

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXXX

408

1990

DATE OF DECISION 30.7.1991

S. Ramasundaram _____ Applicant (s)

Mr. Majnu Komath _____ Advocate for the Applicant (s)

Versus

UOI rep. by the Secretary, Railway Board, Rail Bhavan, N.Delhi & 3 others Respondent (s)

Mr. M.C. Cherian _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y3*
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal? *NO*

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

In this application dated 21st May, 1990, the applicant has challenged the legality, propriety and correctness of the order dated 28.10.1988, at Annexure-I of the third respondent removing the applicant from service with effect from the afternoon of 31.10.1988, and the appellate order of the second respondent rejecting his appeal communicated to him by the third respondent vide letter dated 1.5.1989, at Annexure-IV. He has also prayed that the respondents ~~may~~ be directed to ~~re~~ reinstate him with backwages and continuity of service and other consequential benefits.

2. Avoiding details, the facts of the case necessary for the disposal of this application can be briefly stated as follows. The applicant while working as Loco Khalasi in loco shed, Tiruchirappilly junction did not report for duty during 26.8.1987 to 18.11.1987. According to the applicant, ~~he~~ was sick and under treatment of a private doctor for acute ~~peoxxx~~ stomach ulcer. While he reported for duty on 18.11.1987, he was directed by the Loco Foreman to report to the DMO, Tiruchirappilly and the DMO after taking X-ray of his abdomen and giving him some medicines and certified that he was fit to join duty. The applicant rejoined duty on 19.11.1987. Thereafter, the applicant was charge-sheeted for unauthorised absence from duty from 26.8.1987 to 18.11.1987. An ex-parte enquiry was held without serving on the applicant personally a notice intimating the date of enquiry. The Enquiry Officer held the applicant guilty of the charge ^{and} ~~accepting the finding of~~ the Enquiry Officer, the Divisional Mechanical Engineer, Tiruchirappilly, the respondent No.4 issued the impugned order at Annexure-I dated 28.10.1988, imposing on the applicant ^{the} punishment of removal from service with effect from the Afternoon of 31.10.1988. The appeal submitted by the applicant was rejected by the second respondent and this decision was communicated to the applicant by order dated 1.5.1989 at Annexure-IV. The impugned orders are challenged by the applicant on the ground that, in-

as much as no notice of enquiry was served on the applicant and as not even an attempt was made to serve the applicant with a notice in his residential address, the enquiry held is in violation of principles of natural justice as he was denied an opportunity to defend his case, and that the Appellate Authority has not applied his mind to the contentions raised by him in the appeal memorandum.

3. The impugned orders have been sought to be justified in the reply statement on the ground that the ex parte enquiry was held because the applicant not having furnished his whereabouts could not be personally served with notice, and that the Appellate Authority has passed a speaking order considering the contentions raised by the applicant in his appeal. It has been averred in the reply statement that the notice of enquiry was fixed on the notice board of the office in which the applicant was working, and that, this should be treated as sufficient service on the applicant. It has also contended that, as the applicant is a permanent resident of Salem, this Bench of the Tribunal has no jurisdiction to entertain this application.

4. We have heard the counsel on either side and have carefully gone through the pleadings and documents produced.

5. The respondents have raised a contention that, this Bench of the Tribunal has no jurisdiction to entertain the application as the applicant is a permanent resident of Salem which is outside the territorial jurisdiction of this Bench.

The address of the applicant as given in the cause title of the application reads as follows: S.Ramasunderam, Ex-LK/TPJ, S.No.TM 2704, S/o ~~late~~ R.Sidha Gounder ^{Late} Loco Driver, No.6/97 F Kasakaranor, Salem-636 005, Tamil Nadu now residing at C/o Divakaran, Railway Employee, Thundi-parambil House, Kalamukku, Vypeen, Cochin.1. The respondents have stated that the address at Vypeen given in the application is fictitious one and that the application therefore is liable to be dismissed in-limini. The applicant has filed an affidavit on 27.6.1991 in which he has sworn that, as he was out of employment, he has come to Vypeen with the hope of getting some casual work for his subsistence and that he is residing in the house of his friend Divakaran who has helped him by providing with a shelter in his house. Therefore, according to the applicant, as he is ordinarily residing within the jurisdiction of the Bench of this Tribunal, this Bench of the Tribunal has got jurisdiction to entertain this application. Rule 6(2) of the Central Administrative Tribunal procedure Rules reads as follows:

"Notwithstanding anything contained in sub-rule (1) person who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

The applicant is a person who has ceased to be in service. As per the averment in the application and also in the affidavit filed by him, though his permanent residence is at Salem at the time when he filed this application

and even thereafter he had been ordinarily residing in Vypeen within the jurisdiction of this Tribunal. There is nothing to disbelieve this statement of the applicant in his affidavit. A mere statement in the reply that the address given in the cause title of the application is a fictitious one need not compel us to disbelieve what is sworn in the affidavit by the applicant. If the applicant was ordinarily residing at Salem in his permanent native place, there is no reason why he should come all the way to Ernakulam to file an application, taking the risk of it being contested on the ground of lack of jurisdiction. Therefore, we accept the case of the applicant that he is ordinarily residing within the jurisdiction of this Bench of the Tribunal and hold that this Tribunal has jurisdiction to entertain the application.

