

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

This the 9th Day of April, 2014

Hon'ble Mr. Navneet Kumar-JM
Hon'ble Mr. Shashi Prakash- AM

Original Application No. 133 of 2006
(U/S 19, Administrative Tribunal Act, 1985)

Jhagroo, aged about adult years, ex Safai Wala, son of Chhunnoo,
Village – Kot Bazar, Post – Pyagpur, Distt – Bahraich, U.P.

.....**Applicant**

V E R S U S

1. Union of India, through the General Manager, North Eastern Railway, Gorakhpur, U.P.
2. The D.R.M., N.E. Railway, Ashok Marg, Lucknow.
3. The C.D.O., North Eastern Railway, Gorakhpur.
4. The senior D.M.E., North Eastern Railway, Ashok Marg, Lucknow.

.....**Respondents**

Advocates for the applicant:- **Shri M.A. Siddiqui**
Advocate for the Respondents:- **Shri Narendra Nath**

O R D E R

DELIVERED BY:-

HON'BLE MR. SHASHI PRAKASH, (MEMBER-A)

The present original application has been filed for quashing the impugned order of removal from service passed by the respondent no. 3 on 31.08.2004 and order dated 24.01.2006 passed by the Appellate Authority, which has been challenged by the applicant by way of amendment.

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2. Briefly; the facts of the case are that the applicant while serving as Safaiwala at B.G Pit Line, Gorakhpur was served with a major penalty charge sheet dated 03.11.2002 alleging the charge of un-authorized absence from duty from 13.08.1999 to 28.11.2002. Inquiry Officer was appointed and, as per the O.A, the applicant attended the inquiry proceeding till 17.01.2003. Thereafter he could not appear in the inquiry due to sickness of his own as well as his wife. It has been alleged that regarding his illness, the applicant informed the respondents by post through Section Engineer, B.G. Pit Line, Gorakhpur. It has been further stated that by letter dated 02.09.2004, which the applicant received late, he was intimated to attend the inquiry on 12.09.2004, which he could not attend. However, when the applicant approached the respondents for joining his duties on 25.09.2004, he received the impugned order by which he had been removed from service w.e.f. 30.08.2004. It is averred by the applicant that the inquiry report, based upon which he was removed from service, was never served upon him. On receipt of the impugned order the applicant submitted an appeal dated 12.10.2004 under rule 18 of the Railway Servants (D&A) Rules. The appeal of the applicant has been decided by the respondents vide order dated 24.01.2006, which he has impugned in the O.A by way of an amendment. According to the applicant,



since the absence was occasioned either due to his illness or that of his wife, which he duly intimated to the respondents as well as submitted medical certificates issued by the private as well as government hospitals alongwith supporting documents, the ex-parte inquiry conducted against him is unsustainable. It is further stated that as the punishment of removal from service was imposed upon him without serving a copy of inquiry report, the same is liable to be set aside being violative of principle of natural justice.

3. In the Counter Reply the respondents have vehemently denied the averments of the applicant made in the O.A. It has been stated that while the applicant appeared in the inquiry proceeding on 10.12.2002, 21.12.2002, 06.01.2003 and 17.01.2003 he did not participate thereafter and remained absent unauthorizedly. Because of his continuous absence on listed dates of proceedings, the Inquiry Officer sought permission of the disciplinary authority to proceed with the inquiry on ex-parte basis. In the inquiry report, the charge of un-authorized absence was found proved. Accordingly, the disciplinary authority passed the order of removal of the applicant from service dated 31.08.2004. The appeal against the order of the disciplinary authority was disposed of by the Appellate Authority vide order dated 24.01.2006 and a copy of the appellate order was conveyed to him on 10.03.2006 by mode of "Under Postal

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Certificate" (U.P.C). The respondents have also stated that the inquiry report received by the disciplinary authority was pasted upon the Notice Board of the office in presence of three witnesses and only after expiry of two month that the impugned order was passed. In view of the above the respondents have stated that the applicant does not have any case to support his claim.

