

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No. 278/2010

Pronounced on: 26.07.2012

Hon'ble Dr. K.B.S. Rajan, Member (J).

Hon'ble Mr. S.P. Singh, Member (A)

Vishnu Kumar, aged about 35 years, son of late Shri Kalloo, address-
Gram - Hazipur, Post - Bakshi K Talab, Lucknow.

...Applicant.

By Advocate: Sri Praveen Kumar.

Versus

1. The General Manager, Northern Railway, Baroda House,
New Delhi.
2. The Assistant Mechanical Engineer, Northern Railway,
Varanasi.
3. The Divisional Mechanical Engineer, Northern Railway,
Lucknow.
4. The Senior Division Mechanical Engineer, Northern Railway,
Lucknow.

.... Respondents.

By Advocate: Sri S.Verma.

ORDER

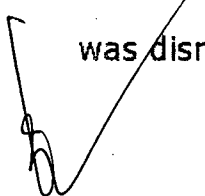
By Hon'ble Dr. K.B.S. Rajan, Member (J).

On account of alleged unauthorised absence during the years
1994 and 1995 for a total of 361 days, the applicant, who was
functioning as Helper Khallasi under Coaching Depot Officer (CDO),

Varanasi, was issued with Annexure A-4 Charge sheet. The said Chargesheet did not contain any names as witnesses from the prosecution's side to prove the charges. The only document relied upon to prove the charge was letter dated 5th March 1995 of the CDO.

2. On his denying the charges, the disciplinary authority ordered for an enquiry. The enquiry officer had chosen not to issue any notice to the applicant and relying upon the judgement of the Apex Court in AIR 1957 SC 38, he had completed the enquiry on the basis of certain documentary evidences and held that the articles of charges are true and that the applicant is not fit for service. On the basis of the inquiry reports the Disciplinary Authority passed the the impugned order dated 6-12-1997 whereby the applicant was removed from service w.e.f. the said date.

3. According to the applicant, as he was seriously ill and suffering from epileptic fits with unconsciousness he could not know about the above developments till as late as 2009 and when he reported for duty he came to know of the order of removal and accordingly moved an appeal before the Appellate Authority. Annexure A-6 refers. This was considered by the Appellate Authority who had held that the appeal was liable to be dismissed on account of bar of limitation. However, he considered the merits of the matter and held that the finding of the enquiry officer is based on certain evidence and the order of the Disciplinary Authority is based on such finding and as such the appeal was dismissed.



4. The applicant moved an application for revision and during the pendency of the same, approached the Tribunal by filing OA No. 419 of 2009 which was disposed of with a direction to the Revision Authority to decide the revision petition. This Revision Petition was also dismissed vide Annexure A-2A order dated 22-01-2010.

5. The applicant has challenged the penalty order, order^{of} the appellate authority and order of the Revision authority and sought the following reliefs:-

(i) To quash the impugned orders annexed as Annexure A-1 and A-2A to this O.A with all consequential benefits.

(ii) To reinstate the applicant with continuity in service, seniority, promotion and all other attending benefits viz monetary benefits etc.

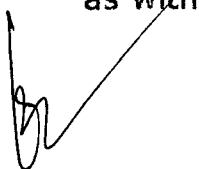
(iii) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(iv) Cost of the present case.

6. Respondents have contested the OA. They have highlighted the continued absence of the applicant from 25-12-1995 when the enquiry was conducted and justified the report of the enquiry officer as well as further action taken by the disciplinary authority and higher authorities.

