CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

O.A. 148 of 1996.

Present : Hon'ble Dr. B.C.Sarma. Member (A)

Hon'ble Mr. D. Purkayastha, Member (J)

F. X. WOOD

Vs.

1. Union of India, through the General Manager, E.Railway, 17, N.S.Road, Calcutta - 1.

2. The Divisional Railway Manager, E.Railway, Asansol-1.

... Respondents.

For applicant : Mr. B. Chatterjee, Counsel.
Ms. B. Mondal, Counsel.

For respondents: Mr. P. K. Arora, Counsel.

Heard on : 13.3.97. :: Ordered On : 30.4.97

O R D E R

D. Purkayastha, JM

By this application under Section 19 of the A.T.Act, 1985, the applicant has challenged the validity of the order of removal dated 24.3.86 passed by the Sr. Divisional Mechanical Engineer (P), Asansol for unauthorized absence from duty for the period from 21.1.81 till 1986, that is the date of passing of the removal order on the ground that order of removal from the service is unfair and against the dictum of fair play and utter violation of the principles of natural justice and also for direction upon the respondents to pay all consequential benefit of service in all respects after reinstatement of the applicant by setting aside the order of removal in question. The case of the applicant, as stated in the application is that in the year of 1981 he was working as Fireman under Loco-foreman at Asansol and went on ten days casual leave from 21.1.81 to 31.8.81. He went home where he fell a victim of mental derailment and lost all his normal senses and could not come to join his duties. Thereafter, he was taken to Ranchi (Bihar) and was treated there till

3.12.93, which will be evident from the medical certificate issued by the Doctor (annexure-A). After being fit subsequently, he sent to office to resume his duties with an appeal dated 7.12.73 and accordingly, he met the Divisional Mechanical Engineer (Power) in his office on 7.12.93 and then he received the removal notice and he was asked to prefer an appeal. Accordingly, he came to know about his removal from service for unauthorized absence from duty on the basis of the charge-sheet dated 28.2.86. The applicant contended that the said charge-sheet was never served upon him, but despite the fact, the Divisional Mechanical Engineer had passed the order of removal of the applicant from service by resorting to Rule 14(ii) of the R.S.(D.A.)Rules, 1968, thereby 7the impugned order of removal from service was violative of Article 14 of the Constitution and contrary to the provisions of the rules. The applicant contended that as he was not dismissed in accordance with the rules, he is entitled to get the benefit of service with all consequential benefits after setting aside the order of removal.

2. The case of the applicant has been resisted by the respondents by filing a reply stating, inter alia, that the application is speculative and after thought and there has been suppression of fact, thereby the application is liable to be dismissed. It has been stated in the reply that the applicant was initially appointed as Cleaner on 11.3.58 on the pay of Rs.30/- per month and he was a habitual unauthorized absentee. At the material time the applicant was functioning as Fireman Gr.C under LF/ASN and he remained unauthorized absent since 3.6.81. A major penalty charge-sheet was issued to the applicant for unauthorized absence from duty since 3.6.91, but the said charge-sheet could not be served in the Loco-shed because he was traceless. Thereafter, the

charge-sheet was sent to home address available in the service record by the Registered Post, but that was returned back by the postal department as undelivered. Thereafter, all efforts have been made to serve the charge-sheet, but to no effect since the applicant's whereabouts ~~was~~ were not known to the respondents, it was not reasonably possible to hold the departmental inquiry; therefore, in terms of Rule 14(ii) of the RS(DA)Rules, it was ordered that the applicant should be removed from service for unauthorized absence since 3.6.81. Accordingly, the applicant was removed from service by a removal notice dated 24.6.86. It has also been stated that the applicant was a habitual unauthorised absentee and he remained absent unauthorisedly on 4.1.77; 28.2.77 and 4.10.79 and lastly from 3.6.81 to till the date of removal and each and every time he was charge-sheeted. It is the contention of the respondents that in view of the circumstances, the applicant was not entitled to get any benefit of personal hearing and the department has a right to remove him from service in view of the provision of Rule 14(ii) of the RS(DA) Rules, 1968. They have, therefore, prayed that this application is liable to be dismissed.

