CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 57 OF 1989.

Date of decision : July 27, 1990.

M. L. Karmakar : Applicant

-Versus

Union of India and others : Respondents.

For the Applicant : Mr. Pradipta Mohanty, Advocate

For the Respondents. : Mr. B.Pal, Sr. Standing Counsel (Railways).

C O R A M:

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. N. SENGUPTA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed to see the judgment ? Yes.

2. To be referred to the Reporters or not ? Yes

3. Whether Their Lordship's wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N. SENGUPTA, MEMBER (J). The chequered history of this case need not be stated in detail, it is sufficient to indicate that the applicant was working as Block Maintainer Gr. I at Khurda Road Carshed. On 10.1.1981 he reported sick and in support of such

sick reporting he filed a certificate from a private medical practitioner. The applicant reported back to duty on 19.2.81 when he was served with a notice of removal from service on the alleged ground of resorting to an illegal strike and instigating other Railway workers to join the said illegal strike. The order of removal was passed under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968. Against that order of removal an application was made in the Calcutta High Court who gave instructions for approaching the Departmental Appellate Authority. After the disposal of the appeal, the applicant approached this Tribunal in O.A. No.41 of 1987 for quashing the order passed by the appellate authority. This Tribunal by its judgment dated 26.11.1987, remitted the case back for fresh disposal after either making or causing an enquiry to be made in accordance with the decision of the Hon'ble Supreme Court in Tulsiram Patel's and Satyavir Singh's cases. As besides the applicant, others were also removed from service and they also filed applications in this Tribunal for quashing the orders of their removal from service the Additional General Manager was appointed as the common appellate authority. The Deputy Chief Operating Superintendent was appointed by the appellate authority as the Inquiring Officer and he submitted a report and the appellate authority agreeing with the said report rejected the appeal and confirmed the order of removal passed by the disciplinary authority. The applicant challengers this order of the appellate authority passed on 30.12.1988.

2. The grounds, of attack by the applicant stated briefly are that even though according to the decision of this Tribunal in the earlier Original Application filed by the applicant an enquiry as provided for under the D.A.Rules was to be made, no charge-sheet was issued before the commencement of the enquiry, there was denial of reasonable opportunity to defend in not making the documents called for by him(applicant) available to him and that there was no evidence of he having himself joined or instigated any body else to join an illegal strike.

3. The case of the Railway Administration is that in an enquiry at the revisional or appellate stage the provisions of Rule 9 of the D & A Rules need not be followed strictly or liberally, it is sufficient if adequate opportunity to meet the case of the department was given as there was already an order of removal and notice of removal had been issued a fresh charge-sheet was not necessary. As regards the case of the applicant that there was denial of reasonable opportunity for defending, it has been stated in the counter that all the relevant documents that the applicant asked for were supplied to him, only those documents which were either not in existence at the time of the enquiry or were not relevant, were not given to the applicant though he asked for them. The case of the respondents is that the applicant ought to have supported his application for sick leave by a certificate from a Railway Doctor and not by a certificate from

a private medical practitioner. In fine, their case is that the order of removal is based on evidence and there was no other defect.

4. We have heard Mr. Pradipta Mohanty, learned counsel for the applicant and Mr. B.Pal, learned Sr.Standing Counsel(Railways) for the respondents. As has been indicated above, one of the grounds urged by the applicant in support of his prayer for quashing the order dated 30.12.1988 (vide Annexure-14) is non-framing of a charge. Though we are not impressed by the argument of Mr. Pal that in an enquiry after removal under Rule 14(ii) of the D & A Rules, no charge-sheet need be framed, yet we would say that the idea of framing a Memorandum of charges is to inform the charged officer of the allegations on which he is being proceeded against, if the allegations were set out in the removal notice in such details as to convey to the applicant what case he was going to meet, we do not think any real prejudice was caused to the applicant. A copy of the removal notice is at Annexure R/1. On going through, it may be found except 1.3, the other items specifically mentioned what the allegations against the applicant were. Had a fresh charge-sheet been issued, the same statements would have been made, therefore, in our opinion, non-framing of a fresh charge and treating the Removal Notice, which the applicant received on 19.2.1988, as the charge-sheet was of no real consequence. With the removal notice, as action was taken under Rule 14(ii) of the Railway Servants(Discipline & Appeal)

Rules, 1968, no list of witnesses or documents in respect of the charges could be furnished to the applicant on the date of service of the removal notice. In such circumstances the only mode in which the requirements of Rule 9(6)(ii) could be complied with was by giving such a list to the applicant prior to the filing of his written statement of defence. In the instant case, the written statement of defence was filed on 3.7.1988 vide Annexure-7 and the list of witnesses to be examined and documents to be proved by the Department was supplied to the applicant on 29.6.1988 vide Annexure-9.Thus, in our opinion, in the circumstances of the case, substantial compliance with the procedure with regard to service of charges and complying of list of witnesses and documents was made.

5. The next question that needs a consideration is whether the findings of the Enquiring Officer that the applicant went on sick leave with a malafide intention to bring disruption to the normal functioning of the Railway in Khurda Road and of the applicant instigating the railway employees to join the illegal strike during January, February, 1981 is based on evidence . We are conscious of the fact that this Tribunal is not to make a reappraisement of the evidence in the disciplinary proceeding but that it not to say that it cannot examine whether in the disciplinary proceeding there was any admissible evidence in support of the charges levelled.

