

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH**LUCKNOW****ORIGINAL APPLICATION No. 402/2008****ORDER RESERVED ON 24.9.2014**ORDER PRONOUNCED ON 27-10-2014**HON'BLE SRI NAVNEET KUMAR, MEMBER (J)****HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Aijaz Hussain aged about 62 years S/o Sjjad Hussain R/o 236/11
Chahkankar Victoria Street, Chowk, District Lucknow.

Applicant**By Advocate :Sri Pratap Singh.****VERSUS**

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Senior Divisional Mechanical Engineer, O& F, Northern Railway, Hazratganj, Lucknow.
4. Divisional Mechanical Engineer , O& F, Northern Railway, Hazratganj, Lucknow.
5. Senior Divisional, Karmik Officer, Northern Railway Mandal Karyalaya, Northern Railway, Lucknow.

Respondents**By Advocate: Sri S. Verma.****ORDER****By Hon'ble Sri 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. To quash the orders dated 13.12.2004 passed by O.P. No. 3 dismissing the applicant from service and order dated 10.9.2003 to 30.1.2005 and to pay all financial and consequential benefits of service.
2. To direct the respondents to pay all retiral service benefits of the post along with current rate of bank interest.
2. The applicant was initially appointed in the respondents organisation on the post of Diesel Cleaner Northern Railway, Diesel Shed Mughal Sarai in 1965 and was subsequently

promoted on the post of Fireman (C) at Lucknow and Fireman (B) and lastly got promoted to the post of Diesel Shunter in 1998. While working on the post of Diesel Shunter, the applicant applied for casual leave from 16.4.2003 to 23.4.2003 on account of severe arthritis and he also submitted medical leave through UPC to respondents. The learned counsel for the applicant has also categorically indicated that the applicant has also prayed for sanctioning three months leave without pay and also be grated voluntarily retirement before his date of retirement i.e. on 30.11.2005 and has also indicated his current postal address. When the applicant did not receive any information from the respondents, he moved another application and when nothing was heard from the respondents, he approached the authorities for sanctioning his application and finally, he gave application before Pension Adalat on 30th October, 2006. The applicant came to know about his removal order on 14.12.2006. The applicant has also given letters to the authorities under RTI Act for giving the details of his removal order and he came to know about his removal order on 13.12.2004. The applicant has also asked for details of departmental proceedings. The applicant has also preferred an appeal against the removal order and has indicated that the entire departmental inquiry was conducted ex-parte and the correspondence was done at old address of the applicant and the appeal so submitted by him was also dismissed by the appellate authority without application of mind. The learned counsel for the applicant has categorically indicated that the entire disciplinary proceedings were held without any intimation to the applicant and without providing any opportunity of hearing, as such, entire departmental proceedings was held in violation of principles of natural justice and is liable to be quashed.

3. On behalf of the respondents, reply is filed and through reply, it is indicted that the applicant while working as Diesel Shunter was issued a major penalty charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 and proposing to hold inquiry against him for his unauthorised absence from duty from 23.03.2003 till 7.7.2003. The applicant failed to submit any representation to the said charge sheet. The applicant earlier remain absent from duty and reminder was sent to him at his recorded address requiring him to submit representation, if any, within a week. The applicant again fail to submit any representation against the charge sheet. The respondents again sent a reminder to the applicant which was also not received back undelivered. Not only this, the said reminder dated 10.3.2004 was also pasted on the notice board of the office in the presence of two witnesses. As such, after the last notice dated 16.4.2004, the disciplinary authority appointed the inquiry officer to enquire into the charges levelled against the applicant. The inquiry officer vide letter dated 31.7.2004 fixed 16.8.2004 for holding inquiry against the applicant and the copy of the letter was also sent to the applicant at his residential address available on record under registered cover dated 02.8.2004 and a copy of which was also pasted on the office notice board in presence of two witnesses. The learned counsel for the respondents has also categorically indicated that the notice sent to the applicant under registered cover was neither received back undelivered, nor did the applicant attend the inquiry proceeding. Despite that another notice was given to the applicant for holding inquiry under registered cover dated 23.8.2008. The said notice was also not received back. The respondents thereafter again sent a notice to the applicant on 25.8.2004. The said notice was also not received back unserved. Since the applicant failed to respond