3. The learned counsel for the applicant Mr.B.Chatterjee, leading Ms.B.Mondal, firstly submitted that no copy of the charge-sheet has been furnished or served upon the applicant in accordance with the rules and the applicant was not aware of the fact that he was charge-sheeted since he was in the hospital for treatment and no attempt was also made to serve the chargesheeet on the applicant by the department for logical conclusion of the departmental proceeding. Mr. Chatterjee further submitted that from the record it is evident that departmental proceeding was proposed to have been initiated against the applicant by the competent authority and

an inquiry officer was also appointed to inquire into the charges. Since a disciplinary proceeding was initiated in absence of the applicant, the department could have proceeded against the applicant ex parte to find out whether the absence from the duty for the alleged charge was intentional or he was prevent by sufficient cause which was beyond his control or not. Mr. Chatterjee further submitted since the department had initiated a departmental proceeding against the applicant, the subsequent action of removal by resorting to a provision of Rule 14(ii) of the RS(DA)Rules is unwarranted and thereby, entire action of the department for the purpose of removal of the applicant from service is unfair, arbitrary and illegal and thereby the order of removal is liable to be quashed.

4. Mr. P.K.Arora, ld. cousnel for the respondents, submitted that the Sr. Divisional Mechancial Engineer (Power) had rightly exercised the jurisdiction vested upon him under Rule 14(ii) of the RS(DA)Rules when he was satisfied that the service of the charge-sheet could not be effected upon the applicant in spite of the various attempts made by the department for causing service upon the applicant. Mr. Arora further submitted that the letter was sent under registered cover with AD to the addressee as per the record available in the service book and that letter was returned back as undelivered. Since the letter was sent under registered cover as per service record, it shall be presumed that the service has been duly done upon the applicant as the applicant did not inform the authority about his leave address. In support his contention Mr. Arora relied on a decision of the Hon'ble Supreme Court reported in AIR 1969 SC 630 (M/s. Madan & company Vs. Wazir Jaiur Chand).

5. In view of the divergent arguments advanced by the learned cousnel for both the parties, it is to be decided

whether the charge-sheet was duly served upon the applicant or not for the purpose of holding disciplinary proceeding proposed to be taken against the applicant for his unauthorized absence for the period in question. It remains undisputed from the side of the parties that the applicant remained absent from duty from 3.6.81 till the date of removal from service on 24.3.86 and the charge-sheet was sent to the applicant under registered post with AD, but that could not be served upon the applicant by the postal peon. The envelope was returned to the sender with the remark 'undelivered'. According to the respondents, they sent the registered letter to the applicant on his addressed which was available in the service record. According to Mr. Arora, ld. counsel, the service shall be deemed to have been effected when the letter was sent under registered cover with AD and it shall be presumed that the letter was duly communicated to the applicant and the said communication become effective accordingly. According to Mr. Chatterjee, ld. counsel, the communication cannot be accepted since the postal authority returned the letter with remark that the said letter is undelivered. It is true that the address of the applicant is available in the service record and the department sent the letter to the addressee (applicant) as per address available in the record and that letter was despatched under registered cover with AD, but it could not be served upon the applicant by the postal authorities since the applicant was not residing in the address given in the service-book, but the letter was sent to the address applicant on that address. So, the question of service as raised by MR. Chatterjee cannot be accepted holding that there had been due communication of the letter under registered post with AD even though the applicant did not receive the same. We find from para 7 of the reply

that it was admitted by the respondents that the charge-sheet could not be served in the last working place because the applicant was traceless. Thereafter, the charge-sheet was sent to his home address available in the administration. The major penalty charge-sheet was returned ~~back~~ by the postal authority with the remark undelivered. All efforts have been made to serve the said charge-sheet, but it could not be served. Mr. Chatterjee strongly relied on the fact that when the actual delivery of the charge-sheet could not be done admittedly by the respondents, the proceedings ~~can~~ could have been held ex parte against the applicant without resorting to the provisions of Rule 14(ii) of RS(DA)Rules. From the facts we can safely hold that when the memorandum was sent under registered post with AD to the correct address of the applicant then it can be safely presumed that there had been a good communication or proper communication of the charge-sheet to the applicant though it had been returned as undelivered by the postal authorities because communication of the charge-sheet shall be deemed to have been made when the letter despatched from the department to the correct address of the applicant. In view of the circumstances, we find no substance in the argument advanced by the learned counsel for the applicant regarding non-communication of the charge-sheet. We find there is an administrative instruction at page 190 of the the RS(DA)Rules,1968, M.L.Jand, 5th Edition, where it is stated that in case of unauthorized absence from duty/headquarters or absconding, the charge-memo should ~~not~~ be sent to the last known address of the railway servant and if that is returned undelivered, it should be sent to all the addresses available on records of the office. If such communication are also returned undelivered, recourse ~~should~~ may be Taken to the provisions of sub-rule (ii) of Rule 14 of the RS(DA) Rules and

