

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 2~~nd~~ day of February, 2001

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.  
Hon'ble Mr. S. Dayal, Member- A.

Original Application No. 483 of 2000

Vinod Kumar Maisy S/o Sri P. Maisy  
R/o L- 16-F, Type- T, Railway Colony, Pilibhit.

.....Applicant.

Counsel for the applicant:- Sri T.S. Pandey.

V E R S U S

1. Union of India through the General Manager,  
Northern Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, N.E. Rly.  
Izzat Nagar Division, Bareilly.
3. Senior Divisional Engineer, North Eastern Rly.  
Pilibhit.

.....Respondents.

Counsel for the respondents:- Sri Lal Ji Sinha

O R D E R (oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

By this application under section 19 of the  
Central Administrative Tribunal's Act, 1985, applicant  
has questioned the legality of the order dt. 08.09.99  
by which applicant has been removed from the service on

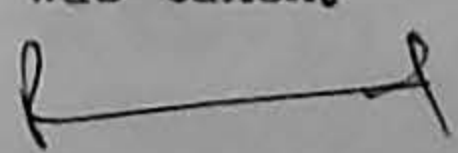


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conclusion of disciplinary proceedings and order dt. 14.01.00 by which order of disciplinary authority has been confirmed by the Appellate authority and order dt. 24.04.00 by which revision application of the applicant has been dismissed.

2. The facts in brief giving rise to this application are that disciplinary proceedings were initiated against the applicant for unauthorised absence for period of 28.07.98 onwards. Memo of charge could not be served on the applicant as stated in the order dt. 08.09.99 passed by disciplinary authority. All possible means were adopted but the applicant did not appear before the Enquiry Officer. Consequently the proceedings were held *ex parte*. Enquiry Officer submitted his report. Disciplinary authority agreed with the report and passed the order of removal. The order of removal has been confirmed in the appeal and revision. Learned counsel for the applicant has submitted that on 19.09.99 applicant appeared and requested for supplying a copy of memo of charge and report of the enquiry officer but relevant papers were not given to him.

3. We have perused the memo of appeal which has been filed as annexure- 24. However, there is no mention in memo of appeal that applicant made any such request for supplying the papers. The learned counsel for the applicant then submitted that the witnesses who were examined on the question of service of the memo of charge, they had filed ~~an~~ affidavit denying that in their presence memo was not tendered for acceptance. This submission also can not be accepted as in memo of appeal no such ground was taken.

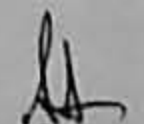





4. Respondents have filed Suppl. Counter affidavit and mentioned that both witnesses have alleged that they were forced to give the affidavit and they <sup>had</sup> ~~were~~ not <sup>voluntarily</sup> denied. Learned counsel for the applicant has also placed before us some telegrams and private doctor's medical certificates, showing ailment of his son. However, it is not for this Tribunal to examine the papers for the first time. It was for him to appear before Enquiry Officer or other departmental authority at the time of inquiry and file all the documents which he needed in defence.

5. We do not find any legal ground calling for interference in the order. Learned counsel for the applicant placed reliance on the judgment of Mumbai Bench of This Tribunal in Leelawathi K. Manjeshwar Vs. U.O.I. & Ors. 2000 (3) A.T.J Pg. 650 wherein the applicant over stayed after expiry of the leave and she admitted her absence. But the court found that the order of punishment could not be passed only on the basis of admission. The court found that admission was not about mis-conduct. Admission was with regard to the fact that she could not discharged duties, but <sup>along with</sup> ~~a~~ ~~coupled~~ with the submission <sup>the fact was that</sup> ~~that~~ she was on medical leave and medical certificate was duly submitted by her. The facts of the present case are totally different. In the above case the delinquent co-operated in the enquiry and filed defence but in the present case applicant has not chosen to appear. In the circumstances the judgment relied upon is not helpfull to the applicant. For the reasons stated above we do not find any merit in the case and is dismissed accordingly.

There will be no order as to costs.

  
Member- A

  
Vice-Chairman.