6. The case of the applicant is that the enquiry held preceding the impugned order is irregular and illegal, since he has not been informed of the place and date of the enquiry and thus he has been deprived of an opportunity to make his defence. That the applicant was not personally served with a notice of enquiry is admitted in the reply statement. What is stated in the reply statement is that, as the whereabouts of the applicant was not known, the enquiry notice was pasted on the notice board of the office where the applicant was working. Exbt.R1(d)

is a copy of the order dated 24.2.1988 by which Shri T.Poosandram was appointed as Enquiry Officer. Though a copy is seen marked to the applicant, the same has not been admittedly served on him for the alleged want of knowledge about his whereabouts. It is stated in the reply statement that from 18.1.88 onwards the applicant did not report for work, and that his whereabouts were not known. Therefore obviously the order dated 24.2.1988 appointing the Enquiry Officer has not been served on him. Sub clause (b) of Rule 9(a)iv^h of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred as Rules) lays down as follows:

"If no written statement of defence is submitted by the Railway servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule(2) an inquiring authority for the purpose and also inform the Railway servant of such appointment."

Sub-rule 11 of Rule 9 reads as follows:

"The Railway servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of the appointment of enquiring authority, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time not exceeding ten days, as the inquiring authority may allow."

So, according to the above provisions, the order appointing the Inquiry Authority must be communicated to the delinquent Railway servant. The Inquiry Authority also has to give a notice in writing to the delinquent Railway servant to

appear before him on a specified date. Here, the order appointing the authority has not been communicated to the applicant. Exbt.R.1(E) is a notice issued by the Inquiry Authority on 15.4.1988 fixing time and date of enquiry at 10.30 hrs. on 28.4.1988. The notice reads as follows:

"The DAR Enquiry into the charges framed against you vide SF.5 cited above will be conducted by the undersigned at LF's Office/TPJ on 28.4.88, commencing from 10.30 hrs.

Please note that you are required to attend the DAR Enquiry without fail in time, failing which the case will be treated as Ex-parte.

Please note and acknowledge."

Signature: Sd/-

Name and Designation: (T.Poosandram)
CS/M/TPJ &
Enquiry Officer"

Copy to:- LF/TPJ. He will please serve one copy to the charged employee and forward the acknowledgement. In case the employee is not available, this advice may please be exhibited on the Notice Board and the acknowledgement of two serving employee as Administrative witnesses may please be obtained and forward the same. He will also relieve the concerned Muster Roll Clerk for the enquiry on 28.4.88 in time, if the charged employee is still in the absentees list the Residential Address may be advised early for taking further action at this end."

A reading of this notice itself gives the impression that the Inquiry Authority had pre-judged that the delinquent employee may not be available to serve the notice on him and has therefore directed that in such event the notice might be exhibited in the notice board. When the Inquiry Authority has an obligation to give a notice to the delinquent Railway servant mentioning the time and date of the enquiry, he should issue a notice to the delinquent Railway

W. T. Wilson
employee and in case the attempt to serve such notice on
him fails then only he should resort to other mode of
service like publishing in local newspaper or pasting
the notice on the office notice board or in the Village
Office. But, in this case the Inquiry Authority has not
followed that procedure. It is an admitted case of the
respondents that no attempt has been made to serve the
notice of the enquiry on the applicant except by pasting
the notice on the notice board of the office where the
applicant was working. As the applicant was admittedly absent from
work, by pasting the notice on the notice board of the
office, the purpose of serving the notice cannot be achieved.
It is rather impossible to believe that the Railway Admini-
stration did not have the residential address of its
employee in order to send a notice. If a notice was sent
to the applicant to his residential address and if it was
returned unserved for his being not present in that address
or for want of knowledge of his whereabouts, then probably
it may be open for the Disciplinary Authority or the
Inquiry Authority to resort to any mode of substituted
service. But without even sending a notice to the resi-
^{the} ~~has held the enquiry. Failure on the part of the Inquiry Authority~~
dential address of the applicant the Inquiry Authority
and the Disciplinary Authority to make a bonafide attempt
to serve the notice of enquiry on the applicant amounts
to violation of principles of natural justice. We are, therefore,

