

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

Original Application No.725 of 2000

Allahabad, this the 11th day of August, 2009

Hon'ble Mr. Ashok S. Karamadi, Member-J
Hon'ble Mr. D.C. Lakha, Member-A

Nasim Khan, aged about 35 years, S/o Late Shri Banne Khan, R/o 65/53, Malviya Nagar, Rajan Tola, Allahabad.

...Applicant.

By Advocate : Shri Rakesh Verma

V E R S U S

1. The Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Senior Divisional Operating Manager, Northern Railway, Allahabad.
3. The Divisional Operating Manager, Northern Railway, Allahabad.
4. The Assistant Operating Manager (M), Northern Railway, Allahabad.

...Respondents.

By Advocate : Shri P.N. Rai

O R D E R

By Hon'ble Mr. Ashok S. Karamadi, Member-J :

This OA is filed for setting aside the orders passed by the respondents dated 17.6.1999 (Annexure-A-I), 7.9.1999 (Annexure-A-II) and 12.10.1999 (Annexure-A-III).

2. The brief facts of the case are that the applicant was working in the respondents department, was charge sheeted for absence of duties from 16.7.1998 to 18.8.1998. For the same, the charge sheet was issued and

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inquiry was held against the applicant. The Inquiry Officer has submitted his report and in his report he held that the charges leveled against the applicant are proved, relying on the same, the disciplinary authority has passed the impugned order removing the applicant from services. Aggrieved by the same, the applicant preferred an appeal before the Appellate Authority, which was rejected. Against the same, the applicant filed a review; the same has also been rejected by the Reviewing Authority. Learned counsel for the applicant submitted that even though the disciplinary authority has taken into consideration the past conduct of the applicant while passing the impugned order, the earlier absence for the period should not have been taken into consideration by the respondents' authority while passing the order. He further submitted that the appellate authority has not taken into consideration even though the applicant has raised all the grievances against the disciplinary order. The appellate authority also not considered the ground of the applicant, hence this OA has been filed.

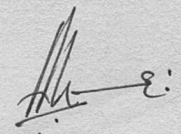
2. On notice, the respondents have filed the counter affidavit and submitted that the applicant was habitual of remaining on unauthorized absence without any intimation. The Enquiry Officer submitted his report after giving several opportunities of hearing to the applicant. The Disciplinary Authority has passed the order taking into account the report of the Enquiry Officer and accepted the same. Having regard to the fact

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that the applicant has given full opportunity to defend himself as well as for explanation, the order passed by the Disciplinary Authority as well as Appellate order does not call for any interference and they sought for dismissal of the OA.

3. We have heard learned counsel for the parties and perused the pleadings and the records. Learned counsel for the applicant submitted that Inquiry Officer and Appellate Authority have passed the order based on the previous conduct of the applicant regarding absence from duty. Learned counsel for the applicant further submitted that the applicant's wife was ill, therefore, he was unable to attend the inquiry proceeding.

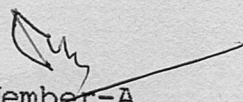
4. On perusal of the Enquiry Officer's report and Disciplinary Authority's order, the findings are recorded, even though the applicant is aggrieved by the same, he filed an appeal before the Appellate Authority in which he raised several grounds regarding the order passed by disciplinary authority, which is not in accordance with the law, as the grounds taken by the applicant were not considered by the Appellate Authority. It is seen from the appellate order that even though notices were issued to the applicant but he failed to give the reply for the same regarding his defence, that being so the applicant was given several opportunities and after considering the case of the applicant, the disciplinary authority has passed the order.



5. In our considered view the appellate authority order is not speaking, as no reasons have been given that being so it is not reasoned and speaking order and the same is not sustainable in the eyes of law. Accordingly, the same is liable to be quashed and set aside.

6. In view of foregoing reasons, this OA is partly allowed. The appellate order dated 7.9.1999 (Annexure-A-II) and the order passed by the Revisional authority dated 12.10.1999 (Annexure-A-III) are quashed and set aside, and the matter is remitted back to the Appellate Authority for reconsideration of the case of the applicant and to pass appropriate reasoned and speaking order in accordance with law, on taking into consideration of the grounds of the applicant, within a period of three months from the date of receipt of copy of this order. If the applicant is still aggrieved by the adverse order, if any, passed by the Appellate Authority, he is at liberty to agitate the same in accordance with law.

7. With the above direction, the OA is disposed of.
No costs.


Member-A

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Member-J

RKM/