

11/11

Central Administrative Tribunal, Jodhpur Bench,
Jodhpur

...

Date of order : 17-4-2001

O.A.No. 95/97

R.K.Saxena S/o Shri R.C.Saxena, aged about 45 years,
R/o Sainath Mother Public School, Pathon-Ki-Magri, Sevashram,
Udaipur 313001, Last employed on the post of T.C. under
S.S. Vadodara W/Rly.

..... Applicant.

Versus

1. Union of India through General Manager, Western
Railway, Churchgate, Bombay.

Additional Divisional Railway Manager, Western
Railway, Vadodara.

Senior Divisional Commercial Manager, Western
Railway, Vadodara.

4. Divisional Commercial Manager, Western Railway,
Vadodara.

..... Respondents.

.....

CORAM :

HON'BLE MR. A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR. A.P.NAGRATH, ADMINISTRATIVE MEMBER

.....

Mr. J.K.Kaushik, Counsel for the applicant.

Mr. S.S.Vyas, Counsel for the respondents.

.....

2/11

Per Mr.A.K.Misra :

The Applicant had filed this application with the prayer that the impugned Chargesheet SF-5 dated 31.10.79 Annex.A/1, Notice dated 27.3.95, Annex.A/2, imposing a penalty of removal from service, Order dated 14.12.95, Annex.A/3 of the appellate authority rejecting the appeal of the applicant and the Order dated 25.7.96, Annex.A/3/A rejecting the revision of the applicant, be declared illegal and be quashed and the applicant be allowed all consequential benefits as if no adverse orders existed against him.

2/ The applicant had challenged the aforesaid chargesheet and the orders on the ground that the chargesheet of major penalty was served by an authority not competent to impose the major penalty, the applicant has been held guilty on the basis of conjectures and surmises and no reasonable opportunity to defend the case was provided to him, that the penalty of removal of the applicant from service was based on extraneous matters and was passed by an authority who was not the applicant's appointing authority, the order of penalty is ex facie illegal, arbitrary and without jurisdiction. The applicant had also challenged the order of the appellate authority on the ground that the applicant was not provided with an opportunity of personal hearing, the appeal has been rejected without considering the points raised therein and no finding was given by the appellate authority in respect of the mandatory requirements as provided ^{Rule 27 of} under the rules. It is also stated by the applicant that the revisional authority had also rejected the revision of the applicant mechanically without application of mind and



gm

examining the matter in detail. The applicant had challenged the disciplinary proceedings on the ground that the disciplinary proceedings were conducted and terminated with in-ordinate delay which is only attributable to respondents. The penalty imposed on the applicant is dis-proportionate to the alleged mis-conduct, therefore, the impugned orders deserve to be set aside as prayed for in the OA.

3/ Notice of the OA was given to the respondents who have filed their reply to which no rejoinder was filed by the applicant. It is stated by the respondents that the applicant was appointed on the post of Ticket Collector w.e.f. 15.7.76 after completing the requisite training. Thereafter, the applicant had executed a bond in favour of the department for five years but the applicant submitted resignation on 26.7.78 without settling the outstanding dues in terms of the bond and absented himself from duties w.e.f. 26.7.78. Consequently, he was served with a chargesheet Annex. A/1 dated 31.10.79 but it was denied by the respondents that the chargesheet was served under the signatures of an incompetent officer. It is alleged by the respondents that during the un-authorised absence period the applicant had accepted employment at various places and prayed for withdrawal of his resignation vide letter dated 7.12.1983 but he was not permitted to withdraw the same in view of the impugned chargesheet. It is further stated by them that after due inquiry the applicant was rightly found guilty of the charges and was punished by the competent authority. Full opportunity to defend the departmental inquiry was given to the applicant. No extraneous matter was considered for awarding the penalty of removal from service, as alleged by the applicant.



