

No Removal

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(15)

O.A. No. 658/1988
~~PAWN~~

DATE OF DECISION 15-12-1992.

Shri Chain Singh, Petitioner

Mr. M.R. Bhatt, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. B.R. Kyada, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan, Vice Chairman.

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Shri Chain Singh,
Assistant Station Master,
Western Railway, Anjar,
Address:- Railway Quarter,
No.T-20/B,Anjar,
Dist :- Kutch.

(16)

....applicant

(Advocate : Mr.M.R.Bhatt)

versus

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Churchgate, Bombay.

2. The Divisional Railway Manager,
Western Railway,
Ajmer.

3. The Divisional Safety Officer,
Western Railway,
Ajmer.

.....respondents

(Advocate : Mr.B.R.Kyada)

O R A L O R D E R

O.A./658/88

Date : 15;12.1992

Per : Hon'ble Mr. R.C.Bhatt
Member (J)

Heard. Mr.K.K.Shah for Mr.R.P.Bhatt, learned
advocate for the applicant and Mr.B.R.Kyada, learned
advocate for the respondents.

2. The applicant who was an Assistant Station
Master and was also performing the duty of a booking
clerk, at the relevant point of time, serving with
the respondents, has filed this application under
section 19 of the Administrative Tribunals Act, 1985,
seeking the relief that the impugned orders dated
7th June, 1988 and 26th September, 1988 respectively
and the charge sheet given to him by the authority concer-

be quashed and set aside and that he should be reinstated in service with full backwages and other benefits of service.

3. The applicant has alleged in this application that on 12th February, 1987 some vigilance inspection ^{the} was made and / investigating officers recorded his statement and seized certain documents and that he was suspended with effect from 13th February, 1987 which was later on, revoked on 28th August, 1987. The applicant was issued charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968, vide Annexure A-1, in which it was alleged that while working as Assistant Station Master, Anjar on 12th February, 1987, the applicant committed serious misconduct and also disobeyed the instructions in force and did not declare his private cash in private cash declaration book. Thereafter, the D.A.R. enquiry was held against him, and the Inquiry Officer submitted a report on 17th May, 1988 vide Annexure A-2. The Disciplinary Authority, on the basis of the enquiry report, passed an order Annexure A-3 dated 7th June, 1988 removing the applicant from service with immediate effect. The appellant preferred an appeal against the same under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968 to the Divisional Railway Manager, Western Railway, Anjar, who dismissed

the appeal by order dated 26th September, 1988 vide Annexure A-5.

4. The applicant has challenged the orders of the disciplinary authority and the appellate authority on several grounds mentioned in para 7 of the application. During the pendency of this application, the applicant has amended the application alleging that the enquiry report was sent to him only along with the penalty order of removal by the disciplinary authority which according to the applicant was illegal inasmuch as he was not given an opportunity of hearing before the disciplinary authority passed a finding of guilt against him.

5. The learned advocate for the applicant submitted that in view of the decision of the Hon'ble Supreme Court in Mohd. Ramzan Khan,

have the disciplinary authority should given an opportunity to the applicant of being heard before he passed an order finding him guilty. He submitted that the applicant was not given any such opportunity of making any representation against the report of enquiry to the disciplinary authority because the report of enquiry was sent to him only along with the findings of the disciplinary authority removing him from service and therefore, the order of the disciplinary authority is illegal and the

order of the appellate authority is also illegal.

6. The respondents have filed reply controverting the averments made by the applicant in his application
7. At the time of hearing of this application, the undisputed fact is that the report of enquiry was sent to the applicant only for the first time when the findings of the disciplinary authority removing him from the service were sent to the applicant, meaning thereby that the disciplinary authority had not given any opportunity to the applicant for making representation against the report of enquiry before ^{an} he passed / order of removal of the applicant from service.

As the applicant was not given an opportunity of making representation against the enquiry report to the disciplinary authority, the principle of natural justice is violated and hence the findings dated 7th June, 1988 of the disciplinary authority vide Annexure A-3/ and the findings of the appellate authority dated 26th September, 1988, vide Annexure A-5 confirming the order of the disciplinary authority shall have to be quashed and set aside on this technical defect in view of the decision in Mohd. Ramzan Khan's case(supra). this will not come in the way of the respondents in case they want to proceed further with the enquiry from the / giving an opportunity to the applicant for making representation against

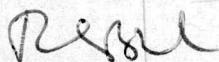
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the enquiry report. It is not in dispute that the applicant has now received the enquiry report. One more point as per the submission of the learned advocate for the applicant / that as the applicant is to reply by 28th February, 1993, the respondents may take into consideration this fact before taking any decision to proceed further with the enquiry against the applicant. We pass the following order:

O R D E R

Application is partly allowed. The order of the disciplinary authority, Annexure A-3 and the order of the appellate authority, Annexure A-5 are held illegal and hence are quashed and set aside and the respondents are directed to reinstate the applicant in service within 15 days from the date of the receipt of the copy of the order of this Tribunal. It will be open to the respondents to proceed further ^{with} / the enquiry after giving opportunity to the applicant to make the representation against the enquiry report if he so desires. However, if the respondents decide to proceed further ^{the} with / enquiry, they should do so within one month from the receipt of the order of this Tribunal, after giving notice to the applicant

about the same. The respondents may take into consideration the factor that the applicant is to retire on 28th February, 1993. The period between the date from which the applicant was reinstated from service and the date on which he will be reinstated shall be regularized by the respondents in accordance with the rules on the subject applicable to the applicant. Application is disposed of accordingly. There is no order as to costs.



(R.C.Bhatt)
Member (J)



(N.V.Krishnan)
Vice Chairman

vtc.