

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:

LUCKNOW BENCH, LUCKNOW.

Original Application No. 581 of 1998.91

T.A.R.A./C.C.P.No. of 1998.

Date of Decision: 30.11.99

Manns.....Applicant

Sh. V.H. Kapoor Advocate for applicant

Versus

....W.L.S. Respondents

....Sh. V.K. Somwanshi Advocate for
Respondents

CORAM

HON'BLE MR. D.C. Verma, I.M.

HON'BLE MR. A.K. Misra, I.M.

1. Whether reporter of local papers may be allowed to see the judgment.
2. To be referred to the reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether to be circulated to other benches ?

vice chairman/Member

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

Lucknow this the 30th day of Nov., 99.

O.A. No. 582/91

HON. MR. D.C. VERMA, MEMBER(J)

HON. MR. A.K. MISRA, MEMBER(A)

Munna Safaiwala, aged about 40 years, son of late Dildare, resident of Chhotelal Kurti, 109, Sadar Bazar P.O. Dilkusha, Lucknow.

Applicant.

By Advocate Shri W.H. Haidari.

versus

1. Union of India through General Manager, N.E. Railway Gorakhpur.
2. Divisional Mechanical Engineer (C&W), N.E. Railway, Hazratganj, Lucknow.

Respondents.

By advocate Shri V.K. Srivastava.

O R D E R

BY D.C. VERMA, MEMBER(J)

By this O.A. the applicant has challenged the order of removal dated 12.7.89.

2. As per pleadings contained in the O.A., for unauthorised absence for the period 28.9.84 to 19.1.89, a charge sheet dated 14.2.89 was served on the applicant under rule 9 of the Railway Servants (Discipline and Appeal) Rules 1968 (hereinafter referred to as the Rules of 1968). There were two articles of charges; one was for failing to maintain devotion to duty due to unauthorised absence from 28.9.84 to 19.1.89, the second article of charge is for committing misconduct as the applicant failed to maintain devotion to duty during the said period. After enquiry, which was not attended by the applicant, the order of removal from service was passed on 12.7.89 (Annexure A-18 to the O.A.).

3. As per applicant, he preferred an appeal on 1.12.90 (copy Annexure A-19 to the O.A.) but the same remained undecided, hence the applicant filed the O.A. on 22.2.91.

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4. The learned counsel for the applicant has submitted that due procedure prescribed for departmental enquiry under rule 9 of the Rules of 1968 was not followed by the respondents. It has been further submitted that the enquiry officer was not appointed for the charges levelled against the applicant vide charge sheet dated 14.2.89 (Anneuxre A-9). The enquiry officer, it has been submitted, was not duly appointed and consequently, any enquiry conducted by the enquiry officer is nullity. The learned counsel also submitted that during the alleged period of absence, the applicant was not well and was admitted in King George Medical College during various periods due to illness on medical grounds. The leave was not sanctioned and the applicant was proceeded with the service of charge sheet.

5. The learned counsel for the respondents has, on the other hand, submitted that the applicant remained absent from 9.3.83 to 15.8.83. Subsequently, the applicant absented from 24.10.83 to 7.4.84. The applicant was also absent from duty from 28.9.84 without any information.

6. As per the learned counsel for the respondents, a charge sheet was submitted against the applicant for unauthorised absence from duty and an enquiry officer was appointed on 5.12.86. As the applicant failed to join duty, a second charge sheet dated 14.2.89 (Anneuxre A-9) was submitted against the applicant. The enquiry officer, who was appointed on 5.12.86, continued with the enquiry in the case ^{also} on the basis of charge sheet dated 14.2.89. The applicant failed to attend the enquiry. Consequently, the enquiry officer concluded the enquiry and the impugned order of removal was passed.

6. We have heard the learned counsel for the parties and we find that in this case, the procedure prescribed for enquiry under rule 9 of the Rules of 1968 has not been followed. The charge sheet is dated 14.2.89. After furnishing a copy of charge sheet, the railway servant is required to submit a written statement of his defence. After the written statement of the defence is received, the disciplinary authority is required to consider the same and decide whether the enquiry should be proceeded with under the rules. If the

