

प्राप्ति (प्राप्ति) विधायक नियम 22 के अनुसार निःशुल्क प्रति

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विनायक 139/98

II

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

**JODHPUR BENCH : JODHPUR**

Date of order : 19.09.2001

1. O.A. No. 210/98  
with  
2. M.A. No. 139/98

Chander Prakash son of Shri Tar Chandji, aged about 63 years, resident of C/o. Mrs. Lalit Dureja, 457-B, DLW Colony, Varanasi (UP), last employed on the post of Asstt. Station Master at Hanumangarh, Northern Railway.

... Applicant.

### versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Additional Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Senior Divisional Operating Manager, Northern Railway, Bikaner Division, Bikaner.

... Respondents.

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

Mr. Jitendra Singh Rathore, Adv., Brief holder for Mr. Ravi Bhansali,  
Counsel for the respondents.

**CORAM:**

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed by Shri Chander Prakash, being aggrieved by the charge-sheet dated 16.08.93 (Annexure A/1), the

order of the disciplinary authority dated 28.06.94 (Annexure A/2), the order of the appellate authority dated 12.12.94 (Annexure A/3) and the order of the revisional authority dated 19.05.97 (Annexure A/4). It is to be noted at this stage itself that the orders of the disciplinary authority and the appellate authority, ordering the removal of the applicant from service vide Annexures A/2 and A/3 respectively, are modified by the revisional authority vide Annexure A/4, reducing the penalty of removal from service to that of compulsory retirement with effect from 30.06.1994.

2. The learned counsel appearing for the applicant submitted that earlier the applicant was given a charge sheet in the year 1983, but the same was withdrawn by the department vide order dated 13.08.93 (Annexure A/6). Thereafter, immediately they have issued the present charge-sheet dated 16.08.93 vide Annexure A/1, and the second charge-sheet could not be valid, since no reason was given for withdrawal of earlier charge-sheet. He also submitted that the department has no power to withdraw the charge-sheet and file a fresh charge-sheet on the same charges. No Rule authorises such a course. Therefore, the entire proceedings initiated against the applicant, including the Annexure A/1, are liable to be set aside. He relied upon R.B.E. No. 171/93 dated 01.12.1993 in support of his contention. He also submitted that after furnishing the enquiry report, the applicant has not been given sufficient opportunity to file reply to the same. As such, the principles of natural justice are violated in this case. By relying upon the averment made in Para 4.4 of the OA, the learned counsel for the applicant stated that the enquiry report was furnished to the applicant on 19.06.94, asking him to file the reply, if any, to that enquiry report within 15 days. But the applicant fell sick on 20.06.1994, and he informed the same to the Disciplinary Authority vide his letter dated 22.06.1994 (Annexure A-9) by speed post, and the same was acknowledged on 27.06.1994. He further stated

that as per the circular dated 10.11.1989 (Annexure A-10), 15 days time was required to be given to submit the representation against the enquiry report. But the disciplinary authority confirmed the findings of the enquiry officer on the 9th day from the date of giving the copy of enquiry report, and a final order was passed on 28.06.1994 by imposing the penalty of removal from service, as such, he could not submit his reply in time and accordingly his defence was seriously prejudiced. Therefore, the impugned order vide Annexure A-2 X is liable to be set aside.

3. On the contentions raised on behalf of the applicant, it is contended by the respondents that the application itself is barred by time. It is stated by the respondents that the finding of facts recorded by the enquiry officer, disciplinary authority, appellate authority and the revisional authority do not call for any interference. He further submitted that the earlier charge-sheet issued against the applicant was withdrawn, since the file connected with the charge-sheet SF-5 was misplaced and could not be traced. Therefore, the earlier charge-sheet was cancelled with a direction to issue fresh charge sheet SF-5 vide Annexure R/1 dated 06.08.1993, and it is on the basis of Annexure R/1, the order Annexure A-6 dated 13.08.1993 was given to the applicant, stating that the earlier SF-5 was withdrawn. They also contended that the quantum of punishment was adequate and the application is liable to be dismissed.

4. Heard and perused the records.

5. From the reading of Annexure R/1, we find that the reasons are given for withdrawing the earlier charge-sheet and filing a fresh charge-sheet. At any rate, the employer has power to withdraw the

charge-sheet for the reasons stated at Annexure R/1, and issue a fresh charge-sheet. Therefore, in terms of R.B.E. No. 171/93 dated 01.12.1993, the order cancelling or dropping the original charge-sheet did mention the reasons, and hence that circular was not violated. Even otherwise, this R.B.E. No. 171/93 is dated 01.12.1993, whereas the order at Annexure R/1 was passed on 6.8.93, and on the basis of that Annexure R/1, the order Annexure A-6 was issued on 13.08.1993, all prior to the issuance of R.B.E. No. 171/93 dated 01.12.1993. Therefore, R.B.E. No. 171/93 dated 01.12.1993 was not applicable as on date the orders Annexure R/1 and Annexure A-6 were issued, and as such, the applicant cannot complain of violation of R.B.E. No. 171/93 dated 01.12.1993. Even otherwise, the employer has the power to withdraw the charge-sheet in case of any formal defect or difficulty etc., and to file a fresh charge-sheet. Moreover, when the fresh charge-sheet was issued vide Annexure R/1 dated 16.08.1993, the applicant did not raise any objection and he participated in the enquiry. Thus, having accepted the decision of the authority on the basis of Annexure A-1, and on that basis, the enquiry was held, the applicant is estopped to contend that the impugned charge sheet vide Annexure A-1 could not have been issued. The applicant has filed a detailed appeal before the appellate authority, in which we do not find any ground alleging that the charge-sheet vide Annexure A-1 could not be issued after withdrawing the earlier charge-sheet. It is the first time before the Tribunal, the applicant is taking this plea, and in our considered opinion, this contention is untenable. It is not the case of the applicant that the disciplinary authority lacks its jurisdiction in issuing the charge-sheet Annexure A-1. As long as the jurisdiction vests with the disciplinary authority either to withdraw or issue a charge-sheet, the charge-sheet vide Annexure A-1, can not be set aside.