any of the notices sent by the inquiry officer and also failed to attend the inquiry proceedings, the inquiry officer proceeded ex-parte and accordingly, the statement of Sri Ajai Kumar Head Clerk, Northern Railway, Lucknow and Sri K. P. Kashyap, Senior Clerk, Northern Railway, Lucknow were recorded on 20.9.2004 and submitted the report to the disciplinary authority. The report of the inquiry officer was sent to the applicant under registered cover on 23.10.2004. Since the applicant failed to submit any representation against the enquiry report sent to him, the disciplinary authority awarded the punishment of removal from service vide order dated 13.12.2004. A copy of the punishment so imposed upon the applicant was also sent under the registered cover and was also pasted on the office notice board on 16.12.2004 in presence of two witnesses. The applicant did not submit any appeal against the punishment order within the prescribed period of 45 days. It is also indicated by the respondents that the applicant preferred an appeal dated 11.4.2008 along with an application for condonation of delay in filing the appeal and the said appeal was decided by the appellate authority vide order dated 30.5.2008. Not only this, it is also submitted by the respondents that the applicant was afforded every reasonable opportunity to defend himself in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968 and principles of natural justice, as such, it does not require any interference by this Tribunal.

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

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

6. The applicant was initially appointed in the respondents organisation and he was promoted on the post of Diesel Shunter. While he was working on the said post, the applicant was issued with a major penalty charge sheet dated 22.8.2003 for his unauthorized absence from duty from 23.3.2003 till 7.7.2003. The applicant was required to give the reply to the charge sheet, but he fail to submit any representation. Since the applicant was absent from duty as such, reminder was sent to his recorded address requiring him to submit his representation within one week. The applicant fail to submit any representation against the charge sheet. The second reminder dated 10.3.2004 was also sent to him at his recorded address under registered cover dated 19.3.2004 which was also not received back undelivered. It is also to be indicated that the said reminder was also pasted on the notice board of the office in presence of two witnesses. When the applicant fail to submit any representation to the charge sheet, then the disciplinary authority was having no other option except to appoint the inquiry officer to inquire into the charges levelled against the applicant in the charge sheet. Accordingly, the inquiry officer was appointed and the inquiry officer vide order dated 31.7.2004 fixed 16.8.2004 for holding inquiry. Copy of the said letter was sent to the applicant at his residential address available on record under registered cover on 2.8.2004 and copy of which was also pasted on the office notice board in presence of two witnesses. The respondents also produced the original records pertaining to the disciplinary proceedings of the applicant. The inquiry officer also issued a second notice dated 16.8.2004 fixing 25.8.2004 as a next date for holding the inquiry. But when the applicant fail to respond to the second notice, another notice dated 25.8.2004 fixing 6.9.2004 was also sent to applicant by the inquiry officer and a copy was also pasted at the office

notice board and none of the notices were received back undelivered. When the applicant failed to respond to the said notice, the inquiry officer proceeded with the inquiry and after recording the statement of Sri Ajai Kumar Head Clerk, Northern Railway, Lucknow and Sri K.P. Kashyap, Senior Clerk, Northern Railway, Lucknow decided to proceed with inquiry ex- parte and finally the inquiry officer submitted the report to the disciplinary authority.

