

(Reserved on 02.05.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 18 day of May, 2012.

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. SHASHI PRAKASH, MEMBER (A)**

Original Application Number. 278 OF 2005.

Hausila Prasad, Son of Tulasi, R/o Village - Nathupur, Post Office -
Jaunpur.

.....Applicant.

VE R S U S

1. Union of India through Divisional Superintending Engineer, Lucknow (N.R).
2. Assistant Divisional Engineer Sectional Engineer Railway (Path Way) Office, Varanasi .
3. Union of India through General Manager, Northern Railway, H.Q., Allahabad.

.....Respondents

Advocate for the applicant: Shri M.K. Upadhyay
Advocate for the Respondents: Shri Anil Dwivedi

O R D E R

Delivered by Hon'ble Mr. Sanjeev Kaushik, J.M.

By means of the present Original Application filed under section 19 of Administrative Tribunals Act 1985, the applicant seeks quashing of order dated 18.08.2000 with further prayer to direct the respondents to pay entire pay, allowances and other consequential benefits arising thereafter.

2. The brief facts of the case are that the applicant, who belongs to backward class category, joined the respondents' department in

16

the year 1963. He was given promotion as Key Man and thereafter to the post of Gang Mate C.P.C and posted at Loop Line 2, Sheopur, Varanasi. The applicant was placed under suspension on 11.10.1990, which was subsequently revoked by order dated 29.10.1990. The applicant was transferred and posted as Junior Gang Mate. The applicant stated to have made representation on 30.10.1990, 19.11.1990 and lastly on 31.07.1990 requesting the respondents to allow him to join duty. He was served with a charge sheet on 02.09.1998 (Annexure A-21) on the ground of absent from duty from 28.11.1989 till date of issuance of charge sheet. Inquiry Officer was appointed and ultimately order of removal was passed on 18.08.2000. Hence the O.A.

3. Pursuant to the notice the respondents contested the claim of the applicant by filing detailed Counter Affidavit stating therein that the applicant remain absent for more than 11 years, therefore, the competent authority firstly served charge sheet on 02.09.1998, thereafter an ex-parte inquiry was conducted as the applicant did not cooperate in the inquiry proceeding. Ultimately based upon the finding of the Inquiry Officer the competent authority passed the order of removal on 18.08.2000.

4. The applicant filed Rejoinder Affidavit contradicting the averment of the respondents stating therein that the inquiry has not been conducted in fair manner as neither any witness nor any documents were produced before the Inquiry Officer, therefore, the

very basis of the order of removal i.e. the Inquiry Report is liable to be vitiated.

5. We have heard Shri M.K. Upadhyay, learned counsel for the applicant and Shri Anil Dwivedi, learned counsel for the respondents and have perused the record.

6. Learned counsel for the applicant vehemently argued that the inquiry proceeding is mere an eye wash and only to complete the formalities as neither any witness nor any documents were produced before the Inquiry Officer. The Inquiry Officer submitted the report, which is against the rule 9 (17) of the Railway Servants (Discipline & Appeal) Rules 1965 , thus the very foundation of removal is liable to be set aside being violative of principle of natural justice. He placed reliance on the judgment of Hon'ble Supreme Court reported in 2010(1) SCC (L&S) 675 - State of Uttar Pradesh and others Vs. Saroj Kumar Mishra. He further argued that the malafide and non-application of mind of the respondents can be seen from the fact that the applicant has been charge sheeted for absent from duty from 28.11.1989 till the date of issuance of charge sheet whereas, the applicant was placed under suspension by order dated 11.10.1990, therefore, how the applicant can be said to be absented from duty when he was placed under suspension , which was subsequently revoked on 29.10.1990 and the applicant was transferred by order dated 29.10.1990, therefore, how the applicant can be treated absent for the period when he was under suspension as such the impugned order of removal is liable to be set aside.

1
16

Lastly, learned counsel for the applicant argued that the Inquiry Officer has not adopted the procedure laid down in rule 9(25) of 1965 Rules.

7. On the other hand learned counsel for the respondents supported the impugned order and have raised only one argument that the applicant remained absent for more than 11 years, therefore, he has rightly been removed from service.

8. We have considered rival submissions and have gone through the record.

9. Admittedly the applicant was placed under suspension on 11.10.1990. The order of suspension was revoked on 29.10.1990 and he was transferred on 29.10.1990. He was charge sheeted on 02.09.1998 for absent from duty from 28.11.1989 till the date of issuance of charge sheet i.e. 02.09.1998. Once the applicant was under suspension on 11.10.1990 then how the above period has been taken as absent from duty. Therefore, it shows non-application of mind of the authority, who issued the charge sheet. Even in the case of **Hasam Khan Vs. U.O.I & Ors - 2004 (1) A.T.J 76**, it is held that "a person, who is placed under suspension, cannot be charged for absent from duty during period of suspension". Secondly, the charge sheet was issued on 02.09.1998 for unauthorized absence from 28.11.1989 i.e. after more than 9 years. No explanation has been given why the charge sheet for unauthorized absence has been issued in the year 1998. Thirdly, we have perused the inquiry report, which in no manner can be termed as 'Inquiry Report', as neither

any document has been discussed nor any witness has been produced. Rule 9(17) and 9(25) of 1965 Rules lay down the procedure for inquiry, which admittedly has not been followed in the present case. Hon'ble Apex Court in para 26 and 28 in the case of State of Uttar Pradesh and others Vs. Saroj Kumar Mishra - 2010 (1) SCC (L&S) 675 has held as under : -

“26. The first inquiry report is vitiated also on the ground that the inquiry officers failed to fix any date for the appearance of the respondent to answer the charges. Rule 7(x) clearly provides as under: -

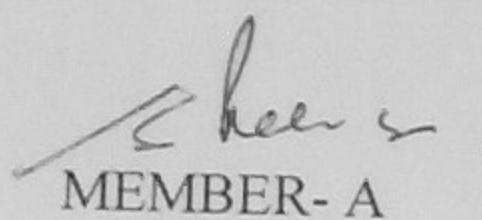
“7(x). Where the charged government servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the service of the notice on him or having knowledge of the date, the inquiry officer shall proceed with the inquiry ex parte. In such a case the inquiry officer shall record the statement of witnesses mentioned in the charge sheet in absence of the charged government servant.”

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved and could not have been taken into consideration to

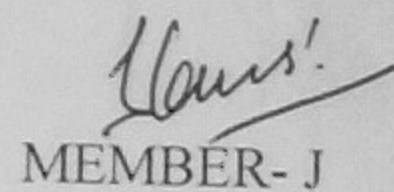
16.

conclude that the charges have been proved against the respondents."

10. In view of the above we find that the impugned order dated 18.08.2000 is not sustainable in the eyes of law, hence it is quashed and set aside. The O.A is allowed. For the period when the applicant was remain out of service, he will not be entitled for monetary benefits. However, the period will be counted notionally for all other benefits, as the applicant was in service. No costs.



MEMBER- A



MEMBER- J

/Anand/