

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 11 of 2008

This, the 18th day of December, 2013.

HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Pyarey Lal dixit, aged about 51 years, Son of Sri Rameshwar Prasad,
resident of Village Sonwan, Post Office Paharpur District Lucknow.

Applicant

By Advocate Sri Ranjeet Singh.

Versus

1. Union of India through The Secretary to Government of India,
Department of Railways, Civil Secretariat, New Delhi.
2. Divisional Railway Manager, North Eastern Railway, Lucknow
Division, Lucknow.
3. Divisional Mechanical Engineer/o&F, North Eastern Railway,
Lucknow Junction, Lucknow.

Respondents

By Advocate Sri D. B. Singh.

(Reserved on 28 .11.2013)

ORDER

By Hon'ble Mr. 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:-

- (i) To set aside the impugned orders dated 24.09.2007 passed
by respondent No. 3 and the order dated 13.4.2007 passed
by respondent No. 4 (Annexure Nos. 1 and 2 respectively);
- (2) To direct the respondents to reinstate the applicant with full
back wages and with all service benefits appended thereto
and further grant voluntary retirement to the applicant
from railway service with all post retrial benefits appended
thereto;
- (3) to issue such other suitable order or directions as the
Hoin'ble Tribunal may deem just and proper in the facts
and circumstances of the case; and
- (4) To allow the OA with costs against respondents."

2. The brief facts of the case are that the applicant was initially
appointed in the North Eastern Railway after due selection on the post
of Helper Running Room and subsequently, he was prompted to the post

of Cook in the pay scale of Rs. 2650-4000 and subsequently, the applicant was transferred and posted at Railway Running Room, Gorakhpur. Subsequently, the applicant joined in his transfer place. In 2004, the applicant was transferred from Gorakhpur to Mailani and it is alleged by the learned counsel for the applicant that the respondents are having malafide intention as such, the applicant was awarded punishment without affording any opportunity of hearing, the respondents have passed a unreasoned and non-speaking order. The applicant was removed from service on the basis of the inquiry report. The learned counsel for the applicant also pointed out that the wife of the applicant has submitted leave application to the authorities and the said leave application was not considered by the respondents and the respondents have passed an order of removal from services without affording any opportunity of hearing

3. The learned counsel appearing on behalf of the respondents filed their reply and through reply, It was pointed out by the respondents that the applicant was removed from service vide order dated 14.11.2005 due to unauthorized absence from duty. But subsequently he was reinstated at the appellate stage by the competent authority and thereafter against the applicant remain absent from duty without informing to the competent authority. Which caused inconvenience to the railway administration and after the inquiry, the competent authority has passed legal, just and valid order in accordance with rules. It is also pointed out by the learned counsel for the respondents that the applicant was found unauthorized absent from duty as such, he was awarded the punishment. Since, the applicant violated Rule 3.1 sub Rule (ii) and (iii) and Rule 26 of Railway Services (Conduct) Rules, 1966, therefore, the charge sheet dated 18.1.2007 was given to the applicant, but the appellate authority taken a lenient view, has reinstated the applicant, but even after that the applicant did not improve his habit and also unauthorizedly absent from duty. Therefore, the competent authority has taken cognizance and

issued the charged sheet dated 18.1.2007. Subsequently, the charges against the applicant stands proved and the applicant also refused to accept the inquiry report therefore, the disciplinary authority under compelled circumstances, passed the punishment order against the applicant. The learned counsel appearing on behalf of the respondents pointed out that there is no illegality in passing the impugned punishment order and also argued that the judicial interference in the disciplinary proceedings is hardly called for if the inquiry is not against any rules.

4. Learned counsel appearing on behalf of the applicant filed his rejoinder and through rejoinder, the averments made in the O.A. are reiterated. It is also denied by the learned counsel for the applicant that the applicant was ever served with a copy of the inquiry report and the respondents submitted incorrect statement and imposed the punishment upon the applicant just to humiliate and unnecessary to harass him. Apart from this, it is once again reiterated that the inquiry made by the respondents and no opportunity of hearing is given to the applicant. Thus the impugned order is liable to be quashed.

