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Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 1084 of 2002

Tuesday, this the 27th day of March, 2007

**Hon'ble Mr. Justice Khem Karan, V.C.
Hon'ble Mr. K.S. Menon, Member (A)**

Bhuneshwar Yadav, Son of Sri Shankar Yadav, resident of village-
Dhanauji Khas, Post-Ramkola/Amwa Bazar, Distt. Kushinagar.

Applicant

By Advocate Sri Sudama Ram.

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad.
3. The Senior Divisional Electrical Engineer (G), Northern Railway, D.R.M.'s Office, Allahabad.
4. The Assistant Electrical Engineer (G), Northern Railway, Allahabad.

Respondents

By Advocate Sri A.C. Misra

ORDER

By Justice Khem Karan, V.C.

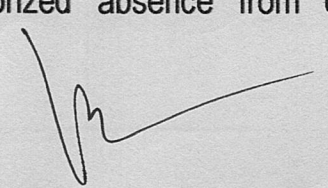
The applicant is challenging the charge sheet dated 10.05.1994 (annexure A-4), the order dated 16.01.1995 (annexure A-1) by which he was removed from service, the Order dated 22.11.1995 (annexure A-2) by which his appeal was dismissed and also the Order dated 29.06.2001 (annexure A-3) by which the finding of guilt was upheld but punishment of removal was substituted by punishment of compulsory retirement.



(21)

2. There is no dispute between the parties that while working as Head Clerk in Electrical General Department, Northern Railway, Allahabad Division, the applicant was served with a charge sheet dated 10.05.1994 (annexure A-4). It was alleged therein that he was unauthorisedly absenting from his duty since 04.03.1994. The applicant submitted a reply on 25.05.1994 saying that his absence was due to serious illness of his wife as well as of himself as he was mentally disturbed due to illness of his wife. Copy of the reply is annexure A-5. The Disciplinary Authority appointed an Inquiry Officer to inquire into the allegations and to submit the report. It appears that the applicant asked for the services of Defence Assistant, which according to him were not supplied but, according to the respondents, the applicant himself did not avail of those services. The applicant was thereafter served with penalty order dated 16.01.1995 together with report of the Inquiry Officer. By this penalty order, the Senior Divisional Electrical Engineer (General) Northern Railway, Allahabad removed the applicant from service on the recommendation of AEE/G. The applicant preferred an appeal under Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968 to A.D.R.M., who after considering the same dismissed it vide Order dated 22.11.1995 (annexure A-2). It appears that the applicant also preferred a revision to the General Manager but before outcome of this Revision, he filed one O.A. No. 107 of 1996, which this Tribunal finally disposed of vide Order dated 03.11.2000 (annexure A-9) directing the Revisional Authority to consider the Revision and pass suitable orders within the time mentioned in the Order. A perusal of this Order dated 03.11.2000 reveals that the applicant had raised several points including one that he was not given reasonable opportunity of hearing but, the Tribunal without expressing any opinion on that point, left that point and all other points, to be considered and decided by the Revisional Authority. After the said decision of this Tribunal, the General Manager passed the impugned order dated 29.06.2001 (annexure A-3), saying that the grounds taken in the Revision were not acceptable and that explanation for his absence from duty being inconsistent itself was not acceptable and so there was no reason to take a view different to the lower authorities, as regards his unauthorized absence from duty. But,

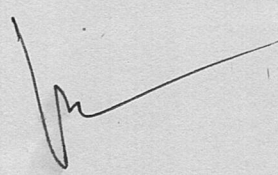
one taken by the lower authorities



considering the factum of medical decategorisation of the applicant, short time span of service and liabilities etc., he chose to reduce the punishment of removal to that of compulsory retirement. Now, the applicant is challenging not only the penalty order, appellate order, revisional order but also the charge sheet and inquiry report.

3. The main grounds taken in the O.A. are that no inquiry was held as per rules, as no evidence in support of the charge sheet was received by the Inquiry Officer during the course of inquiry nor any opportunity to the applicant to lead evidence in defence was given nor copies of the relevant documents were supplied, nor services of Defence Assistant were provided to him. It has been said that even if the inquiry was proceeding exparte, the Inquiry Officer was not relieved of holding proper oral inquiry in view of Railway Board's letter dated 18.04.1990. It is also said that under the Rules, the applicant was entitled to the copy of inquiry report before the Disciplinary Authority formed any view in regard to ^{proof or} ~~prove~~ ^{otherwise} ~~disprove~~ of the charge, but this report was not supplied to him before the penalty order and was supplied to him only alongwith that order. Several other points have also been taken to attack the orders and the charge sheet.

4. In their reply, the respondents have tried to say that as the applicant had clearly admitted during the course of inquiry that he ~~was~~ ^{real} unauthorizedly absent from duty during the period in question, nothing ~~was~~ ^{was} more to be proved in the inquiry by examining the witnesses etc. or by summoning documents etc. It has also been said that the respondents tried to provide the services of Defence Assistant but the applicant avoided to have the services and so he cannot complain now that he was not provided with those services. Much reliance has been placed on annexure CA-4 to the reply, which according to the respondents is virtually admission of his guilt. It has also been said that the applicant accepted the revisional order by getting retirement benefits and now, he cannot be permitted to challenge all these orders.



