

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Original Application No. 393/2008

Order Reserved on 11.11.2014

Order Pronounced on 25/11/14

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Qazi Akhlaq Ahmad aged about 60 years son of late Niaz Ahmad r/o S.S.-441, Sector C-1, LDA Colony, Kanpur Road, c/o Sri Mohd.Yusuf, Lucknow.

Applicant

By Advocate: Sri M.A. Siddiqui

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur U.P.
2. The A.D.R.M., N.E. Railway, Ashok Marg, Lucknow.
3. The Senior D.M.E. (C&W), N.E. Railway, Ashok Marg, Lucknow.

Respondents

By Advocate : Sri Rajendra Singh

ORDER

By Hon'ble Mr.Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following reliefs:-

1. The Hon'ble Tribunal be graciously be pleased to quash the impugned order of removal from service dated 28.6.95 vide Annexure No. A-4 review on 17.8.2007.
2. The Hon'ble Tribunal be further pleased to quash order dated 3.10.2007 and order dated 18.1.2007 passed by the Appellate orders vide Annexure A-7(a) and A-7(b) received through counsel on 20.7.2008 under ordinary dak.
3. After quashing A-4,A-7(a) and A-7(b) , the Hon'ble Tribunal be graciously pleased to order/direct the respondents and grant consequential benefits, the applicant be treated in continuous service from date of removal from service.
4. Any other relief as considered by the Hon'ble Tribunal proper be awarded to the applicant and against the respondents.
5. The cost of the application be also awarded in favour of the applicant and against the respondents.
2. The brief facts of the case are that the applicant joined the respondents organization as Khalasi and was subsequently promoted to the post of Carriage Fitter in the pay scale of Rs. 950-1500 under

CDO, North Eastern Railway, Gorakhpur vide order dated 26.9.1972. The applicant was on sanctioned leave in December, 1992. Thereafter, he could not return back on duty on account of sickness of his wife, as such he was served with major penalty charge sheet dated 6.1.1994 on account of his remaining unauthorisedly absent from duty from 17.12.1992 to 3.1.1994 without any information. The Inquiry Officer was nominated to inquire into the case. The applicant also participated on certain dates in the inquiry and also furnished the postal receipt and relevant papers. It is also indicated by the applicant that he was not be afforded reasonable opportunity to examine and cross examine the PWs and finally the inquiry officer submitted the report and he was removed from service. It is also indicated by the learned counsel for the applicant that no order of removal was served upon the applicant and applicant was not allowed to participate in the inquiry and without affording reasonable opportunity of hearing, the Inquiry officer submitted the report. The applicant against the punishment order, submitted the appeal to the ADRM and subsequently the appellate authority has also passed the order rejecting the appeal of the applicant by means of non-speaking order. It is also argued on behalf of the applicant that the disciplinary authority disagreed with the opinion of the inquiry officer and the said disagreement memo was not served upon the applicant. Not only this, it is also pointed out that the applicant has already superannuated. Earlier, the applicant also preferred the O.A. before this Tribunal vide O.A. No. 527/2006 through which the Tribunal directed the respondents to serve the copy of the removal order to the applicant and in compliance thereof the respondents communicated the removal order to the applicant on 17.8.2007. As such, the applicant has also challenged the same by means of the present O.A.

3. On behalf of the respondents, objections as well as counter reply

is filed and through counter reply, it is categorically indicated by the

respondents that efforts were made for serving copy of the inquiry officer's report to the applicant vide letter dated 8.9.1994 but the applicant remained unauthorizedly absent, as such the same could not be served upon the applicant. On account of issue of opportunity of hearing and service of copy of Inquiry officer's report as well as disagreement memo, nothing is indicated by the respondents in their counter reply. Hence original record pertaining to disciplinary proceedings are summoned and perused by the bench. On behalf of the respondents, it is also indicated that due opportunity was given to the applicant to participate in the inquiry, as such there is no illegality in conducting the inquiry, therefore, the disciplinary proceedings initiated has no lacuna and no interference is called for by the Tribunal in the present O.A.

4. On behalf of the applicant, Rejoinder reply is filed and through rejoinder reply, mostly the averments made in the O.A. are reiterated and denied the contents of the counter reply.

5. Heard the learned counsel for the parties and perused the record.

6. The applicant was initially appointed in the respondents organization. He was served with the charge sheet and in the said charge sheet, it is indicated that the applicant remained unauthorizedly absent from 17.12.1992 to 3.1.1994, as such the applicant has contravened the provisions of Rule 3(1)(ii) and (iii) of Railway Servants Conduct Rules, 1966. The applicant was required to submit reply to the said charge sheet but on account of his mental sickness, the same could not be done. Thereafter, the enquiry officer was appointed and the inquiry officer submitted the report. It is alleged by the applicant that the copy of the inquiry officer's report was not served upon the applicant, though the bare perusal of the disciplinary authority's order shows that the disciplinary authority also disagreed with the findings of the inquiry report and has also indicated that no correspondence in