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

6. Admittedly, the applicant was initially appointed by the competent authority in the North Eastern Railway and after due selection, to the post of Helper, the applicant was promoted to the post of Cook Group 'D' post in the pay scale of Rs. 2650-4000. Thereafter, the applicant was transferred and posted as Railway Running Room, Gorakhpur and in pursuance thereof, the applicant joined there and discharged his duties. In 2004, the applicant was transferred from Gorakhpur to Mailani and has alleged by the applicant during his posting at Mailani, the respondent No. 4 had become prejudiced with the applicant as the applicant has refused to work at his residence and

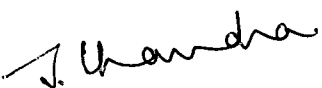
subsequently, the respondent No. 4 passed an order of punishment of temporary withholding of one years increment vide order dated 4.5.2005, but the said order was not challenged in the present O.A. The applicant has also alleged that despite this punishment, the respondent No. 4 was not satisfied and initiated disciplinary proceedings for major punishment against the applicant for his unauthorized absence and subsequently, without any inquiry, he was removed from service. The applicant submitted an appeal and the appellate authority set aside the punishment order and reduced the punishment reverted the applicant for one year at the initial pay in the pay scale of Rs. 2650-4000. Subsequently, the applicant was transferred from Mailani to Kanpur. Thereafter, again the applicant was served with a charge sheet and he was found guilty of absent from duty without authority. After the said charge sheet, the full fledged enquiry was conducted and the applicant was removed from service. Now the question which requires determination is that whether the inquiry conducted by the authority for his unauthorized absence for a period from 5.12.2006 to 4.1.2007 was duly considered and due opportunity of hearing was given to the applicant or not. The bare reading of the inquiry officer report clearly provides that the inquiry officer has fixed number of days but neither he has conducted nor he has submitted any reply. It is also pointed by the inquiry officer, not only once, but the applicant was communicated about the dates of the inquiry by the registered post on number of times and when the charged officer i.e. the applicant fail to appear before the inquiry officer, the inquiry officer have no other option except to proceed ex parte and in pursuance thereof, he has examined the witnesses and submitted the report to the disciplinary authority. It is also pointed out that the inquiry officer report was also sent to the applicant but since the applicant has refuse to accept the same, as such, the disciplinary authority was left no other option except to proceed for imposing punishment. The bare reading of letter dated 22.3.2007, annexed as Annexure CA-1 to the counter reply that the copy of the inquiry officer was duly served upon

the applicant, but as per the endorsement made on the covering letter, and it is clear that the applicant refuse to accept the inquiry officer's report. In the event of this the disciplinary authority has passed an order indicating therein that after the expiry of the stipulated period, the applicant fail to submit any representation and since he was given due opportunity of hearing, and when the applicant fail to appear before the inquiry officer, despite the registry notice upon his last known address, the inquiry officer concluded the inquiry. As such, the inquiry officer proceeded ex parte and submitted the report. The applicant has also refused to accept the inquiry report. As such, the disciplinary authority passed the order of removal from service. After the said order was passed the applicant made an appeal. The applicant pointed out that he has given the reply to the charge sheet on 6.2.2007. On behalf of the applicant there is no medical prescription which is annexed along with the OA only an application of the wife of the applicant is submitted along with the RA indicating therein that her husband is not well since 5.12.2006. In para 6 of the appeal, it is pointed out by the applicant that the applicant has given reply to inquiry officer letter dated 24.2.2007 and 28.2.2007. The reply of the applicant dated 22.2.2007 is available on record. The appellate authority while deciding the appeal has again reiterated the averments made in the inquiry report as well as the disciplinary authority order and has pointed out that after the due opportunity of hearing to the applicant has fail to appear before the inquiry officer as such proceed ex parte and on the basis of the ex-parte report of the inquiry officer, the disciplinary authority has passed an order of removal upon the applicant. The appellate authority had accepted the version of the inquiry officer as well as the disciplinary authority and rejected the applicant's appeal vide order dated 24.9.2007. The Hon'ble Apex Court in the case of ***State of Uttar Pradesh Vs. Saroj Kumar Sinha, (2010) 2 SCC 772***, has been pleased to observe that the employee should be treated fairly in any proceedings which may culminate in punishment being imposed on him.


7. In the instant case, reply to the charge sheet as well as the applicant's application dated 28.2.2007 is available on record and it cannot be said that the applicant has not given reply against the charge sheet or he has not given any reply to the notice given by the inquiry officer. Even, if it is presumed that the applicant was on unauthorized absence w.e.f. 5.12.2006 till 4.1.2007 even then, the punishment of removal imposed upon the applicant appears to be unjustified.

8. As such, considering the averments made by the learned counsel for the parties and also after perusal of the pleadings on record, we feel it appropriate to interfere in the present O.A. As such, the impugned appellate order dated 24.9.2007 is quashed and the applicant be reinstated in service but he will not be paid any back wages since the applicant has not worked during this period of punishment and the matter is remanded back at the stage of the appellate authority who shall provide the copy of the inquiry report to the applicant and seek his explanation and also give him personal hearing and thereafter, pass a reasoned and speaking order in accordance with law. The same shall be done within a period of 3 months from the date a certified copy of this order is produced. The applicant is also expected to co-operate with the enquiry. In case, the applicant fails to submit any reply or refuses to appear personally, the appellate authority would be at liberty to pass a fresh orders in accordance with law.

9. With the above observation, O.A. is allowed. No order as to costs.



(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)