquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent

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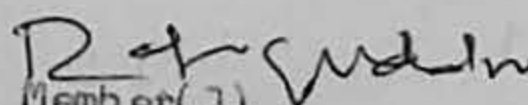
is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and render the final order liable to challenge. In the present case the law laid down by the apex court in Ramjan's case has not been followed before imposing the penalty of removal from service on the applicant. According to ~~the~~ ^{their} own admission in para 6 of ~~their~~ reply, the applicant was under treatment of the N.E. Railway Hospital during the period from February ^{to} April 1991. Even the request for postponing the inquiry made on behalf of the applicant on medical ground was not accepted.. The ex-parte inquiry was concluded hurriedly. The order of removal was passed without affording an opportunity to the applicant to make defence/ representation against the removal order. The whole process was completed ^{about} ~~in~~ 22 months. This indicates that the action taken by the respondents was arbitrary and malafide and was with the sole aim of harassing the applicant. In view of the foregoing, it is quite obvious that the applicant was not given an opportunity to participate in the inquiry and to make defence against the article of charges mentioned in the charge-sheet. The inquiry conducted by the respondents was vitiated and was held ~~against~~ the principles of natural justice. The orders passed by the respondents dated 12.3.1991 and 03.9.1999, are therefore, liable to be quashed and set aside.

10. In view of the above discussion, the orders dated 12.3.1991 and 03.9.1999 are quashed and set aside. However, we make it clear that the respondents are at liberty to hold the inquiry again from the stage of issuing charge-sheet to the applicant.

11. M.A.No. 1506/2000 has no merit and is therefore, rejected and stands disposed of alongwith the U.A.

There shall be no order as to costs.


Member (A)


Member (J)

Brijesh/