

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

THIS the 19TH DAY OF AUGUST, 2002

Original Application No.43 of 2002

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MAJ.GEN.K.K.SRIVASTAVA, MEMBER(A)

Sudhanshu Vachaspati Tripathi
S/o Sri Vachaspati Tripathi
R/o VillageBariyarpur Bhaskar,
Post Saidabad, district Allahabad.

... Applicant

(By Adv: shri B.Tewari)

Versus

1. Union of India through
The General Manager, Central
Railway, mumbai.
2. Divisional Rail Manager,
Central Railway, Jabalpur.
3. Station Master, Central
Railway Madraha(UP)

... Respondents

(By Adv: Shri K.P.Singh)

O R D E R(Oral)

JUSTICE R.R.K.TRIVEDI,V.C.

By this OA u/s 19 of A.T.Act 1985 applicant has challenged the order dated 30.8.2001(Annexure 1) by which revision of the applicant has been dismissed by General Manager, Central Railway. The applicant has also prayed that the order dated 30.3.1984 be declared illegal, inoperative and unconstitutional and nonest in the eye of law by which applicant had been removed from service. Lastly, applicant has prayed for a direction to the respondents to pay him salary for the intervening period and all other benefits.

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The facts of the case are that applicant was serving as Porter. He was served with a memo of charge dated 31.3.1983(Annexure 2). The charge against the applicant was that he remained absent from duty without leave from 1.2.1981 to 12.3.1981 and [^] from 15.2.1982 to 31.3.1983. Applicant submitted his reply to this memo of charge on 6.12.1983. The case of the applicant is that thereafter he did not receive any notice of the proceeding. He was transferred from Madraha station to Ratona on 1.2.1984. The distance between the two stations is more than 500 kms. It is further stated that Enquiry Officer ^{IP issued} ~~received~~ a notice on 22.2.1984 by regd. post at the home address of the applicant, fixing 7.3.1984. This notice was served on the father of the applicant after the date fixed. Thus, the applicant had no notice and order of removal was passed against the applicant without giving him any opportunity of hearing. It is also submitted that the applicant was not served with the copy of the order. He approached the authorities but the copy of the order was not provided to him. He filed a revision/appeal on 12.2.1996 which was not decided. Aggrieved by the action of the respondents applicant approached this Tribunal by filing OA No.948/96. The aforesaid OA was disposed of finally on 16.5.2001 by the following order:

"Since the applicant admittedly [^] ~~exhaust~~ has a the departmental remedy available to him, we direct the General Manager, central Railway, Bombay to dispose of the revision filed by the applicant within a period of three months from the date of receipt

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of a copy of this order. The OA stands disposed of in terms of this order.

There shall be no order as to costs"

In pursuance of the aforesaid direction of this Tribunal, General Manager has disposed of his representation by order dated 30.8.2001(Annexure 10, aggrieved by which this OA has been filed.

The learned counsel for the applicant has submitted that the finding recorded by General Manager in the impugned order about the service of the removal order dated 30.3.1984 is contrary to record and suffer from manifest illegality. It is also submitted that though applicant was asserting from the very beginning that copy of the order has not been given to him, Respondents have failed to establish any evidence on record, that the copy of the order was served on the applicant in accordance with the rules applicable. It is also submitted that the order was passed behind the back of the applicant as he was not aware of the date fixed for further proceedings and the order is illegal and non being violative of the principles of natural justice and cannot be sustained.

Learned counsel for the respondents on the other hand, submitted that the applicant never demanded the copy of the order from the authorities. He approached the authorities after long time and thus acquiesed to the order and no interference is called for by this Tribunal. It is also submitted that the order passed by General Manager does not suffer from any error of law.