7. The applicant had filed his rejoinder reiterating his contentions as contained in the original application.

8. Counsel for the applicant submitted that the applicant had been suffering from mental depression and had been under continuous medical treatment as is evidenced from the enclosures to Annexure A-6 appeal filed before the Appellate Authority. Thus the reason as to why the applicant could not prefer the appeal on time against the order of removal passed by the disciplinary authority is fully justified. Evidences would show that the applicant was under treatment from 1996 onwards while the order of removal was passed on 06-12-1997. Thus there is no possibility of the applicant's coming to know about the order of removal from service as at that time he was not in a fit health condition. Next, the counsel for the applicant invited the attention of the Tribunal to the enquiry report and submitted that the report reflects that the enquiry conducted was by a process totally unknown to law. The extent of violation of principles of natural justice in conducting the enquiry needs no special mention as the enquiry officer himself had stated that documentary evidences would suffice to conduct the enquiry. The Counsel stated that there has been absolutely no intimation to the applicant from the enquiry officer about the dates of the enquiry. Though only one document was reflected as the relied upon documents in the chargesheet, extraneous documents have been taken into consideration and the enquiry authority has also examined a witness when no one has been named in the chargesheet as witness. The enquiry authority had exceeded and gone beyond the



period of alleged unauthorized absence as contained in the chargesheet and chose to prove that the applicant has been absenting right from 1988, whereas the charges related to alleged unauthorised absence for the year 1994 and 1995. The Counsel also submitted that the entire enquiry proceedings are to be held as thoroughly illegal and consequently action taken on the basis of this illegal enquiry should also be held illegal as such.

9. Counsel for the respondents submitted that action taken by the Disciplinary Authority as well as the Appellate/Revision authorities was based entirely upon the enquiry report and finding rendered therein.

10. Arguments were heard and documents perused. It is well settled law that a departmental enquiry is quasi-judicial in nature. In this regard the following two decisions of the apex court are relevant: -

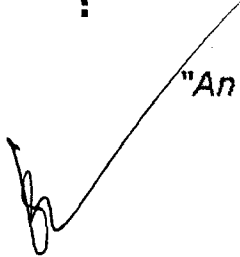
(a) *Moni Shankar v. Union of India*, (2008) 3 SCC 484, :

"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles."

(b) *Union of India v. Prakash Kumar Tandon*, (2009) 2 SCC 541,

:

"An enquiry officer is a quasi-judicial authority. He,



therefore, must perform his functions fairly and reasonably which is even otherwise the requirement of the principles of natural justice."

(c) Union of India v. S.K. Kapoor, (2011) 4 SCC 589, at page 590 :


"5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge-sheeted employee so that he may have a chance to rebut the same."

11. While performing the functions of Inquiry Officer, the prime responsibility of the I.O. is to ensure that principles of natural justice are fully complied with, especially, *audi alteram partem*. In this regard, the following decisions would be appropriately cited:-

(a) Indu Bhushan Dwivedi v. State of Jharkhand, (2010) 11 SCC 278,

"23. When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also to disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of *audi alteram partem*. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, the employer is duty-bound to act in consonance with the rules of natural justice—*U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee*."

(b) Ganesh Santa Ram Sirur v. State Bank of India, (2005) 1 SCC 13,



"The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of justice must be held to be applicable."

With the above dictum in mind, the Inquiry conducted is to be examined. The I.O. has rendered his finding as hereunder: -

"Enquiry Report

Case No.E/4/1/95 dated 23.8.95 (SF-5 issued by Shri Shyam Singh AME/BSB) against Shri Vishnu Kumar (c/o) S/o Shri Kalloo Working under DCO/BSB.

Charge and alleged misconduct: Under DAR-1968 Act 69, SF-5 No.E/4/1/95 dt. 23.8.95 has been issued due to unauthorised absence for 137 days + 36 days in 1995 and 188 days in 1994.

Proceeding: The above case has been given to the undersigned vide SF-7 No. of even dated 9.12.95 against Shri Vishnu Kumar S/o Shri Kalloo c/c and acknowledged on 18.12.95.

(1)The particulars of Shri Vishnu Kumar ar as under:

*DOB: 8.10.68
DOA: 18.3.89
DOR: 31.10.2026*

(2)In the cases of continuous absence from duty holding of domestic enquiry is not necessary (AIR 1957 SC 38) any documentary evidences are sufficient.

Documentary Evidences: On going through the 'absentee' records of Shri Vishnu Kumar kept in the office of CDO/BSB shown to the undersigned by AS Shri Jawahar Ram, seen frequent cases of u/a absence of the charged employee as detailed below:

1989	-	11 days
1990	-	66 "
1991	-	129 "
1992	-	87 "
1993	-	140 "
1994	-	188 "
1995	-	173 "

The CO is again absented from 25.12.95 and still continuing.

Findings: Shri Vishnu Kumar was appointed by the railways on 18.3.89 and in the same year he absented for 11 days and further in each and every year by and by u/a absence gone to increased instead of any improvement, which shows clear negligence, carelessness and u/c least interest towards duties.

CONCLUSION: From the above, I hold that, the article of charges contained in the memorandum are true and seeing his performance it is concluded that he is not fit for service.

Sd/-
EO
(N.H.ANSARI)"

12. The Disciplinary Authority does not appear to have cared to see whether the inquiry has been conducted properly. He had passed an order, vide Annexure A-1 which does not reflect even the nature of the charge, which is an order of removal, which would entail civil consequence. Law requires that the Disciplinary authority shall record reasons while passing an order adversely affecting an individual: (**G. Vallikumari v. Andhra Education Society, (2010) 2 SCC 497**) :

13. When the applicant, albeit after a pretty long time, preferred the appeal, the Appellate Authority too has, in a cryptic manner, passed the appellate order, dismissing the appeal. Law requires that the Appellate Authority shall apply his mind to the entire case and ascertain to consider

(1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice :

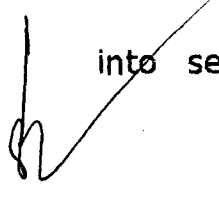
(2) whether the findings of the Disciplinary Authority are warranted by the evidence on record; and

(3) whether the penalty imposed is adequate;

14. It is thereafter that the appellate authority shall pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same. (see ***Ram Chander v. Union of India, (1986) 3 SCC 103***, ***Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713*** ***Apparel Export Promotion Council v. A.K. Chopra***)

15. In the instant case, the way the inquiry had been conducted does not meet any of the legal requirement as per the Rules and as laid down by the Apex Court. The entire proceedings have been vitiated due to violation of the basic legal principles in conducting the inquiry. Consequently, the entire proceedings are liable to be set aside.

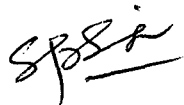
16. The OA is thus, **allowed**. It is declared that the inquiry conducted is vitiated and hence, action taken on the basis of the inquiry report is equally illegal and invalid. Consequently, the order of penalty, the appellate order and the Revision Order impugned herein are all quashed and set aside. The applicant is entitled to be reinstated into service. Respondents are directed to have the applicant



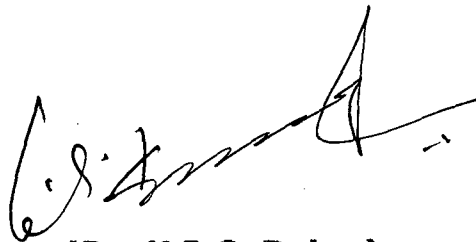
reinstated through an appropriate order, within a period of two months from the date of communication of this order.

17. As regards back wages, two options are available. (a) If the respondents desire to proceed with the inquiry from the stage of appointment of inquiry officer, then the period of absence from the date of removal from service till the date of reinstatement shall be treated as period of suspension and the applicant shall be paid the due subsistence allowance as per the rules on the subject. (b) Instead, if the respondents do not wish to proceed against the applicant, in that event, the applicant not having performed any duty (nor was in a position to perform such duties due to his ill health,) he is not entitled to any back wages, under the principles of 'no work, no pay.' The General Manager, Northern Railway, New Delhi (Respondent No. 1) shall pass suitable orders in this regard. Compliance of the order for reinstatement shall also be monitored and ensured by the General Manager, N.R.

18. Under the above circumstances, there shall be no orders as to costs.



(S.P. Singh)
Member (A)



(Dr. K.B.S. Rajan)
Member (J)