

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

O.A. 993 of 1997

Date of order: 08.07.2004

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.
Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Akul Goswami

- v e r s u s -

Union of India & Ors. (S.E. Railway)

For the applicant : Mr. S.K. Dutta, counsel.
For the respondents : Ms. U.D. Sen, counsel.

O R D E R

Per Justice B. Panigrahi, VC

In this proceeding there has been a prayer made by the applicant to cancel, withdraw and rescind the impugned charge sheet dated 25.2.94, ex-parte enquiry report dated 12.8.94 and the order of punishment of removal dated 13.8.94/21.9.95 being Annexure-I to the application. It has been inter-alia stated that the applicant was appointed as a Khalasi TCIL, Adra on or about 1.10.63 and was transferred to different places, which the applicant claimed to have carried out with efficiency and sincerity and thereafter he was transferred to Bokaro Railway Station. While he was posted at Bokaro Railway Station, he met with an accident on 23.2.87 while on duty by falling in between the platform and the train, as a result of which his right leg had to be amputated in Bokaro B.S.L. Hospital. Subsequently he was admitted to the Adra Railway Hospital where he stayed from March to June, 1987. In 1987, the applicant was transferred to Hatia, Ranchi as a Khalasi Helper. While he was posted as a Khalasi Helper at Ranchi, the authorities entrusted him with heavy duty but the applicant could not cope up with the same due to his physical disability on account of amputation of right leg. The applicant has, therefore, prayed to declare him incapacitated and to provide him an alternate job by allotting some type of sedentary

duty. Under compelling circumstances, on account of his continuous ailment he remained absent for quite sometime. Accordingly, the authorities purported to have issued a charge sheet on 25.2.94 and ex-parte enquiry was conducted following which the order of removal was passed. Therefore, being aggrieved by such order the applicant has filed this case.

2. Mr. Dutta, 1d. counsel appearing for the applicant has submitted that till the applicant did not meet with the accident he was very sincere to attend the office but after such unfortunate accident, on account of his physical disability, he could not join and perform any arduous job. Thus he had prayed for alternate job, but the authorities turned deaf ear to such request. The authorities before embarking upon the disciplinary proceeding failed to supply article of charges nor provide him opportunity of being heard in the disciplinary proceedings. Thus they have taken one sided view that the applicant was unauthorisedly was absent from duty for certain period. Mr. Dutta has also invited our attention to the letter dated 22.12.93 (Annexure-A/2 to the application) whereby the applicant expressed his desire to join duty, but the authorities without giving him suitable posting rather they were bent upon to proceed with the disciplinary proceeding with the determined effort to remove him from service.

3. Ms. Dutta Sen, 1d. counsel appearing for the respondents when asked about the supply of article of charges, she could not give satisfactory reply to us whether the applicant had received such article of charges or not. From the enquiry report it is self-evident that no such opportunity was given to the delinquent while final order of removal was passed. Nowhere it is also mentioned in the enquiry report as to why the applicant's joining report was not accepted even though it was tendered to the concerned authority

on 22.12.93. Thus in this background, since the punishment imposed against the delinquent was unilateral and illogical which has caused sufficient prejudice to the delinquent by not having a copy of the same being served. We, therefore, quash the disciplinary proceeding. When asked to Mr. Dutta as to whether his client will be prepared to face disciplinary proceeding once again, he expressed his inability and made fervent prayer that instead of removal from service, let the punishment imposed on his client be treated as a compulsory retirement. We find from the record that on previous occasion the delinquent frequently remained absent from duty, therefore, we feel it proper not to remit the case back to the authorities for embarking upon a fresh enquiry in order to meet the ends of justice. We, therefore, direct the respondents to treat the order of punishment as compulsory retirement instead of removal. If the applicant is otherwise entitled to, the authorities shall release all the service benefits accrued to him. No costs.

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Member (A)

Benn
Vice-Chairman.