4. Shri M.A. Siddiqui, learned counsel for the applicant mainly relied on two points. In the first place he stated that a perusal of Annexure CA-2 to CA-5 show that the applicant has cooperated with the inquiry. Regarding the dates on which he did not appear was due to the fact that he had not received any intimation regarding the next date. In the second place, learned counsel for the applicant argued that the impugned order was never served upon the applicant. He argued that instead of sending a copy of inquiry report through registered post, it was pasted on the office Notice Board. As the applicant did not receive the copy of inquiry report he could not submit his reply which amounted to denial of reasonable opportunity and is against the applicable rules. Learned counsel stated that for this reason only the impugned orders needs to be set aside.

5. Shri Narendra Nath, learned counsel for respondents argued that the applicant absented himself for more than three years

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unauthorizedly and in the inquiry, which was instituted for going into the charge of unauthorized absence, the applicant did not cooperate. Hence there was no other option but to proceed with the inquiry proceeding and finally the charge leveled in the Charge Sheet was found proved. The non-cooperation in the inquiry shows that the applicant did not have any justification / explanation for his long absence. Learned counsel further argued that as the punishment was imposed after following due procedure there is no reason for the Tribunal to interfere with the impugned orders.

6. We have heard Shri M.A. Siddiqui, learned counsel for the applicant and Shri Narendra Nath, learned counsel for respondents.

7. Before going into the facts and the issues involved in this case it may be pertinent to mention the legal position in the matter. It is now well settled that the disciplinary authority has to take a decision on the basis of the findings of the Inquiry Officer. Before he comes 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

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inherent under Article 311(2) of the Constitution of India, which provides protection and an opportunity of proving his innocence in a departmental proceeding. In fact in the case of Union of India Vs. Mohd. Ramzan Khan – SCC 1991 (1) 588, the Apex Court made following observation :-

“.....We, therefore, come to the conclusion that supply of a copy of the enquiry report along with recommendations, 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.”

8. If we examine the facts and circumstances of this case, in view of the above stated position, we observe that principle, as enunciated, has not been followed. It is even admitted by the respondents that the inquiry report was not sent by any mode of communication to the applicant and it was merely pasted on the Notice Board of the office in the presence of three witnesses, which certainly cannot be considered to be a sufficient service of the inquiry report upon the applicant. The normal procedure to be followed in this regard was either to serve the report directly upon the charged official and in the event he was not available then the other option available to the respondents was to sent the same

through registered post at the available residential address. In case he refused to accept the service of inquiry report by any of the above stated mode, then the proper course for the respondents would have to paste the copy of inquiry report at the door of the residence of the charged official in the presence of witnesses. The respondents are totally silent in the Counter Affidavit on the issue whether at any point of time the applicant had at all refused to receive the copy of inquiry report. The law relating to consequence of non-furnishing of the inquiry report has been laid down by the Apex Court in the case of **Managing Director, E.C.I.L, Hyderabad & Ors. Vs. B. Karunakaran & Ors – 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. Infact, in the cited case, the inquiry report was sent through registered post but the same was returned with the postal remark “not found”. Hence the apex court set aside the order of dismissal as it amounted to non-supply of the report. It has been clearly stated that non-supply of the inquiry report amounts to violation of principle of natural justice.

9. Having regard to the forgoing facts and circumstances, we feel that non-supply of the inquiry report to the applicant, according

to due procedure, was a serious deficiency / omission on the part of the respondents before they proceeded to impose the punishment as per the impugned order dated 31.08.2004 . Hence the impugned orders are vitiated and liable to be set aside.

10. Accordingly, the O.A is allowed. Orders dated 31.08.2004 and 24.01.2006 are hereby quashed and set aside. The respondents are directed to reinstated the applicant in service within a period of three month from the date of receipt of certified copy of the order with all consequential benefits but without back wages. However, the respondents are at liberty to proceed in the matter in accordance with rules after serving a copy of inquiry report upon the applicant.

No costs.


(Shashi Prakash)
Member-A

Anand...


(Navneet Kumar)
Member-J