

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 28th day of March 2001.

Original Application no. 716 of 1999.

Hon'ble Mr. S.K.I. Naqvi, Member-J

Hon'ble Maj Gen K.K. Srivastava, Member-A.

Bharat Ram, S/o Chet Ram,
R/o Mohalla Jagrautha,
Out side Mathura Gate,
Bharatpur - Rajasthan.

... Applicant

C/A Sri R.K. Mishra

Versus

1. The Union of India, through the Secretary,
Ministry of Railways, Govt. of India,
NEW DELHI.
2. The Divisional Manager (G),
Central Railways,
JHANSI.
3. The Divisional Commercial Manager,
Central Railway,
JHANSI.
4. The Divisional Rail Manager (P),
Central Railways,
JHANSI.

... Respondents

C/Rs Sri D.C. Saxena

Saxena
...2/-

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O R D E R (Oral)

Hon'ble Mr. S.K.I. Naqvi, Member-J

As per applicant's case, while posted as Assistant Booking Clerk in Jhansi Division, he was subjected to disciplinary proceedings which resulted into his removal from service vide order dated 8.4.96 against which he preferred an appeal, but the same has also been dismissed on 6.6.98, upholding the ^{his order} punishment order, ^{his order} against which the applicant has come up seeking relief mainly on the ground that the applicant was charged for and held guilty for having absented from duty unauthorisedly and without information to the authorities, but the same happened because of his serious illness and having remained under treatment for mental disease and for that he could not even attend the disciplinary proceedings and, therefore, the punishment order has been passed ex parte without giving him an opportunity of hearing.

2. Learned counsel for the respondents took us through the pleadings as have come up from the side of respondents to mention that due opportunity was given to the applicant to participate ⁱⁿ with the proceedings but he deliberately absented himself and, therefore, these proceedings cannot be said to have taken place without giving any opportunity to the applicant. It has also been pointed out that against the appellate order there is statutory provision for review, but the

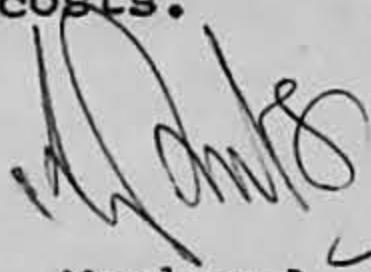
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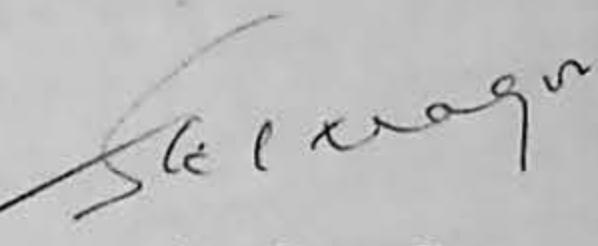
applicant has not availed this remedy and has straight away approached the Tribunal.

3. For the above, we do not find any good ^{the} ground to interfere with the findings and orders passed by disciplinary authority and the appellate authority. The OA is dismissed accordingly.

4. No order as to costs.



Member-A



Member-J

/ pc/

IN THE HON'BLE HIGH COURT OF UTTARAKHAND

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CIVIL MISC. WRIT PETITION NO. 34172C OF 2001
(Under Article 226 of the Constitution of India)

(District: Jhansi)

BHARAT RAM
Son of Sri Chet Ram
R/o Mohalla Jagrautha,
out side Mathura gate Bharatpur
Rajasthan

.....Petitioner.

Versus

1. Central Administrative Tribunal,
Addl. Bench, Allahabad.
2. Union of India through
Secretary, Ministry of Railways,
Government of India, New Delhi.
3. The Divisional Manager (C)
Central Railway, Jhansi.
4. The Divisional Commercial Manager,
Central Railways, Jhansi.
5. The Divisional Railway Manager (P)
Central Railways, Jhansi.

.....Respondents.

TO,

THE HON'BLE THE CHIEF JUSTICE AND HIS OTHER COMPANION
JUDGES OF THE AFORESAID COURT.

THE HUMBLE PETITION ON BEHALF OF THE PETITIONER MOST
RESPECTFULLY SHOWETH AS UNDER:

Reserved

Court No. - 3

Case :- WRIT - A No. - 34726 of 2001

Petitioner :- Bharat Ram

Respondent :- C.A.T. Allahabad & Others

Petitioner Counsel :- Pankaj Misrha, M. Kushwaha, P.K. Kashyap, P.K. Kushwaha

Respondent Counsel :- S.C., Tarun Verma

Hon'ble Laxmi Kanta Mohapatra, J.

Hon'ble Mrs. Sunita Agarwal, J.

(Delivered by Hon. L.K.Mohapatra, J.)

The petitioner having lost before the Central Administrative Tribunal, Allahabad Bench, Allahabad in Original Application No. 716 of 1999 filed by him has preferred this writ petition against the order of the Tribunal.