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5. We have heard Sri Sudama Ram, Counsel for the applicant and Sri A.C. Misra, Counsel for the respondents and have perused the material available on record.

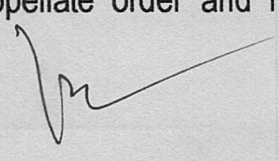
6. We may say in the very outset that in so far as the relief for quashing the charge sheet is concerned, we see no good reason to accept the same as it has been the subject matter of further inquiry, good or bad and has culminated into certain orders.

7. But it appears to us that the Inquiry Officer did not inquire into the matter in accordance with law. Once, the applicant had replied the charge sheet by saying that his absence from duty was due to his wife's illness or his illness and once the disciplinary authority chose to appoint the Inquiry Officer, to inquire into the matter and submit a report, it was the duty of the Inquiry Officer to have ^{held} ~~held~~ proper oral inquiry, before submitting his report. It appears that he did not ask the department to lead any evidence in support of the charge nor gave opportunity to the applicant to controvert the contents of any documents such as attendance register or to cross-examine any witnesses. Even if the applicant had given something in writing as annexure CA-4 during the course of inquiry, the Inquiry Officer ought to have fixed certain date for leading his evidence in defence, when he was saying that he was prevented by serious illness of his wife or by his own illness from attending to his duties and he had also sent application or letters to the authorities. ^{then} ~~then~~ Justice demanded that he should have given that opportunity to prove all this by leading evidence. The Division Bench of our own High Court in Govind Lal Srivastava Vs. U.O.I. and others (2005) 2 U.P.L.B.E.C. page 1530 held that it is a ^{cardinal principle} ~~cardinal principle~~ of law that in a domestic inquiry, the charges ^{levelled} ~~levelled~~ against the delinquent employee has to be proved by the department itself, ~~that too on the material on record and~~ by leading evidence. It has also been held that the delinquent officer has a right to demolish the case of the department or to prove his innocence and in no case he has to disprove the charges before they are put to ^{proof} ~~prove~~ by the Inquiry Officer. In paragraph no.13 of the said case, it has been said that even mere non submission of reply to the

charge sheet or not asking for opportunity of producing the witnesses or evidences would not in itself be sufficient to hold that opportunity was not availed of by the delinquent, though given. It has been said that day, time and place of inquiry should be fixed and the delinquent official should be informed of the same and he should ^{be} given opportunity to adduce the evidences, whether oral or documentary in defence.

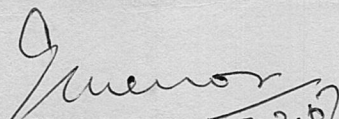
8. Perusal of the inquiry report (annexure A-6) does not disclose that any such procedure was followed. He appears to have proceeded on the basis that since the applicant had stated in writing during the course of inquiry that he ~~was~~ ^{had} absented, so no further inquiry was needed. There is no mention in the report that the applicant was ever given any opportunity to lead the evidence so as to prove that he was ~~not~~ prevented by his own illness or the illness of his wife. So the inquiry appears to be vitiated for want of affording reasonable opportunity of hearing to the applicant and for want of following the procedure laid down for holding such inquiry.

9. Sri Sudama Ram has contented that the copy of the inquiry report dated 13.09.1994 was not supplied to the applicant before passing of the penalty order and so he ~~has~~ ^{had} no opportunity to meet that report and to convince the Departmental Authority that his absence was not such, which could entitle his removal or compulsory retirement as he was prevented ^{by} ~~due to~~ sufficient cause, from attending the duties. He says that Rule 10 (2) of Rules of 1968 was not observed by sending the copy of the report to the applicant. According to him, the applicant has been seriously prejudiced by non-supply of copy of the inquiry report. Learned counsel for the respondents does not say that copy of the inquiry report was supplied to the applicant, before the orders of punishment. This specific plea has been taken in paragraph no.4.6 of the O.A. but its reply in paragraph no.11 of the counter affidavit is almost vague on the point in question. No where it has been said in so many words that copy of the report was furnished to the applicant, before the punishment order. So, we think that non-supply of copy of inquiry report before the punishment order also vitiates the punishment order and consequently the appellate order and revisional



order. We are of the view that the punishment order as well as the appellate and revisional orders deserve to be quashed with all consequential benefits, but with a liberty to the respondents to hold a fresh inquiry, if they so like, in accordance with the rules and pass suitable orders.

10. So, the O.A. is finally disposed of and the inquiry report, punishment order dated 16.01.1995, appellate order dated 22.11.1995 and revisional order dated 29.06.2001 are hereby quashed with all consequential benefits to the applicant but, a liberty is given to the respondents to hold a fresh inquiry from the stage of submission of the reply to the charge sheet (in accordance with the rules and pass suitable orders), ~~if they so like~~. No order as to costs.


Member (A) 27.3.07


Vice Chairman

/M.M./