regard to intimation of illness of the applicant is available in the CDO, office Gorakhpur. Apart from this, it is also indicated by the disciplinary authority that the reasons shown by the applicant are also contradictory and in fact he was unauthorizedly absent for approximately 2-1/2 years. The applicant only participated in the inquiry and rest of the time he was not available in the office. It is also correct to say at this stage that the copy of the inquiry officer's report is not given to the applicant. As per the averment of the respondents, it is clear that the copy of the inquiry officer's report was sent to the applicant vide letter dated 8.9.1994 but the same could not be served upon the applicant. Not only this, the bare reading of the disciplinary authority's order, it shows that he did not agree with the findings of the inquiry officer's report but whether disagreement memo is communicated to the applicant is also not clear from the pleadings on record. For that purpose, the Tribunal directed the respondents to produce the original records and the bare perusal of the entire original record also does not show that copy of the disagreement memo was ever communicated to the applicant. Apart from this, the inquiry officer has categorically indicated in his inquiry report that the charges so leveled upon the applicant are not fully proved. The said inquiry officer's report is dated 16.7.1994. It is also seen from the original record that vide order dated 26.10.94, it is indicated by the authorities that since the applicant is absent from duty, as such copy of the inquiry officer's report could not be served upon the applicant. As such, the matter was placed before the disciplinary authority and the disciplinary authority disagreed with the findings of the inquiry officer's report. It was incumbent upon the respondents to provide a copy of disagreement memo upon the applicant but the same has not been done. After that the applicant submitted the appeal and in the appeal it is once again indicated by the applicant that he was not provided with the copy of the removal order as well as disagreement memo. Apart

from this, it is also indicated by the inquiry officer that the charges leveled against the applicant are also provided. The appellate authority has also rejected the appeal of the applicant vide order dated 18.1.2007. The applicant thereafter, submitted the revision and the said revision was also rejected by the revisional authority. Feeling aggrieved by all these orders, the applicant preferred the present O.A.

7. Now the question is whether the respondents without serving the copy of the inquiry report as well as disagreement memo are at liberty to pass order of removal adversely affecting the applicant.

8. In the case of **State of U.P. Vs. Saroj Kumar Sinha reported in (2010) 2 Supreme Court Cases, 772**, the Hon'ble Apex Court has been pleased to observe as under:-

“An Inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the un rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

9. Further, as observed by the Hon'ble Apex Court in the case of **Kashinath Dikshita Vs. Union of India reported in (1986) 3**

SCC, 229, that *“the rationale for the rule requiring supply of*

copies of the documents, sought to be relied upon by the authorities to prove the charges leveled against a govt. servant the appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at the preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority." The proposition of law that a Govt. employee is facing a departmental enquiry is entitled to get all the material to enable him to have a reasonable opportunity to meet the charges against him.

10. When a departmental enquiry is conducted against the employee, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased, impartial and fair. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that an employee is treated fairly in proceedings, which may culminate in imposition of punishment including dismissal/removal from service.

11. It is now well settled that the disciplinary authority has to take a decision on the basis of findings of the inquiry officer. Before he come to a decision, the charged official is entitled for an opportunity of hearing either by way of representation/reply on the inquiry report. Thereafter, the disciplinary authority is expected to objectively consider the representation and pass his final order. For the purpose of submission of reply, the charged officer must get a copy of the inquiry report. This right of the charged officer is inherent under Article 311(2) of the Constitution of India, which provides protection and an opportunity of proving his innocence in a departmental proceedings.

In fact, in the case of **Union of India Vs. Mohd. Ramzan Khan** –

SCC 1991 (1) 588, the Hon'ble Apex Court made following observations:-


“.....We, therefore, come to the conclusion that supply of a copy of the enquiry report along with recommendation, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof.....”

12. The law relating to consequence of non-furnishing of the inquiry report has been laid down by the Hon'ble Apex Court in the case of **Managing Director, ECIL, Hyderabad and others Vs. B. Karunakaran and others reported in 1993(4) SCC 727**, It has been held therein that **“if the question is raised regarding service or otherwise of the inquiry report, the authorities would have to satisfy the court in a positive manner that the inquiry report was served and received by the charged official.”** In fact, in the cited case, the inquiry report was sent through registered post but the same was not served upon the applicant as submitted by the respondents.

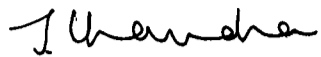
13. Apart from this, the question whether unauthorized absent from duty amounts to failure of devotion to duty behavior unbecoming of a Govt. servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

14. The applicant has intimated the respondents about the reasons and he was also not provided copy of the inquiry officer's report as well as disagreement memo.


15. Accordingly the impugned order dated 28.6.95, 17.8.2007, 18.1.2007 and 3.10.2007 are liable to be interfered with and also liable to be quashed and are quashed. However, since the applicant has not worked from the date of removal till the date of retirement, as such he is not entitled for any back wages but since the impugned orders are quashed, as such the applicant is entitled for pensionary benefits etc.



16. With the above observations, O.A. is allowed. No order as to costs.



(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-