

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 206/2008

This, the 11th day of February, 2009

Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A.K. Mishra, Member (A)

Aslam Aged about 39 years son of Sri Najee resident of H.No. 339/116, Trivenia Ganj, Thana Bazar Khala, Lucknow employeed as Safaiwala under the CDO ,N.Rly. Lucknow.

Applicant.

By Advocate: Sri Alok Trivedi for Sri Siya Ram.

Versus

1. Union of India, through General Manager, N.Rly, Baroda House, New Delhi.
2. Additional Divl. Rly. Manager, N.Rly, Hazratganj, Lucknow.
3. Senior Divl. Mechanical Engineer, (C&W), N.Rly, Hazratganj, Lucknow.
4. Assistant Divl. Mechanical Engineer (CDO), N.Rly, Lucknow.

Respondents.

By Advocate: Sri C.B. Verma.

ORDER

By Hon'ble Sri M. Kanthaiah, Member (J)

The applicant has filed O.A. with a prayer to quash the punishment order dated 11.4.2002 (Ann. A-9) passed by disciplinary authority , which has been confirmed by the Appellate authority vide order dated 19.3.2007 (Ann. A-11) and revisioanl authority vide order dated 31.8.2007 (Ann.A-13) and for consequential benefits on the following grounds:-

- i) Inquiry Report (Ann. A-6) submitted by the inquiry officer is an ex-parte report;

- ii) No procedure has been adopted , while conducting ex-parte inquiry and no evidence either of oral or documentary taken into consideration for giving his conclusion;
- iii) No date, time and place of inquiry has been informed to the applicant which is against the rules and violation of Principles of Natural Justice;
- iv) The punishment of removal from service imposed against the applicant by the disciplinary authority and confirmed by the Appellate and Revisional Authorities are liable to be quashed in view of inquiry report which is arbitrary and illegal.

2. The respondents have filed the counter reply denying the claim of the applicants stating that because of non participation of the applicant in the departmental inquiry , the proceeding was conducted ex-parte and there was no violation of principle of natural justice and further the punishment order dated 11.4.2002 (Ann.A-9) issued by the disciplinary authority with the punishment of removal of applicant from service (Ann. A-9) and orders of the appellate authority and revisional authority covered under Ann. A-11 and A-13 confirming such punishment are as per rules and thus there is no illegality in the said orders for interference of this Tribunal.

3. The applicant has filed Rejoinder Reply denying the stand taken by the respondents and reiterated the pleas taken in the O.A.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as claimed for.

6. The admitted facts of the case are that the applicant while working as regular Safaiwala in the year 1998, major penalty charge sheet has been ordered for his unauthorized absence from duty w.e.f. 25.1.97 to 15.7.2000 but because of his absence it could not be served on the applicant. After the representation of the applicant dated 12.7.2000 (Ann.A-) because of ill health of his wife, he was absent

from duty from 25.1.97 to 5.7.2000 and requested to allow him to resume duty, the Divisional Mechanical Engineer had allowed him to resume duty w.e.f. 25.7.2000 and served the major penalty charge sheet (Ann. A1) upon the applicant. The applicant submitted his reply dated 1.8.2000 (Ann. A2) stating because of serious sickness of his wife, he remained absent from duty but the disciplinary authority (respondent No.4) was not satisfied with his reply, initiated disciplinary proceedings and appointed inquiry officer. Thereafter, Sri P.N. Bhatnagar, SE was appointed as Inquiry Officer but at the request of the applicant, he was changed and Sri G.K.Saxena , SSE was appointed as Inquiry Officer, who completed the proceedings ex parte on the ground that applicant did not attend the proceedings and submitted his inquiry report dated 10.2.2002 (Ann. 6). Annexure A-6 is the inquiry report and basing on such report, the disciplinary authority imposed punishment of removal of the applicant from service vide order dated 11.4.2002 (Ann. A-9). The applicant submitted his appeal against the said punishment order but Respondent No.3 rejected the same and confirmed the order of Disciplinary Authority. Thereafter, the applicant also preferred revision under Rule 24 (3) of the Railway Servants (D&A) Rules, 1968 but the same was also rejected by the respondent No.2 vide order dated 31.8.2007 (Ann. A-13). Aggrieved with such punishment and orders passed by respondents No. 4,3 and 2, the applicant filed this O.A. mainly on the ground that no opportunity was given to the applicant by the inquiry officer while conducting the inquiry proceedings and further his inquiry report without any evidence is also not in accordance with the procedure and basing on such inquiry report, more particularly, ex -parte report imposing a penalty of removal from service by the disciplinary authority is illegal and unsustainable.

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7. In view of such pleas taken by the applicant, it is incumbent upon this Tribunal to consider the inquiry report and also the procedure adopted by the Inquiry Officer that there was any violation of procedure and Principles of Natural Justice in deciding the proceedings.

8. As per the charge sheet dated 26.7.2000 Ann.A-1, a major punishment charge sheet was issued against the applicant for conducting the inquiry under Rule 9 of Railway Servants (D&A) Rules, 1968 with charge No. 1 that he was unauthorizedly absent from duty from 25.1.97 to 25.7.2000 and charge No. 2 that he intimated to the authority about the illness of his wife during the period from 25.1.97 to 25.7.2000 with delay and that on perusal of Muster Roll and T x R of Lucknow Mail Train No. 4229/30, they came to know that the applicant was unauthorizedly absent for duty.