7. Not only this, the applicant was also provided copy of the inquiry report through registered post dated 20.10.2004 at his residential address. The same was also not received back undelivered. Since the applicant fail to submit any representation against the inquiry report sent to him, the disciplinary authority awarded punishment of removal from service with immediate effect. The punishment so awarded to the applicant was also sent to him by the registered cover and a copy of which is also pasted on the notice board. The applicant was also provided to submit an appeal within the stipulated period of 45 days, but the applicant was absent from duty till 22.11.2004, as such, no appeal was preferred by the applicant within the prescribed period of 45 days. The learned counsel for the respondents also indicated that the applicant neither attend the inquiry proceedings despite sufficient notice and reminders nor did he submit any reply under Rule 18 of the Railway Servant(Discipline and Appeal) Rules 1968 within the prescribed period of 45 days against the punishment awarded to him. On behalf of the respondents, it is also indicated that the applicant preferred the appeal on 11.04.2008 along with condonation of delay in filing the appeal. The respondents considered the same and decided by means of an order dated 30.5.2008. The learned counsel for the respondents has

vehemently argued that the applicant was provided several reasonable opportunity to defend his case and he was given full opportunity to participate, as such there is no violation of principles of natural justice, and the applicant himself has chosen not to participate in the inquiry and also not to give any reply to the authorities, and has also not attend the inquiry proceedings as such, the inquiry officer proceeded ex-parte against the applicant. The inquiry report submitted by the inquiry officer was duly communicated to the applicant but the applicant failed to give any reply to the same as such, the disciplinary authority passed the orders of removal from service.

8. While deciding the appeal of the applicant, the appellate authority has also categorically indicated that the applicant remained unauthorisedly absent from duty and during the entire inquiry proceedings neither he participated nor he submitted any reply against the inquiry report. Not only this, it is also indicated by the appellate authority that the due opportunity is provided to the applicant, but in the absence of any reply, the disciplinary authority was left with no other option except to pass an order of removal from service. As such, the appellate authority after considering all the material available on record, rejected the appeal of the applicant. The learned counsel for the respondents was also directed to place the original records which was also placed and the same was also perused which clearly shows that the due notices were given to the applicant which are mentioned in the counter reply.

9. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. G. Annadurai reported in (2009) 13 SCC 469** that the employee's failure to participate in enquiry despite sufficient opportunity being given to him by sending notices at his home

does not require any interference and it is further observed by the Hon'ble Apex Court as under:-

"5. Thereafter, in course of the enquiry, statements of four witnesses were recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6.3.1998. Again, there was no compliance with the order. Enquiry was concluded and it was held that the charges were proved."

10. Further in the case of **State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya** reported in (2011) 4 SCC 584, the Hon'ble Apex Court has been pleased to observe as under:-

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

9. Several witnesses were examined to prove the charge. One of them was H.S. Sharma who conducted the preliminary inquiry and to whom the respondent had made a statement broadly admitting the facts which constituted the subject matter of the second charge. I.M. Rawal, who was the cashier and I.C. Ojha, the officiating Branch Manager were also examined. Based upon their evidence, the Inquiry Officer found the respondent to be guilty of the second charge and that has been accepted by the disciplinary authority. The High Court has

interfered with the said finding without expressly holding that the said finding of guilt was erroneous. The High Court has proceeded as if it was sitting in appeal over the departmental inquiry and interfered with the finding on a vague assumption that the respondent must have acted bonafide in an "increasing customer friendly atmosphere". There was no justification for the division bench to interfere with the finding of guilt."

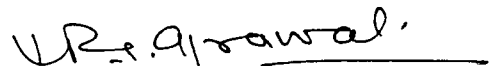
11. Considering the law laid down by the Hon'ble Apex Court, and also after the perusal of the official record, and the pleadings available on record, the applicant was given full opportunity to participate in the inquiry, but he fail to participate in the same, as such, the impugned order are passed by the disciplinary authority and the appellate authority which does not require any interference by this Tribunal.

12. Accordingly, the O.A. is dismissed. No order as to costs.



(Jayati Chandra)

Member (A)


(Navneet Kumar)

Member (J)

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