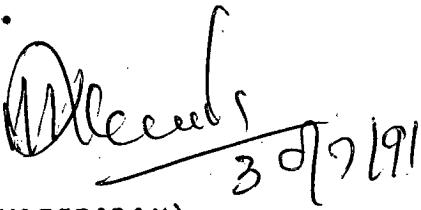
convinced that the enquiry alleged to have been held in this case is highly irregular and illegal in as much as the applicant has not been given a reasonable opportunity to defend his case. It is curious to note that the respondents could trace out the applicant's address for the purpose of serving on him the impugned order of punishment at Annexure-I. If ~~attempt~~ was made in the same manner before conducting the enquiry, we are sure that the respondents could have obtained the residential address of the applicant and served on him ~~xxxxxx~~ the notice and thus enabled the applicant to participate in the enquiry. We are ^{therefore} of the view that the impugned order at Annexure-I passed without holding a proper enquiry giving the applicant reasonable opportunity to defend himself is unsustainable in law. The Appellate Order at Annexure-IV is devoid of application of mind. In the appeal memorandum in Annexure-III the applicant had raised several contentions including that he has not been served with a notice of enquiry. None of these grounds has been adverted to in the appellate order. The appellate order reads as follows:

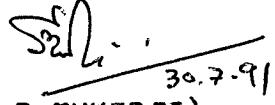
"I have considered the appeal submitted by Shri S.Ramasundaram against the punishment for removal from service. I have gone through the enquiry proceedings and his SR which shows many instances of unauthorised absence on his part. I do not therefore see any reason to alter the punishment given by the disciplinary authority after following the proper procedure. As such the punishment should stand."

Had the Appellate Authority only taken care to see whether the Inquiry Authority has issued notice of the enquiry to

the applicant and conducted the enquiry properly, he would have understood that the enquiry was not held following the proper procedure. Therefore, we are of the view that the appellate order also is unsustainable.

6. In the conspectus of the facts and circumstances, we are of the view that the impugned orders at Annexure-I and IV are illegal and unsustainable and therefore, we quash these orders and direct the respondents to reinstate the applicant in service with continuity of service and full back wages with effect from the date on which the impugned order at Annexure-I was served on the applicant, forthwith and at any rate not later than within a month from the date of communication of this order. However, we make it clear that the respondents would be at liberty to recommence and complete the disciplinary proceedings initiated against the applicant from the stage of appointment of the Enquiry Officer. If the respondents choose to do so, enquiry should be completed within a period of three months from the date of communication of this order. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

30.7.91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
R.A. No. 48/91
in O. A. No. 408/90

~~XXX~~

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DATE OF DECISION 13.11.91

Union of India represented Applicant (s) /Petitioners in RA
by the Secretary,
Railway Board, Rail Bhavan, New Delhi and others

Mr. M.C. Cherian

Advocate for the Applicant (s)

Versus

S. Ramasundaram

Respondent (s)/Applicant in OA

Mr. Majnu Komath

Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S. P. Mukerji - Vice Chairman

and

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 Mr. A. V. Haridasan, Judicial Member)

The respondents in the original application have filed this Review Application praying that the final order passed in the Original Application No. 408/90 may be reviewed.

The two main grounds urged in the Review Application are that (i) as per Rule 9(23) of the Railway Servants Disciplinary and Appeal Rules, once the/Railway servant refuses to give explanation to the charge memo or does not appear in response thereto before the disciplinary authority, it is open ^{to} the disciplinary authority to hold an enquiry ex-parte and that this aspect has not been considered by the Tribunal in the final order; and (ii) that the conduct of the applicant in having remained absent even after issuance of charge memo has not been taken into account by the Tribunal

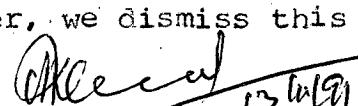
while passing the final order.

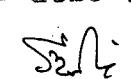
2. We have heard the counsel for the Review Applicants and also for the original applicant. There is no doubt in our mind that if a charge-sheeted employee does not appear or file his written statement of defence, the disciplinary authority cannot hold the enquiry ex-parte. But even an ex-parte enquiry has to be held with due notice to the charge-sheeted employee. The appointment of the enquiry authority, the date of proposed enquiry and the materials sought to be relied onⁱⁿ that enquiry have all to be made known to the delinquent who is to meet the charges if he so chooses. The fact that a person has been set ex-parte once does not mean that he should not get an opportunity to participate in the proceedings at a later stage. The denial of such an opportunity amount to gross violation of principles of natural justice.

3. We have at length discussed this aspect of which the matter in the final order in O.A.408/90/does not appear to our mind^{as} erroneous on the face of record.

4. The second point is also of no consequence. Even if the respondents have a case that if that aspect was properly considered, probably a different conclusion would have been possible, since we have taken a decision, the wisdom of that decision cannot be challenged in a Review Application.

5. In the conspectus of facts and circumstances apparent finding that there is no error^{on} the face of record in the final order or any other circumstance^{as} warranting a review of the order, we dismiss this Review Application.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

13.11.91

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