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this guidelines should be kept in view in the matter of service of articles of charges upon the delinquent railway servants in such cases and taking further action against them. In the instant case the disciplinary authority had sent the memo to the address of the applicant available in the service record and such communication was returned undelivered. thereafter, the disciplinary authority had taken the recourse to the provision of Rule 14(ii) of the RS(DA)Rules. In view of the guidelines there may not be any obligation on the part of the disciplinary authority to hold an ex parte inquiry when the applicant did not submit a written statement of defence before the specific date or he did not appear in person before the disciplinary authority or inquiring authority. In the circumstances the question of holding ex parte inquiry against the applicant does not arise since it can be presumed that the charge-sheet was duly communicated to the applicant by registered post with AD and such communication shall be treated as a valid communication in the eye of law. In view of the circumstances it cannot be said that the department had acted in a manner not in accordance with the rules or regulations framed for the purpose of inquiry against the applicant.

6. It is now well settled that removal from service for unauthorized absence amounts to penalty. So, no employee can be removed from service without availing the procedure for inquiry in a manner laid down in Rule 9 of the RS(DA)Rules. But, Rule 14 has been laid down in Rule itself empowering the disciplinary authority to dispense with the regular inquiry contemplated by the rules on account of practical difficulty found by the competent disciplinary authority in case it is not reasonable practicable to hold such inquiry. We have

already hold that the disciplinary authority has rightly proceeded in the matter in view of the provision of Rule 14(ii) when he found difficulty to serve the notice upon the applicant even after the registered post with AD letter was returned undelivered. Rule 14 runs as follows :

> "Notwithstanding anything contained in Rules 9 to 13:
> (i) where any penalty is imposed on a railway servant on the ground of conduct which has led to his conviction on a criminal charge; or
> (ii) where the disciplinary authority is satisfied , for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
> (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided there rules;

On a careful consideration of the aforesaid provision of the rule it is found that said power has been vested upon the disciplinary authority only in order to dispense with the regular inquiry as contemplated by the rule itself for providing major penalty or minor penalty whatever may be. But that does not dispensence with the obligation to find out as to whether such unauthorised absence amounts to misconduct or unbecoming to be the government servant. In other words, whether such conduct of the applicant warrants removal from service. Now the question comes whether "remaining absence" is within the meaning of the said rules, means voluntary absence and not absence for a cause which is beyond control that is serious illness and other cause which prevented him from resuming duty. Though we do not deny the power of the disciplinary authority to dispense with the regular inquiry for imposing punishment upon the applicant, yet it is not implied that the disciplinary authority has the authority to pass such orders without being fully satisfied that the applicant was really absent from duty without permission of the authority willfully, voluntarily or without any sufficient cause. We have gone through the impugned order of removal dated 24.3.86

(annexure-A1). From the said order We do not find that the disciplinary authority had considered this fact whether the applicant remains absent from duty for such a long period voluntarily, intentionally or under circumstances which were not beyond control of the applicant. In the instant case, the respondents exercised their power of removal, removing him from service with effect from 24.3.86 without holding that he remained absent voluntarily and intentionally and the reasons were not beyond control of the applicant. In absence of any such finding, the order of removal which is a major penalty under service rules should not stand. Moreover, non-application of mind of the disciplinary authority before imposition of the punishment of removal amounts to arbitrary, unreasonable and liable to be struck down. It is evident from the record that the applicant after being recovered had wanted to resume to duty and prayed to the authority to allow him to resume duty, but he was not allowed since the removal order had already been passed in the year 1986 and he accordingly, made a representation to the authority on 2.6.95 and that has not yet been disposed of by the authority.

7. The case is hopelessly barred by limitation. The Administrative Tribunals Act, 1985 is the complete coordinate itself and the general law limitation is not applicable to the matters covered by the Administrative Tribunals Act. The impugned order was passed on 24.3.1986 and the first representation was filed by the applicant on 2.7.94 after a lapse of more than eight years. There is no explanation forthcoming from the applicant as to why he was not aggrieved by the order of removal from service. No petition praying for condonation of delay has also been filed by him. There is no doubt, therefore, that the case is hopelessly barred by limitation. Moreover, in Ratan Chandra Samanta case it has

been held by the Hon'ble Apex court that delay itself deprives a person of his own right. the applicant has delayed in the matter of filing of the application for remedy and that by doing so he has denied himself of his right.

8. The application, therefore, deserves to be dismissed but keeping in view the fact that the applicant was mostly ill for some time, he may file a fresh representation to the appropriate authorities in the matter and the dismissal of the application will not be a bar if the respondents consider it favorably.

9. The application is, therefore, dismissed without passing any order as regards costs.

(D. Purkayastha)
MEMBER(J)

(B.C.Sarma)
MEMBER(A)
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