We have carefully considered the submissions made by the counsel for the parties. Shri K.P.Singh has also made available to us the photo copy of the disciplinary proceedings. In our opinion, the important legal question involved in this case is whether the copy of the order dated 30.3.1984/31.3.1984 was served on the applicant or not. The Revisional authority on the basis of the application of the applicant dated 12.7.1993 has drawn an inference that he has not mentioned the non receipt of the removal order dated 30.3.1984. However, this inference drawn by the revising authority does not appear to be correct. In his application dated 12.7.1993 applicant has specifically said that after he recovered from the ailment he approached the Station Master with medical certificates and all the applications and requested for permission to join duty, but, the applicant was asked to approach the Divisional office. Then the applicant visited several times the divisional office but no information was given to him. From reliable sources he has learnt that on account of his absence from duty he has been removed from service from 15.4.1984. Then he has requested the officer that he may be informed about the correctness of this fact. Thus, he requested the authorities for information whether the order of removal has been passed against him or not. In our opinion, from this it could not inferred that he has not denied the receipt of the order of removal. From the copy of the record of the disciplinary proceedings it appears that on 15.12.1995 order was passed to the following effect:

"Sir, kindly instruct as per employees

request whether copy of the removal order may be issued or not, then order was passed issue again. But thereafter there is nothing on record to show that the copy of the removal order was given to applicant."

In the counter reply in paragraph 11 the only assertion is that the copy of the order of removal was sent to Station master Madraha and Ratona with instruction that spare copy was pasted on notice board. Since the applicant was absent from duty and his whereabouts was not known so the removal order was affixed on the notice board where the applicant was posted. No other manner of service of order has been claimed or asserted in the counter reply. Whereas, under Rule 26 the mode of service provided is that either it should be served personally or communicated to him by regd. post. Rule 26 of Railway Servants(Discipline & Appeal) Rules, 1968 is being reproduced below:

Service of Order, notice:

"Every order, notice and other process made or issued under this Rule shall be served in person on the railway servant concerned or communicated to him by regd. post."

The respondents do not claim that order was served personally on the applicant. They also do not claim that the copy of the order was ever communicated to the applicant by registered post. In the circumstances, there was no legal and valid service of the order on the applicant.

The another serious legal infirmity is that though applicant was transferred from Madraha to Ratona during pendency of the proceeding the notice fixing date 7.3.1984 was sent to his home address which was not

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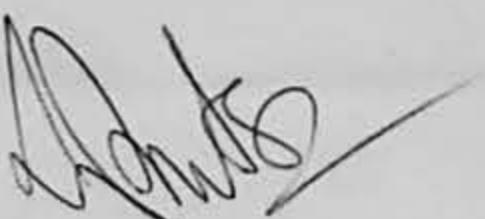
served on him. According to applicant notice was served on his father after 7.3.1984 which was the date fixed. Whereas, the respondents have filed copy of the acknowledgment due which shows that notice was received at the home address of the applicant on 29.2.1984 but the fact remains that the notice was not served on the applicant though it could be served on him at Ratona station where he was transferred on 1.2.1984. It may be noticed here that it is the case of the respondents themselves that the copy of the order of removal was sent for service at Ratona though it was passed on 30.3.1984, then there was no justification for sending the notice of the proceedings to his home address. Considering all these facts, we are of the opinion that on point of service of notice also the order of removal cannot be sustained. We have perused the order of removal which has been annexed alongwith the photo copy of the record of the disciplinary proceedings. The order is sketchy and does not disclose any reasons about the defence of the applicant though admittedly, reply was submitted by him. Such order cannot be sustained being violative of principles of natural justice.

Considering the ~~total~~ facts and circumstances of the case in our opinion, the ends of justice will be served if the respondents are directed to reopen the inquiry from the stage of the service of the memo of charge and submission of reply by the applicant and conclude it within the time fixed by this order. The counsel for the applicant has submitted that applicant shall extend full co-operation in concluding the

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inquiry within the time fixed by this Tribunal. It is made clear that the applicant has been supplied copy of all the documents of the disciplinary proceedings and he will not claim any adjournment on the ground of non supply of the documents.

For the reasons stated above, this OA is allowed. The order dated 30.8.2001 passed by General Manager(Annexure 1) and order dated 30/31.3.1984 passed by Disciplinary Authority are quashed. The disciplinary proceedings against the applicant shall be resumed from the stage stated above and shall be concluded within three months from the date a copy of this order is filed. So far as the back wages and other reliefs are concerned, they shall be considered by the Disciplinary Authority and orders shall be passed in accordance with law. There will be no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated: 19th Aug: 2002

Uv/