6. Regarding the second contention of the applicant that no opportunity was given to the applicant after issuing second chargesheet vide Annexure A-1, the applicant's counsel contended that the disciplinary authority should have given him 15 days' time to file reply to enquiry report, in terms of circular dated 10.11.1989 (Annexure A-10) of the Railway Board. But we find that the applicant admits having received the copy of the enquiry report, and it is his case that after receipt of the enquiry report, he fell sick and he could not file the reply in time. Admittedly, in this case, the applicant remained absent right from the year 1982 onwards as per the charge-sheet. It appears that during 1983 and 1989, he reported for duty, but he slipped away without joining the duty. Both the disciplinary authority and the appellate authority held that the applicant was unauthorisedly absent, nearly for 12 years. The applicant admits the absence, but pleaded that he was sick during that period. But the authorities have pointed out that nothing prevented him in either applying the sick leave or informing the department. But that he has not done. His further case that he was not taken on duty by the authority after 1982, is also not accepted by the disciplinary authority as well as appellate authority, stating that he could not have kept quiet nearly for 12 years. If he was not taken on duty, he could have complained to the higher authority that the lower authority was not taking him on duty. They have also pointed out that within the period of 12 years number of his superior officers might have changed, and it was unthinkable that he was not taken on duty. The applicant's case that he had taken treatment from a private doctor for heart disease etc. for 12 years, has been disbelieved by all the authorities below. Moreover, the applicant has been given personal hearing by the appellate authority while dismissing his appeal. We think it appropriate to reproduce the order of the appellate authority dated 12.12.1994 as under :-

" I have gone through the appeal submitted by the ex-employee and the D&AR case. He was also given a personal hearing as requested by him. The charges levelled against him are that he has been absconding un-authorisedly since 1982. These charges have been proved beyond any doubt by the enquiry officer. The ex-employee has submitted a verbose and lengthy appeal. The gist of which and also the please taken by him during the personal hearing is that he was not allowed duty although he tried on several occasions to report for duty during the period 1982 to 1994. This argument is not acceptable at all. I fail to understand as to how an employee .... .... (not legible) survive for a long period of 12 years without getting any salary and simply keeps reporting to the Sr. DOM for duty on several occasions as claimed by him. If he was not allowed duty by the various Sr. DOMs, who would have been posted during this long period of 12 years, the employee should have approached the higher authorities viz. ADRM/BKN, DRM/BKN. No such effort seems to have been made by him. It is, however, seen that during this period, he reported for duty in office in 1983 and 1989 and on both the occasions, he managed to slip away and did not join duty. Even, if the other plea that he was suffering from a serious heart disease is accepted, it does not entitle him to remain on unauthorised absence, unless he is continuously under the treatment of a railway doctor and in that case also he is required to inform and obtain necessary approval from the competent authority for remaining away from duty for such a long period. In a nutshell, whatever he has tried to say in his appeal are lengthy and baseless bunch of arguments which are not acceptable. In my opinion, he has been rightly removed from service by the Disciplinary Authority. The appeal is, therefore, accordingly rejected."

Having regard to the reasons assigned by the disciplinary authority as well as the appellate authority, as extracted above, in our considered opinion, no prejudice could be caused to the applicant if the applicant was not granted 15 days' time to file reply to the show cause notice given to the applicant alongwith enquiry report. Moreover, the finding of facts recorded by all the three authorities based on enquiry report and also on the evidence on record, do not call for any interference.

7. Moreover, we find that the order of removal awarded by the disciplinary authority and confirmed by the appellate authority, has been modified to the one of compulsory retirement with effect from 30.06.1994. It is also brought to our notice at the Bar that the applicant would have retired from service from the same date, i.e.

30.06.94. In our considered opinion, reducing the penalty of removal to the one of compulsory retirement itself is a very very lenient view taken by the department, having regard to the fact that the applicant remained unauthorisedly absent for nearly 12 years. In this view of the matter, we do not find any merit in this application.

6. Before parting with this application, we find that the applicant has filed an M.A. No. 139/1998 for condonation of delay of one month and 20 days in preferring the present OA No. 210/1998. Only the reason explained by him in the affidavit in support of the application is that, though he could get some pension amount, yet he could not file the application in time due to paucity of funds, and he had to go from Varanasi to Jodhpur for filing this application. This averment has been denied by the respondents. Admittedly the applicant has received certain amount of pension. If that is so, the plea that he could not file this application due to paucity of funds, cannot be accepted. Thus, in such circumstances, there is neither equity nor any law to condone the delay in filing the OA. Accordingly, we pass the order as under :-

" The O.A. No. 210/1998 and the M.A. No. 139/1998 are hereby dismissed. No costs."

Sd/-  
(GOBAL SINGH)  
ADM. MEMBER

Sd/-  
(B.S. RAIKOTE)  
VICE CHAIRMAN

cvr.

श्रमाणित सदी प्रतिलिपि  
30/9/2001  
श्रानुभाग अधिकारी (आधिकारी)  
केन्द्रीय प्रशासनिक अधिकारक  
जोधपुर