2/m

It is also denied by the respondents that the respondent No. 4 was not the appointing authority of the applicant. The appeal of the applicant was duly considered by the appellate authority and the revision of the applicant was duly considered by the revising authority. Both the authorities agreed with the findings of the disciplinary authority. The delay in inquiry is attributable to the applicant who was absenting from duty due to his having been employed elsewhere. The punishment is proportionate to the charges, therefore, the applicant is not entitled to any relief whatsoever.

4/ We have heard the learned counsel for the parties and have gone through the case file. We have also considered the arguments advanced by the learned counsel for the parties which they had developed on the basis of their pleadings.

5/ The applicant was offered appointment on the post of Temporary Ticket Collector vide letter dated 14.7.76 (Annex. A/5) issued by the Senior Divisional Commercial Superintendent, Baroda and was appointed on the said post vide Annex. A/6 issued by the same authority. Thus, the Senior Divisional Commercial Superintendent is required to be treated as the applicant's appointing authority for all purposes. The applicant was ordered to be removed by the Divisional Commercial Manager vide its order dated 27.3.95 (Annex.A/2). When the applicant was appointed by the Senior Divisional Commercial Superintendent, he cannot be ordered to be removed by the Divisional Commercial Manager as the same is not the appointing authority and in view of this, the removal order Annex.A/2 is grossly bad in law and deserves to be quashed.

bom



6/ The chargesheet for un-authorised absence was served on the applicant under the signatures of Divisional Commercial Superintendent, the chargesheet is placed at Annex.A/1. It is not established that the Divisional Commercial Superintendent was competent to impose a major penalty on the applicant and in view of this, the chargesheet served on the applicant was not issued by a competent authority and, therefore, was bad in law. The same, in our opinion, deserves to be set aside.

7/ The applicant had filed an appeal against the order of removal which was considered by the appellate authority and was disposed of by a cryptic order without dealing with the grounds raised in the memo of appeal. As per the provision of law, the appellate authority was to apply its mind in respect of few important matters. These matters are; whether the chargesheet was issued by a competent authority, whether the order of removal was passed by a competent authority and whether the punishment is proportionate to the charges levelled against the applicant. Had the appellate authority examined these points the result of the appeal would have been different than the one which is under challenge. There is nothing on record to show that reasonable opportunity was given to the applicant by the appellate authority. Failure on the part of the appellate authority to provide an opportunity of personal hearing to the applicant amounts to refusing a reasonable opportunity to defend the case. Thus, in our opinion, the principles of natural justice have been violated. Consequently, the order of the appellate authority is difficult to sustain. We have also examined the order passed by the revising authority. We are of the opinion that

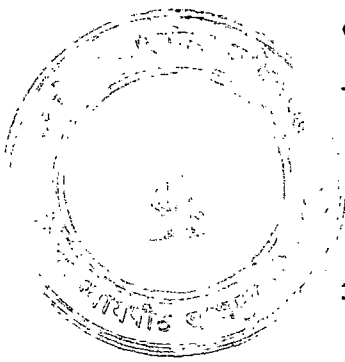


2mm

.6.

the legal aspect of the departmental case was not examined by the revising authority with due application of mind. The applicant had challenged the competence of the authority removing him. This, in fact was the most important legal aspect of the case which was lost sight of by the revising authority. Consequently, the order of the revising authority is also difficult to sustain.

8/ In the departmental inquiry punishment should be proportionate to the charges which the applicant was facing. In the instant case, the applicant was charged for remaining un-authorised absence from duties w.e.f. 26.7.78. No doubt, the inquiry came to an end almost after 15 years of issuance of the chargesheet, ^{but} _L the disciplinary authority was required to consider the fact of un-authorised absence of the applicant from duties w.e.f. 26.7.78 till the chargesheet dated 31.10.79 was served on the applicant. If the applicant had remained absent subsequently ^{also} _L than the chargesheet ought to have been amended accordingly but this was not done. From the inquiry report, we find that the applicant was found un-authorisedly absent from 26.7.78 and onwards and the same was up-held by the disciplinary authority. This goes to show that applicant's continuous un-authorised absence was considered for awarding the punishment of removal from service. Law does not permit extraneous matters to be considered in holding the charge unproved. If the date of un-authorised absence till the date of service of chargesheet is considered as a period of un-authorised absence then certainly the penalty of removal of applicant from the service is dis-proportionate to the charges. But, this aspect of the matter should not detain us any further once we have



2m

.7.

come to the conclusion that punishment of removal has been awarded to the applicant by an authority other than his appointing authority.