9. It is not in dispute fact that the applicant submitted his reply dated 01.08.2000 (A-2) to the charge sheet stating that he did not attain the office from 25.1.97 to 25.7.2000 due to serious illness of his wife and it is not the case of either party that the applicant denied such charges levelled against him. In spite of it, the disciplinary authority initiated disciplinary proceedings against the applicant and appointed an inquiry officer. On perusal of inquiry report Ann. A-6, it shows that second inquiry officer commenced the inquiry proceedings on 9.11.2001, on which date, the applicant did not opt for any defence assistant but he has taken the assistance of one Sri Nishar Ahmad, Technician I Ticket No. 64 for writing. It also shows that on 9.12.2001, a letter was sent to the address of the applicant through R.S. Section but the same is not helpful for which purpose it was sent and whether he has furnished any date and time of inquiry etc. Next para of the report says that on 6.1.2002, they got pasted the notice on the notice Board where the applicant earlier

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worked informing to complete the inquiry within 15 days but no reply has been received from the applicant.

10. The report says that as per the official record, the applicant was unauthorizedly absent for last 6 months and inquiry officer has come to the conclusion that he was careless to his service and he is habitual absentee without permission and by showing illness of his wife as reason and due to which he is submitting his ex-parte report against the applicant.

11. After reading the said inquiry report, it is not at all clear which are the date fixed for conducting his inquiry and also the absence of the applicant on such dates and further the inquiry officer did not discuss the charges levelled against the applicant and also for proving the same any material was there on record. Further, the report also does not say what are the charges levelled against him and also the charges which are proved against him. Admittedly, none of the witnesses have been examined and no documents have been inspected. From this, it is clear that inquiry report is not only ex-parte and also without any material and such a report is against the rules and also violative of Principles of Natural Justice and the same is not at all valid in the eyes of law and as such the applicant is justified in questioning such ex-parte inquiry report submitted by the inquiry officer, which is the basis for imposing major penalty against him for removal from service.

12. The punishment order passed by the respondent No.4 in its order dated 11.4.2002 (Ann. A-9) says that he has gone through the inquiry report and it is proved that the applicant was unauthorizedly absent from 25.1.97 to 25.7.2000 i.e. 3-1/2 years and as such he imposed penalty of removal from service. But from the report of the inquiry officer (Ann. A-6), no such findings are there in respect of unauthorized absence of the applicant from 25.1.97 to 25.7.2000 i.e. 3-1/2 years as mentioned by the disciplinary authority in his

punishment order which also shows that without going into the inquiry report, he mechanically imposed such grave penalty against the applicant and as such, the applicant is justified in questioning the validity of such punishment.

13. The applicant also challenged the order of the appellate authority dated 19.3.2007 (Ann.A-11) on the ground that the same is not correct and reasoned one. On perusal of the order of the appellate authority (Ann. A-11) it says that the applicant was given ample opportunity but he failed to avail those opportunities and also not cooperated in inquiry proceedings and on such conclusion, he rejected the appeal. On perusal of the inquiry report (Ann. A-6) it is not at all giving any particulars to show that there was any proper intimation given to the applicant in respect of the date of next inquiry proceedings etc. As such, when the inquiry officer did not discuss in respect of charges levelled against the applicant and also in respect of proving of the same and which are the documents he perused for his conclusion, giving of such findings by the appellate authority is nothing but without any material and as such, the same is also liable to be quashed.

14. Against the such rejection, the applicant preferred revision before the revisional authority (R-2) but the same was also rejected basing on the inquiry report (Ann.A-6), without taking the correctness and validity of inquiry report.

15. From the above discussion, it is clear that the disciplinary authority (Respondent No. 4) imposed the penalty against the applicant for removal from service based on the inquiry report (Ann.A-6) in which there was no finding against the applicant in respect of the charges levelled against him and further no material or document has been considered by him for his conclusion against the applicant and basing on such report, imposing major penalty for removal from service by the disciplinary authority under Ann. A-9 is

not at all sustainable and similarly the order passed by the appellate authority dated 19.3.2007 (Ann.A-11) and revisional authorities (Ann.A-13) are not at all sustainable and as such the applicant is justified in questioning the validity of such punishment imposed against him.

16. In view of the above circumstances, this Tribunal has no option except to quash the impugned order of removal from service imposed against the applicant on 11.4.2002 (Ann.A-9) confirmed the same in Appellate order dated 19.3.2007 (Ann.A-11) and Revisional order dated 31.8.2007 (A-13).

17. In view of such infirmities in the inquiry report, the respondent authorities are at liberty to conduct fresh inquiry against the applicant in accordance with the rules, basing on the earlier charge sheet dated 26.7.2000 (Ann.A-1) and with this observation, the impugned orders are quashed and O.A. is allowed. No costs.

Apri 2007
(Dr. A. K. Mishra)
Member (A)

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(M. Kanthaiah)
Member (J)
11.02.2007

HLS/-