

Reserved
(On 29.04.2015)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 19th day of May 2015

Original Application No. 1367 of 2006

Hon'ble Dr. Murtaza Ali, Judicial Member
Hon'ble Mr. O.P.S. Malik, Administrative Member

Amit Kumar Garg, Urf Amit Garg, S/o Shri Brij Mohan Gupta, Ex-Technician Grade III, N. Railway, Ambala, Cantt. R/o Opposite Kothi No. 4 Chander Nagar Saharanpur.

... Applicant

By Adv: Shri S. Ram

V E R S U S

1. Union of India through General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi - 1.
2. General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi - 1.
3. Additional Divisional Railway Manager, Northern Railway, Ambala Cantt.
4. Sr. DDE (TRD), Northern Railway, DRM's Office, Ambala Cantt.
5. DDE (RSO), Northern Railway, DRM's Office, Ambala Cantt. (D.A.).
6. Assistant Electrical Engineer (TRD), Northern Railway, DRM's Office, Ambala Cantt (Shri K.A. Khan).
7. Shri Yuv Raj Singh, Sr. Section Engineer, Northern Railway, Saharanpur.

By Adv: Shri P.N. Rai

... Respondents

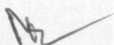
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ORDER

By Hon'ble Dr. Murtaza Ali, Member - J

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, to quash the major penalty charge sheet dated 10.03.2004, inquiry report dated 14.02.2005, penalty order dated 20.07.2005, appellate order dated 09.01.2006 and revisional order dated 27.06.2006.

2. Shorn off unnecessary details, the brief facts of the case are that the applicant was working as Technician Gr. III (TRD) under Senior Section Engineer, Northern Railway, Saharanpur. He was transferred from Saharanpur to Ropar (Punjab) vide order dated 08.09.2003 and spared on 09.09.2003. It has been submitted that he was seriously hurt in spinal cord due to pushing by Shri Yuv Raj Singh, Sr. Section Engineer, Northern Railway, Saharanpur on 09.09.2003. He reported to Railway Doctor on 09.09.2003, but he was not satisfied with his treatment, so he took the treatment from Dr. R.C. Manocha w.e.f. 10.09.2003 and sent regular information about his treatment to his office. The applicant filed OA No. 250/04 against his transfer order dated 09.09.2003 and the operation of his transfer order was stayed vide Tribunal's order dated 17.03.2004.




3. The applicant was served with a charge sheet dated 10.03.2004. The main charge levelled against the applicant was that he remained unauthorised absent from duty w.e.f. 09.09.2003 to 10.03.2004. He submitted his reply on 05.04.2004 and denied the charges levelled against him. It has been contended that he had been regularly informing about his illness to the concerned authorities. He admitted having received several letters for participating in the inquiry but he could not attend the inquiry and informed the Inquiry Officer that he would participate in the inquiry when he would be declared fit by the doctor. The Inquiry Officer concluded the inquiry exparte on 14.02.2005. The Disciplinary Authority without issuing him any show cause notice on the inquiry report, issued the order of penalty of removal on 20.07.2005. The applicant filed appeal dated 13.06.2005 which has also been rejected by the Appellate Authority vide order dated 09.01.2006. It has also been submitted that the applicant filed his Revision Petition dated 24.02.2006 before ADRM, NR, Ambala, Cantt. which has also been rejected vide order dated 27.06.2006. The applicant filed Special Appeal dated 18.09.2006 to the General Manager, Northern Railway, New Delhi which has also been rejected vide order dated 06.10.2006. It has been submitted that the applicant



could not participate in inquiry proceedings due to his illness for which he informed the Inquiry officer, but he ignored his requests and no proper opportunity of hearing was provided to him by the Inquiry Officer and the issues raised in the appeal and revision were also not considered by the relevant officers and passed cryptic and unreasoned order which are liable to be quashed.

4. In the counter reply filed on behalf of respondents it has been submitted that the applicant has a blemished service record and he has earlier been awarded several punishments on different counts. He was transferred from Saharanpur to Ropar in the administrative interest. He came on duty on 09.09.2003 and sparing letter for joining at Ropar was delivered to him, but he submitted an application stating therein that he was not feeling well and requested for issue of a sick memo. On his request a sick memo was prepared, but he did not turn up to collect the same. He did not take treatment at Railway Hospital at Saharanpur or Ropar. A letter of applicant dated 29.03.2004 was received on 02.04.2004 which was replied on 14.04.2004 and copy of the same was delivered to the applicant personally on 22.04.2004. The applicant resumed his duties in the office of DPO/NR, Ambala after 08 months of unauthorised absence on 15.04.2004. As the applicant had to be sent for medical



examination prior to taking him on duty but he absconded after receiving the reply dated 14.04.2004.