9/ From the foregoing discussions, we come to the conclusion that the chargesheet was issued to the applicant by an authority not competent to do so, the punishment of removal from service was awarded to the applicant by an authority not competent to do so and the appeal and the revision were disposed of in a cryptic manner without application of mind and consequently all these orders deserve to be set aside and applicant is entitled to be reinstated in service.



10/ Having come to the conclusion as mentioned above, the next question which we ^{are} posed with is, how the period ~~from~~ of un-authorized absence of the applicant till his re-instatement should be dealt-with. The applicant had absented from duties as per the chargesheet w.e.f. 26.7.79. Thereafter, the applicant had sought employment elsewhere and remained employed till August 1983 as mentioned in his letter dated 29.2.84, Annex.R/3, addressed to the Railway authorities. We do not know whether thereafter the applicant had gained another employment or not. But, this is certain that initially the applicant had remained employed elsewhere for a period of four years. The applicant was facing a charge for not depositing the cost of training and some amount of over-drawal. The applicant could have deposited the same and could have prayed for his re-instatement with the condition

3/11

.8.

of facing the chargesheet. But, this was also not done. No doubt, the inquiry dragged on for number of years but the applicant also cannot be left un-blamed for the same because such a situation was created by the applicant ^{him} ~~it~~ self due to his un-authorized absence from service. The applicant was removed from service w.e.f. 27.3.95 and thereafter was agitating the matter departmentally and through this O.A. But, he had not rendered any service to the department for all this period, therefore, while concluding that the applicant should be re-instated immediately, we are of the opinion that he is not entitled to any back wages for the period of un-authorized absence till the date of re-instatement. The applicant is also not entitled for counting the entire period for ^{any} pensionary benefits.

11/ It may be noted that we have come to the conclusion that the chargesheet was not served on the applicant under the signatures of the competent authority but by applicant's own admission we find that while the applicant's resignation was still pending with the authorities he had undertaken employment elsewhere. Therefore, we leave it for the authorities to consider the matter of serving a ^{fresh} chargesheet to the applicant on these counts ~~for~~ if necessary.

12/ In view of the above discussions, the O.A. deserves to be accepted in part and the impugned chargesheet and the orders of the departmental authorities which are under challenge, deserve to be quashed.

13/ The O.A. is, therefore, partly accepted. The Chargesheet

gym-

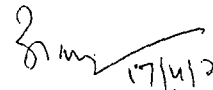
dated 31.10.1979 (Annex.A/1), the order of the disciplinary authority dated 27.3.1995 (Annex.A/2), the order of the appellate authority dated 14.12.1995 (Annex.A/3) and the order dated 25.7.1996 (Annex.A/3-A) rejecting the revision of the applicant, are hereby quashed and set aside and the respondents are directed to re-instate the applicant on the same post from which he had tendered his resignation, ^{and was removed from service} on the same pay scale or equivalent thereof in the new pay scale, within a period of three months from the date of communication of this order. However, it is hereby ordered that the applicant shall not be entitled to any pay or arrears thereof from the date of his unauthorised absence till re-instatement. This period shall also not be counted as a qualifying period for any service or pensionary benefits of any kind whatsoever of the applicant.



14/ The respondents shall be free to initiate the departmental proceedings against the applicant for the alleged unauthorised absence *denovo* from the stage of serving the chargesheet on the applicant and proceed against him in such inquiry as per the rules.

15/ The parties are left to bear their own cost.


(A.P. NAGRATH)
Adm. Member


(A.K. MISRA)
Judl. Member

...

rehta