

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD.**

THURSDAY, THIS THE 16TH DAY OF NOVEMBER, 2006

QUORUM : HON. MR. K. ELANGO, J.M.

HON. MR. M. JAYARAMAN, A.M.

ORIGINAL APPLICATION NO.872 OF 2002

Hari Saran, Son of, Shri Santu, resident of, Village Dighiya, Post Khorabar, District Gorakhpur.

..... Applicant.

Counsel for applicant : Shri S.K. Om.

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager (Engineering), North Eastern Railway, Varanasi.
3. The Assistant Mechanical Engineer, North Eastern Railway, Ballia.

..... Respondents.

Counsel for Respondents : Sri Anil Kumar.

ORDER

HON. MR. M. JAYARAMAN, A.M.

Heard Shri S.K. Pandey appearing for Shri S.K. Om, counsel for the applicant and Shri Anil Kumar, Counsel for the Respondents.

2. In this O.A., the main plea taken by the applicant is that he was removed from service by impugned order dated 2.6.2001 and his appeal has also been rejected vide order dated 7.11.2001, passed by Respondent Nos.2 and 3, without application of mind and without passing a speaking order. His further plea is that due process of law has not been followed in this case, particularly, because the inquiry report was not given to him to make representation, if any, against the same but it was sent along with the impugned order dated 7.11.2001.

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3. The counsel for the respondents stated that the impugned order clearly gives the reasons for arriving at the conclusion and the order passed in Appeal also explains why it was being rejected. In his view, due process of law has been followed since the inquiry report was sent along with the impugned order. He also drew our attention to para 13 of the C.A. wherein it has been mentioned that the inquiry report was pasted on tool box in the office in the presence of two witnesses which, according to him, was due service of the inquiry report to the applicant. He made further submission that in the eventuality of the O.A. being allowed, it should be made clear that the applicant will not be entitled to back wages for the intervening period on the principle of "no work no pay".

4. We have given our careful consideration to all the points made by the rival parties. We have read at the impugned order at page 19, which shows that it is a cyclostyled order wherein the name, designation, date etc. have been filled-in. This clearly shows that it has been passed in a routine manner without application of mind. It does not discuss the various points brought out in the inquiry report nor does it refer to any defence points put up by the applicant. In view of the above, we agree with the applicant that the impugned order has been passed without application of mind and without following the due process of law. Similarly, it is a settled law that the charged officer is to be served with a copy of the inquiry report giving him time to make representation, if any. Since the entire proceedings in this case revolve around the absence of the applicant from duty, it is not clear how the respondents plead that pasting of the inquiry report at the place of work was sufficient service of the inquiry report on the applicant. They ought to have



sent the inquiry report to the place of residence of the applicant under acknowledgement or by Regd. A.D. ~~AB~~
This was not done. There is a lacuna in the due process of law on this account also.

5. We, therefore, allow this O.A. and set aside the impugned order of punishment of removal from service in regard to the applicant. The respondents are at liberty to take necessary action and proceed against the applicant, if they so desire, in accordance with law. We make it clear that so far as back wages etc. for the intervening period are concerned, the respondents are at liberty to decide the same in accordance with law. This exercise however, shall be completed within a period of three months from the date of receipt of a copy of this order.

No order as to costs.


A.M.


J.M.

Asthana/