The case of the petitioner is that while working as Senior Assistant Booking Clerk at Mathura Junction, Mathura, he took three days casual leave on 13.05.1994 with permission to leave station and went to his village. While on leave he developed mental disorder, as a result of which he could not resume work. His wife wrote a letter to the department for extension of his leave on 16.05.1994. He remained under treatment from 15.5.1994 to 08.08.1995. However, without granting leave on medical grounds, the department initiated disciplinary proceeding against him and a copy of the charge sheet was sent from the office of Divisional Railway Manager on 25.08.1994 on the allegation that he remained unauthorisedly absent from duty from 16.05.1994 till issuance of the said letter accompanied by the charge sheet. The wife of the petitioner received the copy, but no further steps could be taken as she had intimated to all concerned on 16.05.1995

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that the petitioner was unable to resume duty because of his illness. An Enquiry Officer appointed and he issued letter on 10.07.1995 fixing 21.07.1995 as the first date to conduct the inquiry. During the said period the petitioner was under treatment and could not attend the inquiry. On 09.08.1995 the petitioner was declared fit to resume duty and accordingly he submitted his joining letter on the same day. It is alleged by the petitioner that he performed his duty from 09.08.1995 to 12.08.1995 and on 11.8.1995, when the petitioner was on duty a letter was served on him intimating that the inquiry had been fixed on 28.08.1995. The petitioner again went on casual leave for three days from 13.08.1995 to 16.08.1995 for further treatment and could not attend inquiry on 28.08.1995. Intimation of his illness was given to the Enquiry Officer. Thereafter, petitioner again had to undergo treatment and ultimately the inquiry was conducted *ex parte* and report was submitted on 06.10.1995 finding the petitioner guilty of charge of unauthorised absence. On the basis of the said enquiry report and without serving any notice to the show cause, the major penalty of removal from service was passed by the disciplinary authority on 08.04.1996. The appeal filed by the petitioner against the said order was also rejected on 15.06.1999. Finding no other way the petitioner approached Central Administrative Tribunal, Allahabad Bench, Allahabad challenging the order of passed by the disciplinary authority. The Tribunal in the impugned order dated 28.03.2001 dismissed the original application which has given rise to the present writ petition.

Sri P.K.Kashyap, learned counsel appearing for the

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petitioner assailed the impugned order on the ground that the Tribunal dismissed the original application in a cryptic order without looking into the records of disciplinary proceeding or answering the issues raised by the petitioner. According to the learned counsel, the petitioner was not given an opportunity of hearing by the Enquiry Officer and the inquiry was conducted *ex parte*. It was further submitted that though the law requires service of notice to show cause against the proposed punishment, no such notice was issued to the petitioner and the explanation submitted by the petitioner was not considered by the disciplinary authority and the order of punishment was passed without assigning any reason. The Appellate Authority also did not apply its mind and mechanically dismissed the appeal.

Sri Tarun Verma, learned counsel appearing for the respondent submitted that in spite of the two notices the petitioner did not appear before the Enquiry Officer and this fact is admitted in the writ petition. Therefore, the petitioner now cannot make a grievance that he was not given an opportunity of hearing by the Enquiry Officer. According to the learned counsel for the respondent, unauthorised absence having been admitted by the petitioner there was no requirement of issuance of notice to show cause and the disciplinary authority could impose the punishment on the basis of enquiry report finding the petitioner guilty of charge of unauthorised absence. It was further contended by learned counsel for the respondent that the order passed by the Appellate Authority clearly indicates application of the mind to the fact and the allegation of non application of mind by the

Appellate Authority is without any basis.

From the averments made in the writ petition, it appears that the petitioner had initially taken casual leave from 13.08.1995 to 16.08.1995 but he did not resume duty thereafter till 09.08.1995. During this period of absence the departmental proceeding was initiated. Though the petitioner has assigned the reasons for his absence during the said period, the fact that he was absent is not in dispute. In the departmental proceeding two notices were issued to the petitioner to appear before the Enquiry Officer on two dates. It is admitted in the writ petition that the petitioner did not appear on those two dates but stand is taken by the petitioner that because of his illness he could not appear. Due to non appearance of the petitioner on the said two dates the Enquiry Officer conducted the inquiry *ex parte* and submitted a report before the disciplinary authority finding the petitioner guilty of unauthorised absence. After receipt of the copy of the enquiry report the petitioner appears to have submitted a reply but the order of punishment passed by the disciplinary authority clearly shows that the said reply had not been considered. Nothing has been produced before the Court to show that the petitioner was served a notice to show cause in relation to the proposed punishment by the disciplinary authority. Had the petitioner appeared before the Enquiry Officer, he could have proved the reason for his unauthorised absence. The petitioner having not appeared before the Enquiry Officer it was the duty of the disciplinary authority to at least to look into his reply which he submitted before the order of punishment was passed. Learned counsel for the

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respondent submitted Xerox copy of the record of the disciplinary proceeding for perusal of the Court.