Before referring to the evidence of the only witness examined by the Department, it would be pertinent to state that a statement of a person recorded behind the back of the charged officer cannot be utilised against the charged officer unless it is proved in any recognised mode. The disciplinary proceeding is quasi criminal in nature, even though the rigours of proof in a criminal trial may not be insisted upon in a disciplinary proceeding yet if a person who allegedly made a statement earlier, does not stick to it during the enquiry, such a statement cannot be pressed into service without other evidence, intrinsically supporting such statement, recorded in the presence of the charged officer.

6. The case of the department was that a report was made by the witness examined in the disciplinary proceeding stating that the applicant instigated others to join the strike. The evidence in this regard of the witness during the course of the enquiry was that he was no doubt on duty on 9.1.1981 at about 16.15 hours but he had temporarily gone somewhere else which he could not recollect. The witness further stated that the letter was dictated by Shri S.Mohan Rao, Assistant Mechanical Engineer, Khurda Road and the same was scribed by somebody whom the witness did not know. However, he put his signature. This answer of the witness however liberally construed could never be taken to be the proof of the contents of the letter except that he signed the letter. To a question put by the defence counsel the witness stated that some people no doubt came to the Carshed

at Khurda Road but he had not seen the mob. After Cross-examination by the defence counsel the Enquiry Officer himself put some questions which were in the nature of leading question in cross-examination, the suggestion made to the witness was that he had stated in the letter that on 9.1.1981 at about 16.14 hours some members had come to the carshed and he was asked if he (the witness) had seen the applicant in the carshed at that time, the answer to this question was that he had not seen the applicant. The next question put by the enquiring officer was also in the nature of leading question in cross-examination. In a disciplinary proceeding the enquiring officer is to maintain some detachment and it would not be permissible for an enquiring Officer to cross-examine a witness as if he were the presenting Officer. If the enquiring officer cross-examines witness, there would be a violation of the norms of natural justice and for that has been stated above, we are of the opinion that the enquiring officer did not conform to the standard of detachment required of him as such enquiring officer in a disciplinary proceeding and that vitiated his findings, at least so far as the applicant instigating other railway employees to join the strike was concerned. This could also be found to have been noticed by the appellate authority in paragraph 6 of the impugned order where he stated the charge of instigating the employees was not proved by the eye witness.

7. The other finding, as has been stated above, was that the applicant reported sick with a malafide intention

to bring disruption in the normal functionings of the Railways. The appellate authority in the impugned order at Annexure-14 stated that the charge of reporting sick without valid medical certificate from 10.1.1981 to 10-2-1981 had been proved. But he did not observe that there was any malafide intention for obvious reasons because that cannot be borne out from the evidence recorded in the enquiry. Mr. Mohanty learned counsel for the applicant has stated that the finding of the appellate authority that there was no valid medical certificate is wrong because under the Rules, a railway employee could report sick on the strength of a certificate issued by a private medical practitioner. Copy of the relevant rules relating to submission of medical certificates has been filed. From the Railway Medical Manaul it would be found that under para 537, when a railway employee residing within the jurisdiction of a railway doctor is unable to attend to duty by reason of sickness, he has to produce within 48 hours , a sick certificate from the competent Railway Doctor. Sub-item(2) to Item No.537 states that the railway employee may be attended to during his sickness by a railway medical attendant of his own choice but if he requires leave of absence on medical certificate, an application for such leave must be supported by a certificate from the Railway Doctor. Sub-para(4) deals with employees residing outside the jurisdiction of the Railway doctor.From Note I it would be found that ordinarily the jurisdiction of a Railway Doctor will be taken to cover the railway employee

residing within the radius of 2.5 K.M. of the Railway Hospital or the health Unit to which the doctor is attached and within a radius of one K.M. of the Railway station of the doctors beat. No evidence was adduced during the enquiry as to the distance of the quarters where the applicant was living from the Railway Medical Unit or from the Railway station. May be in many cases, the quarters for the railway employees are not far off from the railway stations and the railway hospitals are also usually not at a long distance from the Railway Stations, but it is not inconceivable that the railway quarters may be beyond 2.5. K.M. from the Railway Health Unit of a particular station. If there is no supporting evidence, conjecture or surmises about the distance between the health unit and the quarters of the railway employee would be of no avail. In the circumstances, we would say that there was no material before the appellate authority to find that the applicant was living within the jurisdiction of the Railway Doctor of that he was required to file a certificate from the railway doctor to support leave on ground of sickness. From the records it would be apparent that after submission of the certificate from the applicant, no further action to get the applicant examined by a railway medical officer was taken. The applicant was attended to work for some days after he reported to duty. In these circumstances it is to be found that there was really no evidence in support the conclusion reached by the enquiring officer or the appellate

authority.

8. The discussion made above would show that in the enquiry there were some deficiencies for which it has not been possible on our part to sustain the findings of the appellate authority but all the same it has to be stated that the applicant has not beam able to make out a case that he was completely free from blemish. So, we would direct that the applicant be reinstated in service forth with and the period from the date of termination till this day be treated as dies non but it would count towards his other service and pensionary benefits. The application is disposed of accordingly. No costs.

27.7.90
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VICE-CHAIRMAN

27-7-90
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MEMBER (JUDICIAL)

Central Administrative Tribunal
Cuttack Bench, Cuttack.
July 27, 1990/Sarangi.

SEAL OF THE CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH