

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 237 of 2010 AW O.A. 317 of 2010

Order Reserved on 6.5.2015

Order Pronounced On 19-05-2015

HON'BLE MR. NAVNEET KUMAR, MEMBER(J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

O.A. No. 237 of 2010

Ram Pal aged about 59 years son of late Sheo Lal, resident of 166, Gandhi Nagar, Sidhauri, District Sitapur, employed and posted at present as Gangman in Gang No. 28 LB Gola Gokarannath, under Section Engineer (Rail Path) NE Railway, Lakhimpur.

Applicant

By Advocate Sri Vivek Kumar for Sri S. K. Singh.

Versus

1. The Union of India, through the General Manager E. E. Railways, Gorakhpur.
2. The Divisional Engineer III, N.E. Railway, Hazratganj, Lucknow.
3. The Assistant Divisional Engineer, N. E. Railway Sitapur.
4. Section Engineer (SSE/P.Way) North East Railway, Lakhimpur Kheri.

Respondents

By Advocate Sri Rajendra Singh.

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ORDER**HON'BLE MR. NAVNEET KUMAR, MEMBER(J)**

The present Original Applications are preferred by the applicants under Section 19 of the AT Act, 1985.

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2. In the present O.A., the applicant challenges the impugned order dated 1.4.2009/4.7.2009 and 13.4.2009/4.7.2009 as contained in Annexure A-1 and A-2 to the O.A.. Apart from this, the applicant has also prayed for setting aside the impugned order dated 25.8.2010 passed by opposite party No. 3 and also prayed for issuing a direction upon the respondents to re pay the recovered amount with the suitable compounding interest.

3. The brief facts of the case are that the applicant was working with the respondents organisation and was served with a charge sheet (SF-11) dated 8. 11.2008 and 24.11.2008 and when the applicant failed to submit any reply, the respondents passed

an order of recovery of an amount of Rs. 19592/- in 30 equal monthly instalments. The learned counsel for the applicant has categorically argued and submitted that the copy of the charge sheet was not served upon the applicant as such, he could not submit the reply therefore, the orders so passed by the respondents is illegal and against the principle of natural justice as such, it is liable to be quashed.

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4. The present O.A. is preferred by the applicant under Section 19 of the AT Act, 1985 with a prayer to quash the order dated 13.4.2009/04.7.2009 as well as order dated 25.8.2010 rejecting the appeal of the applicant and also prayed for issuing a direction upon the respondents to repay the recovered amount with the suitable compounding interest and allow the O.A. with costs.

5. In this case, the applicant claims that the charge sheet (SF-11) was issued without service upon the applicant.. The impugned orders are passed taking into account that the applicant fail to submit any reply to the same.

6. It is argued by the learned counsel for the applicant that the copy of the charge sheet was not served upon the applicant as such, the impugned order is violative of principles of natural justice. The applicant submitted the appeal to the appellate authority and the appellate authority also rejected the same without application of mind. As such, it requires interference by the Tribunal.

7. On behalf of the respondents, detailed reply is filed and through reply, the averments made in the O.A. are denied and

submits that the copy of the charge sheet was served upon the applicant on 9.12.2008 as such, the contention of the applicant is wrong and is liable to be rejected. The learned counsel for the respondents has also relied upon the decision of the Hon'ble Apex Court and has indicated that the due opportunity was provided to the applicant but when he fail to submit any reply, the disciplinary authority passed an order and the appeal so submitted by the applicant was also considered by the appellate authority. As such, there is no illegality in the impugned order. Accordingly, the O.A. is liable to be dismissed out rightly.

8. Rejoinder affidavit is filed by the applicant and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

9. Heard the learned counsel for the applicant and perused the record.

10. The only question which requires interference in the case is about the service of the charge sheet. There are two charge sheet which are dated 8.11.2008 and another one 24.11.2008. During the course of the argument, the learned counsel for the respondents is directed to produce the original record to ascertain whether the copies of the charge sheet so issued to the applicant were served upon him or not.

11. Though the appellate authority in his appellate order has categorically indicted this fact that copies of the charge sheet was served upon the applicant on 9.12.2008.

12. The respondents counsel produce the original records and bare perusal of the original records, it is clear that that the copies of both the charge sheets dated 8.11.2008 as well as 24.11.2008 were duly received by the applicant himself on

9.12.2008 as such, it is explicitly clear that the copies of the charge sheet was served upon the applicant and when the applicant fail to submit any reply to the said charge sheet, the disciplinary authority was having no other option except to pass the impugned order.

13. As such, there is no illegality in the impugned order. The appeal so submitted by the applicant is also considered and decided by the appellate authority.

14. The Hon'ble Supreme Court in the case of **U.O.I. & ors. v. G. Annadurai reported in (2009) 13 SCC 469** has held that Courts are not for interfering with dismissal order passed against respondent employee and it has further been observed by the Hon'ble Apex Court observed as follows:-

"4. A memo of charges dated 23.12.1997 was drawn up, the charge memo was sent to the respondent by registered post at his home address. The respondent did not respond to the charges levelled and the charge memo was sent back undelivered. An enquiry officer was appointed and after issuance of notice to the respondent to appear before him on 26.1.1998 along with his written statement, reminder was sent to him on 10.2.1998. As the respondent did not respond to the notices issued, an order was passed ex-parte.

12. The factual scenario shows that ample opportunities have been given to the respondent in order to enable him to effectively participate in the proceeding. He has failed to avail those opportunities. That being so the Division Bench of the High Court ought not to have interfered with the order of the learned Single Judge which according to us is irreversible. The appeal is therefore allowed and the impugned judgment is set aside."

15. Considering the submissions made by the learned counsel for the parties as well as after perusal of the original records, the

copy of the charge sheet dated 8.11.2008 and 24.11.2008 were duly served upon the applicant on 9.12.2008 and the applicant failed to submit any reply, as such, there is no illegality in the impugned orders.

16. Accordingly, we do not find any justification to interfere in the present case. Accordingly, O.A. is dismissed. No order as to costs.

Member (A)

Member (J)

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