From the record produced, we find that the explanation/reply submitted by the petitioner was forwarded to the disciplinary authority on 29.03.1996 i.e., much before the order of punishment was passed. Following is the office notice in this regard.

"As per orders at (page 31). Kindly peruse the explanation of Shri Bharat Ram ABC MTJ at (Page 39-40).

This explanation was received after the case was put up to you."

The disciplinary authority after receipt of the record made the following observation.

" I have already finalized the case on 28.03.96. It may be put up to higher officer than me."

Thereafter the office put up a note in the following manner:

"The orders has not yet been issued hence the case cannot be put up to higher authority be.

DCM is requested to peruse the representation at P-40 to 32 so that orders at page 31 may be issued."

The departmental authority on perusal of the office note as stated above made following observation:

" I have already recorded the order. I will not review my own decision"

It is clear from the office note that even though the disciplinary authority had passed the orders on 28.03.1996, it

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had not been communicated to the petitioner and therefore, he could have considered the explanation submitted by the petitioner and pass a fresh order. Instead, the disciplinary authority declined to review the order dated 28.03.1996 even though it was brought to his notice that the explanation of the petitioner was available on record to be considered. Admittedly, the order of punishment was communicated to the petitioner on 08.04.1996 much after receipt of copy of the explanation dated 29.3.1996. Therefore, we are unable to accept the submissions of learned counsel appearing for the respondent that there was no necessity of issuing notice to the petitioner to show cause against the proposed punishment, the unauthorised absence having been admitted.

Apart from the above, we find from the order of punishment that the same is in a printed format. It is not understood as to how the order of punishment can be passed by the disciplinary authority in a printed format by only inserting the name of the delinquent and dates. This clearly shows non application of mind on the part of the disciplinary authority while passing order of punishment without referring to defence taken by the delinquent. The Court while condemning such practice expects that in future the disciplinary authority while passing the order of punishment should refrain from using printed format. The Appellate Authority has not assigned acceptable reasons for rejecting the appeal. Unfortunately, the Tribunal also while dismissing the original application neither looked into the records of the departmental proceeding nor answered the above issues raised by the petitioner.

We therefore, find that though the petitioner has been found guilty of the charge of unauthorised absence by the Enquiry Officer in a *ex parte* or report, the settled procedure has not been followed by the disciplinary authority as no notice to show cause against the proposed punishment was issued to the petitioner and the disciplinary authority also did not consider the explanation submitted by the petitioner before passing the order of punishment.

For the reasons stated above, we set aside the order of punishment of removal of his service passed by the disciplinary authority as well as order passed by the Appellate Authority rejecting the appeal and the impugned order of the Tribunal dismissing the original application.

The writ petition is allowed.

It appears that the petitioner attained the age of superannuation during the pendency of the writ petition. Therefore, while allowing the writ petition, we further direct that the petitioner shall be deemed to be in continuous service till he attained the age of superannuation and his pension and other retiral benefits shall be calculated accordingly. However, he shall not be entitled to arrears of salary from the date of removal till the date he would not have attained the age of superannuation.

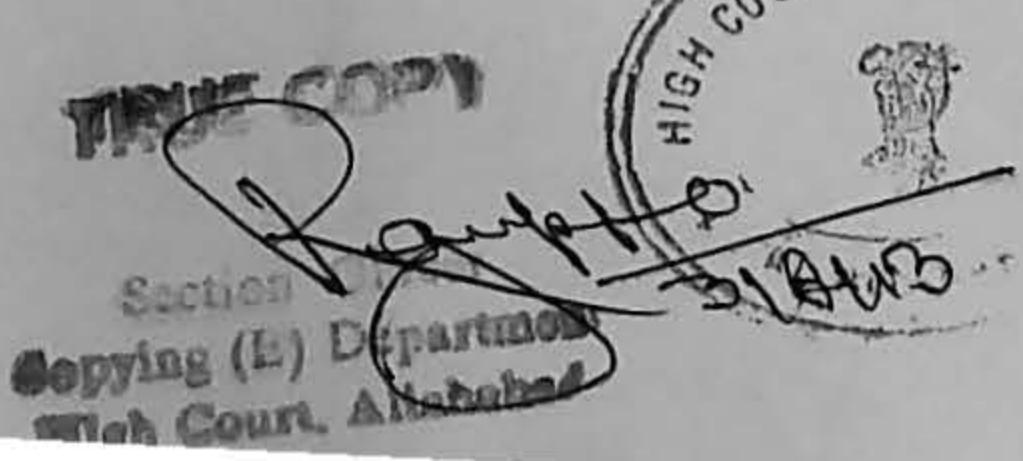
Date: December 18, 2012

PKB

Smt. Laxmi Kanta Mohapatra, J.
(Justice Laxmi Kanta Mohapatra)

Smt. Mrs. Sunita Agarwal, J.
(Justice Mrs. Sunita Agarwal)

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High Court, Allahabad

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