5. Due to unauthorised absence from duty w.e.f. 09.09.2003 to 10.03.2004, a charge sheet SF-5 was served upon him. The Inquiry Officer sent several letters to the applicant for participating in the inquiry proceedings, but he neither turned up before Inquiry Officer nor produced any authentic document of Railway Doctor about his sickness. The inquiry Officer submitted his findings to the Disciplinary Authority on 14.02.2005 holding the charges as proved. Considering the defence representation of the applicant dated 24.02.2005 and the gravity of charges, the case was referred to next higher authority i.e. DEE/RSO/Ambala who while acting as a Disciplinary Authority considered the case of the applicant and awarded the punishment of removal from service. Later on, the Appellate and Revisional Authorities also considered the appeal and revision filed by the applicant and have passed speaking orders.


6. It has also been submitted that the OA No. 250/04 was disposed of by this Tribunal on 17.03.2004 with a direction to DRM/NR/UMB to forward applicant's representation against his transfer to the GM, Northern Railway for decision, but his transfer order from



Saharanpur to Ropar was held good vide order dated 09.12.2004 and he was directed to join at Ropar. Later on, the Senior DE (TRD), Northern Railway, Ambala has cancelled his transfer order dated 08.09.2003 and transferred him from Ropar to Ambala Cantt. vide order dated 25.02.2005.

7. It has also been contended that it is not mandatory to issue any show cause notice before imposing the penalty. On considering the defence was submitted by the applicant to the Disciplinary Authority on 24.02.2005, the penalty for removal from service was imposed by DEE/RSO as per extant rules. According to respondents, the penalty imposed by Disciplinary Authority is in consonance of gravity of charges and the Appellate as well as Revisional Authorities have considered all the grounds taken in the petitions.

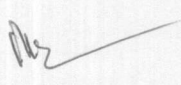
8. In the Rejoinder, the applicant has reiterated the averments made in the OA and further stated that since the applicant was not residing in the Railway premises he was not bound to take treatment from Railway doctor. The applicant reported for duty on 12.02.2005 with fit certificate after availing medical leave from 10.09.2003 to 11.02.2005 and also applied leave from 12.02.2005 to 27.02.2005 which was later on sanctioned. The applicant



was referred to Sr. DMO, Divisional Railway Hospital, Ambala Cantt. with PMC on 28.02.2005 and he was further referred to Medical Director, Northern Railway, Central Hospital, New Delhi for medical examination and for advice on 07.03.2005 and he was finally declared fit for duty on 11.03.2005. It has been alleged that the disciplinary proceedings were initiated by respondent No. 7 to pressurise the applicant to withdraw the criminal case filed by him against the respondent No. 8.

9. Heard Shri S. Ram, learned counsel for the applicant and Shri P.N. Rai, learned counsel for the respondents and perused the entire record.

10. It is trite law that the judicial review is not an appeal of a decision but a review of the manner in which the decision has been made. The purpose of judicial review is to ensure that the individual receives fair treatment. In the case of ***Govt. of A.P. Vs. P. Chandra Mouli - 2009 (13) SCC 272***, it has been held by the Hon'ble Supreme Court that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere unless it is found that either inquiry proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of



reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. Thus, the Tribunal cannot interfere with the findings of Inquiry Officer or Disciplinary Authority where they are not arbitrary or utterly perverse.

11. In the case of **B.C. Chaturvedi Vs. Union Of India & ors. - (1995) 6 SCC 749**, the Hon'ble Supreme Court has held as under:-

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made, power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as Appellate Authority to re-appreciate the evidence and to arrive at its own

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independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

12. Learned counsel for the applicant confined his arguments mainly on following counts:

- a. **Firstly**, it has been contended that the Disciplinary Authority did not apply his mind on the report of Inquiry Officer and he neither furnished any copy of inquiry report nor issued any show cause notice on the inquiry report to the applicant and thus violated Rule 10 (2) of Railway Servant (Discipline and Appeal) Rules, 1968.

Above averments have been made in para 4.9 of the OA and in reply thereto the respondents have only stated in para 27 of counter reply that the contents of para 4.9 of the OA are not admitted. Not issuing any show cause notice on receiving the Inquiry

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Report and passing punishment order clearly shows that the Disciplinary Authority did not apply his mind on the inquiry report. Rule 10 of Railway Servant (Discipline and Appeal) Rules, 1968, reads as under:

"10. Action on the inquiry report:-

(1) If the disciplinary authority:-

(a) after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

(b) is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9, as far as may be.

(2) The disciplinary authority:-

(a) shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule(1) (a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is

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favourable or not to the Railway Servant;

(b) shall consider the representation if any, submitted by the Railway Servant and record its findings before proceeding further in the matter as specified in sub-rules (3), (4) and (5).

