

Open Court

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD.

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ORIGINAL APPLICATION NO. 1259 of 1999.

this the 11th day of April 2001.

HON'BLE MR. RAFIQ UDDIN, MEMBER (J)

HON'BLE MR. S. BISWAS, MEMBER (A)

Hari, aged about 40 years, S/o late Sri Hari Charan, R/o
Nandanpura, Lehargird Path Mohalla, Jhansi.

Applicant.

By Advocate : Sri R. Verma.

Versus.

Union of India through the General Manager, Central Railway,
Chhatrapati Shivaji Terminus, Mumbai.

2. The Senior Divisional Mechanical Engineer (C&W),
Central Railway, Jhansi.

Respondents.

By Advocate : Sri D.C. Saxena.

O R D E R (ORAL)

Mr. S. BISWAS, MEMBER (A)

The applicant has sought the following reliefs :

"(1) to issue a writ, order or direction in the nature of mandamus directing the respondent nos. 1 & 2 to take the petitioner back on duty as Helper Khalasi with effect from the date when the petitioner reported for duty alongwith medical certificate i.e. with effect from 8.2.1995 alongwith arrears of pay and other benefits attached thereto;

OR

to issue a writ, order or direction in the nature of certiorari quashing the entire departmental proceedings held ex-parte including the punishment order, if any, and to provide the reasonable opportunity of being heard, issuing chargesheet to the petitioner and holding fulfilled departmental enquiry before any action is taken."

S. R. 2. The brief facts of the case are that while working as Helper Khalasi in regular and substantive capacity and was posted under the control of the respondent no.2 in

Re applicant

Faridabad in Jhansi Division, ~~he~~ was removed against ex-parte order dated 8.2.95. It is stated that the applicant was under medical treatment from 20.2.92 to 26.1.95 of Dr. Ajit Kumar, Mental disease Specialist. It is further stated that during the said period, no correspondence was received by the applicant and his wife had submitted an application stating therein that her husband was confined due to his mental disease. The copy of the medical report to that effect has been annexed and ~~also~~ a copy of the representation made by the wife of the applicant has also been annexed. On 21.1.95, the applicant was examined by the Doctor and was declared to be fit to resume his duties. When he went to join his duties, he was not permitted to join his duties and was informed ~~and~~ that he was removed from service.

3. The applicant's case is that during his illness *on* un-authorised ^{and} illegal disciplinary process was initiated against him without giving any opportunity, nor any correspondence or intimation regarding the disciplinary case was received by him.

4. The learned counsel for the respondents has refuted the charges stating that the applicant had himself absented from duty un-authorisidely and accordingly disciplinary action under Rule 14 of the Railway Servants (Discipline & Appeal) Rules 1968 was initiated on 15.9.92. Several attempts were made to serve the charge memo and notice for attending the enquiry, but the same was returned with the observation of the Postal Department that the applicant was not available. These notices were sent through the registered cover. Ultimately the case was decided ex-parte and the order dated 15.9.92 was pasted on 13.1.93 in the office. Under these circumstances, it is stated that the applicant has no case either legally or factually to agitate. It is also brought to our notice that the applicant did not exhaust the departmental remedy

before approaching this Tribunal.

5. We have heard the learned counsel for the parties and have also perused the pleadings on record.

6. The issue to be decided in this case is limited. The learned counsel for the applicant has repeatedly insisted that the service of the chargesheet and intimation of hearing are to be regulated under the decision of Hon'ble Supreme Court in the case of 32 1998 (2) SCC (L&S) 1837. We have gone through the observation given by the Hon'ble Supreme Court. The Hon'ble Supreme Court has laid down a detailed procedure regarding service of the charge memo and allied notice including the order of punishment. It is clearly mentioned in sub-rule 14 of the Indian Railway Servants (Discipline & Appeal) Rules 1968 and has clarified as under:-

"In case of unauthorised absence from duty/ headquarters or absconding, therefore, the Charge memorandum should normally be sent to the last known address of the Railway Servant. If that is returned undelivered, it should be sent to all the addresses available on records of the office. If such communication are also returned undelivered, recourse should be had to the provisions of sub-rule(ii) of Rule 14 of Railway Servants (Discipline & Appeal) Rules 1968. These guidelines should be kept in view of the matter of service of articles of charges upon the delinquent Railway servants in such cases and taking further action against them."

S. B. 7. The learned counsel for the respondents has also pointed-out that this O.A. is hit by time barred. But this is a case in which the applicant was removed from service on the ground of un-authorised absent from duty for about three years and we have also taken note of the fact that the respondents did not give any reply to the letter submitted by the wife of the applicant. We, therefore, ^{are} ~~conclude~~ ^{unable to} ~~not~~ to entertain the objection of the respondents that the present O.A. is barred by limitation. However, considering the material on record and the legal points raised, we are of the considered view that ends of justice would be met if

the applicant is given a further opportunity to defend the charges levelled against him in the chargesheet. We, therefore, set-aside the impugned order dated 8.2.95 and remand the case for de-novo enquiry in the disciplinary case as per rules. If the respondents fail to initiate the ^{fresh} enquiry proceedings within three months of receipt, the order of setting-aside the impugned order shall become absolute.

5. The O.A. stands disposed of as above, with no order as to costs.

S. B. S.
MEMBER (A)
GIRISH/-

R. S. S.
MEMBER (J)