disciplinary authority decides that the enquiry should proceed, it may either enquire into such of the articles of the charges as are not admitted, or appoint the Board of enquiry or an enquiry authority for the purpose. It is thereafter, that a Presenting Officer is appointed and the delinquent railway official is also informed about it. ~~It is~~
Thereafter, ~~that~~ the delinquent official appears in person before the enquiry authority. In case the delinquent official fails to appear within the specified time or refuses/plead, the enquiry authority asks the presenting officer to produce the evidence, by which articles of charges is proposed to be proved and the case is adjourned for the delinquent official so that the delinquent official may prepare his defence. Thus, as per rules, it is after the submission of the charge ^{proceeds} that the enquiry as per rule 9 of the Rules of 1968. In the case before us, we find, as already mentioned in preceding paragraph, the charge sheet is dated 14.2.86 but the enquiry officer was appointed on 5.12.86. Even this fact is not on record that any enquiry officer was appointed on 5.12.86. It is during the course of arguments that the learned counsel for the respondents on an enquiry from the Bench, from the enquiry file, informed us that an earlier charge sheet had been submitted in 1984 and the enquiry officer had been appointed on 5.12.86. Thus, in the case before us, no enquiry officer was appointed as per rule 9(9) (a) (ii) of the Rules of 1968. Further, an enquiry officer appointed on 5.12.86 cannot be taken to be an enquiry officer for the absence of the applicant for a period subsequent to the date of appointment of the enquiry officer. As has been noted, the present charge sheet is for absence from 28.9.84 to 19.1.89. Thus, the appointment of enquiry officer in 1986 for the period of absence of applicant on future dates would not be in accordance with the procedure laid down in the Rules of 1968. Any enquiry conducted by such an enquiry officer is thus, a nullity and invalid.

7. Further, we find that the enquiry report (Annexure A-17) shows that the applicant was given notice of the enquiry on 4.12.88 to appear for enquiry on 18.12.88. Thus,

the enquiry report is of a period not connected with the charge sheet dated 14.2.89. The relevant portion of the enquiry report is quoted below:

"History of the case: His earlier absence period is for 4 years 3½ months. As Munna was untraceable since 28.9.84, a notice was pasted on the notice Board of CDO/Gn on 4.12.88 informing Munna to appear for enquiry on 18.12.88. As Munna failed to turn up on 18.12. another notice was pasted on Notice Board of CPO/Gen on 18.12.88 asking him to appear on 1.1.89. A letter was also served to Sri Munna through Sri M.A. Benjamin, Clerk CPA on 18.12.88. Since Munna did not turn up on 1.1.89 also the process was repeated. Finally, Munna turned up for enquiry on 19/22.1.89 and submitted PMC as below:....."

8. In view of the above, we are of the view that the ~~whole~~ enquiry in the episode of absence from duty of applicant conducted on the basis of charge sheet dated 14.2.89 has to be quashed as not in accordance with the prescribed rule of procedure and has to be held as farce.

9. The learned counsel for the respondents has submitted that the applicant's appeal is still pending and has not been decided till date. No such assertion has been made in the Counter reply. We however, find that the Memo of appeal (copy of which is Annexure A-18) is dated 1.12.89. If the appeal is pending before the appellate authority since 1989 and the same has not been decided till date, this Tribunal cannot wait indefinitely for an order thereon. In the light of section 21 of the Administrative Tribunals Act, 1985, this O.A. is maintainable if the appeal was not decided within a period of six months from the date of filing appeal. Thus, the submission of the learned counsel for the respondents that the appeal is still pending, will have no effect on the decision of the present case.

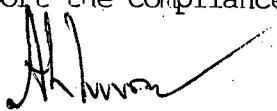
9. The learned counsel for the respondents has further submitted that the applicant has been regular absentee, details of which have been given in the Counter Affidavit. The Learned counsel also submitted that even for the period of absence from 28.9.84 to 19.1.89, the applicant has not been able to explain his absence or to show that the applicant was

admitted in any hospital throughout the period of absence, except for a brief period. It has been therefore, submitted that the present O.A. be dismissed.

10. We have, however, considered all the submissions of the learned counsel for the respondents and we are of the view that as the enquiry conducted on the basis of the charge sheet dated 14.2.89 has been found to be nullity, any order of removal passed on the basis thereof, cannot stand. The order of removal (Anneuxre A-18) has to be quashed.

11. In view of the discussions made above, we quash the removal order dated 12.7.89 (Anneuxre A-18 to the O.A.) and declare that the applicant shall be treated as in continuous service as Safaiwala, the post on which he was working. We also direct the respondents to allow the applicant to join the post immediately. We however, provide that the applicant shall not be given the back wages/salary till the date of joining. For fixation of pay, after joining, ^{for} the period of absence usual increments admissible would be taken into consideration ^{as} and the seniority would be maintained if the applicant was not removed from service.

11. The O.A. is decided as above. The respondents shall pay costs of Rs 2000/- to the applicant within a period of two months from the date of communication of this order and report the compliance to the Tribunal.


MEMBER (A)


MEMBER (J)

Lucknow; Dated: 30.11.89

Shakeel/