

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 431/90
TXXXXXNo.

199

DATE OF DECISION 24. XII. 91.

N.Duraiswamy _____ Applicant (s)

M/s.K.Ramkumar,V.R.Ramachandran Nair _____ Advocate for the Applicant (s)

Versus
Union of India represented by
the General Manager, Southern Railway, _____ Respondent (s)
Madras and 2 others

M/s. M.C.Cherian, Saramma Cherian and T.A.Raja _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 21.5.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Pointsman in the Traffic Department of the Southern Railway has prayed that the impugned order dated 13.12.88 at Annexure-A removing him from service as also the impugned appellate order dated 5th July 1989 rejecting his appeal, should be set aside and the respondents be directed to reinstate him in service with all consequential benefits. The brief facts of the case are as follows.

2. While the applicant was working as a Group D employee as Pointsman B he was chargesheeted on 3.8.1988 for ^{Three spells of} ~~unauthorised~~ absence from 27.11.1987 to 29.11.1987, again from 31.5.1988 to 8.6.1988 and again from 14.6.1988 onwards. However the chargesheet could not be served on the applicant as he was continuing to be absent without any intimation or information. The copy of the charge memorandum sent to him by registered post on 6.9.88 was returned unserved. Accordingly the charge memo-

randum was displayed on the notice board of the Calicut Railway station where the applicant was working immediately prior to his absence.

On 12.10.88 the disciplinary authority appointed the Enquiry Officer (Exbt.R1(c)) . On this the applicant appeared on 18.10.88 and sought personal interview by his representation dated 18.10.88 at Exbt.R1(d). When nothing was heard of him, notice of enquiry was sent to his residential address(Exbt. R1(e)). The applicant, however, did not turn up and the enquiry was conducted ex parte. On the basis of the finding of the Enquiry Officer the impugned order of penalty at Annexure A was issued removing the applicant from service. This was sent to his home address and was received by the applicant on 23.12.88 and six months thereafter the applicant filed an appeal dated 12.5.89. Even though the appeal was time-barred it was considered on merits and was dismissed. On this the applicant sent a revision appeal to the second respondent (the Divisional Railway Manager) but the same was rejected by the impugned order dated 5th July 1989 at Annexure-F. The applicant has challenged the punishment orders on several grounds. Firstly he has stated that the ex parte orders are against the principles of natural justice and that the charge memo was not issued to the applicant. He has further argued that ^{once} when he was allowed to join duty after the first two spells of absence by submitting proper fitness certificate, the respondents could not take action against him for those two periods of absence on leave. Even otherwise production of application and certificates on medical grounds can be only after the leave has been availed of. He has also challenged the competence of the Divisional Safety Officer to pass the order of dismissal. He has also challenged the impugned orders by stating that they are non-speaking and not reasoned.

3. In the counter affidavit the respondents have stated that the disciplinary authority being an officer in the Junior Administrative Grade in the Traffic Department is competent to award the punishment. They have also indicated that the Full Bench decision of the Tribunal relied upon by the applicant to challenge the competence of the discipli-

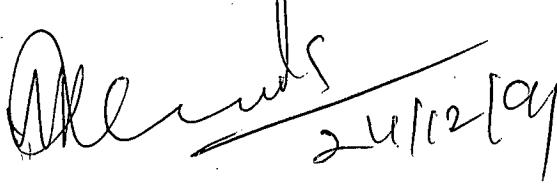
nary authority, i.e, the Divisional Safety Officer, has been set aside by the Supreme Court. They have stated that all possible opportunities were given to the applicant to defend his case, but the applicant did not avail of them. Having appeared briefly on 18.10.88 he did not appear again or participate in the enquiry. He had not given any hint prior to his appeal at Annexure-B, that his absence was due to medical unfitness.

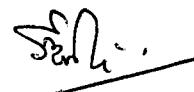
4. In the rejoinder the applicant has stated that he had submitted medical certificates for each spell of leave applied for. He has annexed copies of the medical certificates also and stated that it was only after the receipt of the fitness certificates after the first two spells of leave, referred in the chargesheet that he was allowed to join duty. He, however, concedes that due to mental depression he did not pursue his application for personal interview. His wife took him to the office of the DSO to explain his mental condition, but he was not allowed to meet him.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. We cannot accept the result of ex parte enquiry without satisfying ourselves that all possible action was taken to associate the applicant at all stages of the enquiry. Even accepting the respondents' contention that the chargesheet was sent by registered post and was returned unserved, there is nothing to show that after the enquiry was commenced in October 1988 and after the applicant had appeared in person on 18.10.88, the applicant was continued to be informed by registered post of the enquiry proceedings. The learned counsel for the respondents indicated that the enquiry was held only for one day and the enquiry report was not sent to the applicant before the disciplinary authority made up its mind about the guilt or otherwise of the applicant. It has been held by the Supreme Court in Union of India and others vs. Mohd. Ramzan Khan, Judgment Today, 1990(4) SC 456 that non-supply of the enquiry report before the order of punishment is finalised by the

disciplinary authority, violates the principles of natural justice.

5. In the facts and circumstances we allow the application, set aside the impugned orders dated 13.12.1988 at Annexure-I and 5th July, 1989 at Annexure-F and direct that the applicant should be reinstated with effect from the date of removal and deemed to be under suspension from that date. The respondents are directed to initiate disciplinary proceedings after duly serving the chargesheet on the applicant and get necessary orders passed by the competent authority in accordance with law. The entitlement of pay and allowances for the period of unauthorised absence and for the period between the date of deemed suspension and the date of passing of final orders shall also be considered and decided by the respondents in accordance with law at appropriate stages. The applicant, however, will be entitled to subsistence and other allowances ^{as admissible} ~~as~~ during the period of his deemed suspension. There will be no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

n.j.j