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any

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**opportunity of making
representation on the penalty
proposed to be imposed:**

**Provided that in every case where it
is necessary to consult the
Commission, the record of the
inquiry shall be forwarded by the
disciplinary authority to the
Commission for its advice and such
advice shall be taken into
consideration before making an
order imposing any such penalty on
the railway servant”.**

From the perusal of Rule 10, it is evident that after receiving the inquiry report the Disciplinary Authority has to apply his mind and he may broadly take any action from the following options:

- i. He may himself recall any witness and examine and cross examine him;
- ii. He may remit the inquiry report to the Inquiry Officer to hold further inquiry;
- iii. He may forward a copy of report together with his own tentative reasons for disagreement to the delinquent official if he is not satisfied with the findings of Inquiry Officer.


It appears that the Inquiry Officer did not apply his mind on the inquiry report and without sending the copy of inquiry report to the delinquent official he awarded the punishment of removal from service, and thereby violated the provisions of Rule 10 (2)

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of Railway Servant (Discipline & Appeal) Rules, 1968.

- (b) **Secondly**, the learned counsel for the applicant has argued that the applicant was transferred from Saharanpur to Ropar vide order dated 08.09.2003 and he was also spared on 09.09.2003. He filed OA No. 250/04 against the said transfer order and the operation of said transfer order was stayed by this Tribunal on 17.03.2004 and the said OA was finally disposed of on 02.09.2004 with the direction to the General Manager for disposal of his representation. Thus he was wrongly charge sheeted for the absence from duty from 09.09.2003 to 10.03.2004 as the operation of his transfer order was stayed during the said period.

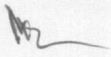
There is no force in the above contention of learned counsel for the applicant. It is true that operation of transfer order dated 08.09.2003 was stayed by order dated 17.03.2014 passed in OA No. 250/04, but from the said stay order it cannot be inferred that the period of absence i.e. from 09.09.2003 to 10.03.2004 would have been



regularized. In such circumstances we are of the view that there is no illegality in issuing the charge sheet.

- (c) **Thirdly**, it has been contended that the applicant was seriously hurt in his spinal cord and he also reported to the Railway doctor on 09.09.2003 but on being dissatisfied with the treatment of Railway doctor he took the treatment from Dr. R.C. Manocha w.e.f. 10.09.2003 and sent regular information to his department. He also contended that as he was not residing in the Railway premises so he was not bound to take treatment from Railway doctor and on being declared fit he reported his duty on 12.02.2005.


We are not convinced that applicant was not able to participate in the disciplinary proceedings due to his ailment because he was regularly attending his private doctor (Dr. R.C. Manocha) and also attended the chamber of his counsel for filing OA No. 250/04. He must have gone to swear in the affidavit for filing it before the Tribunal. In these circumstances the applicant cannot



take any excuse that he could not appoint his defence counsel and was unable to appear before the inquiry proceedings. It is an admitted fact that the applicant received letters dated 16.07.2004, 17.10.2004, 10.11.2004, 16.11.2004, 27.11.2004 & 29.11.2004, but he intentionally did not nominate his defence assistant and also avoided to attend the inquiry proceedings.

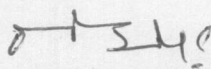
We are also not convinced that applicant was unable to contact the Railway doctor during his absence period as he was regularly attending his private doctor (Dr. R.C. Manocha). The Railway Board's circular dated 29.08.2003 allows a Railway employee to seek treatment from Private Doctor for a short period in emergency, but he has to report to Railway Hospital as soon as possible, but he avoided to report to the Railway Hospital.

13. Considering all the facts and circumstances of the case, we are of considered opinion that the disciplinary authority did not apply his mind on the inquiry report and without considering the options available to him, awarded punishment to the applicant which is a clear

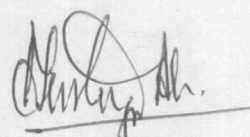


violation of Rule 10 (2) of Railway Servant (Discipline & Appeal) Rules, 1968, and on this ground alone the inquiry proceeding is vitiated and, therefore, order of penalty as well as the order of Appellate and Revisional Authorities are liable to be quashed.

14. Accordingly, OA is allowed and the ^{major penalty chargesheet} ~~punishment~~ ^{and punishment} order dated 20.7.2005 -
~~order~~ dated 10.03.2004, ^h appellate order dated 09.01.2006 and revisional order dated 27.06.2006 are hereby quashed and set aside. The respondents are directed to take back the applicant in service immediately, deeming that no order dated 10.03.2004, 20.7.2005, 09.01.2006 and 27.06.2006 were ever passed. The ^{Amended vide order dt 8/10/15} Disciplinary Authority is at liberty to proceed afresh on the Inquiry Report dated 14.02.2005 according to Rule 10 (2) of Railway Servant (Discipline & Appeal) Rules, 1968, if they so desire, within a period of one month from the date of receipt of a certified copy of this order. The applicant shall be entitled to get half wages for the period he was out of service, if the respondents choose not to proceed afresh on the Inquiry Report. There is no order as to costs. ^{Amended vide order dt 8/10/15}


Member (A)

/pc/


Member (J)