

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No 469 of 2009

Order Reserved on 16.9.2015.

Order Pronounced on 30-9-15

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

Prem Nath Ist, aged about 59 years, (dead) Sri Krishna S/o Late Prem Nath Ist son of Late (Shri) Panchu Ram, Ticket No. 974, Resident of ~~Viltage~~ Badali Khera, Majre- Farrukhabad Chillawan, Post Office Manas Nagar, Lucknow.

Applicant

By Advocate Sri Praveen Kumar.

VERSUS

1. Union of India through its Manager, N.E. Railway, Gorakhpur.
2. Chief Mechanical Engineer, N.E. Railway, Gorakhpur.
3. Divisional Mechanical Engineer (Diesel), Diesel Shed, Gonda.
4. Assistant Mechanical Engineer (Diesel) Diesel Shed, Gonda.
5. Diesel Loko, Inspector Diesel Shed, Gonda.

Respondents

By Advocate Sri B. B. Tripathi for Sri M. K. Singh.

ORDER

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 quash the order dated 07.8.2002 passed by the opposite party No. 5 contained in Annexure No. 7 to this application/petition.
- (ii) Direct the opposite parties to provide a suitable job to the dependent of the applicant.
- (iii) Direct the opposite parties to provide the pension to the applicant.
- (iv) Direct the opposite parties to provide the consequential benefits like P.F. etc.
- (v) Issue any other suitable order or direction which this Hon'ble Tribunal may deems, just fit and proper under the facts and circumstances of the case.

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» (vi) Allow the application with cost in favour of the applicant/petitioner."

2. The brief facts of the case are that the applicant is a son of the deceased employee namely Prem Nath 1st challenging the order dated 28.7.2001 passed by the opposite party No. 5 through which the applicant is removed from service. 3. The grounds taken in the O.A. are that on account of illness of the ex-employee, he could not attend the office, as such, a notice was sent to the applicant for taking disciplinary action. The applicant submitted that his father was continuously mentally ill from 1995, but has submitted the reply to the charge sheet. The applicant has also indicted that his father informed the railway administration about his mental condition, but the respondents passed the order dated 28.7.2001 without providing any opportunity of hearing to the ex-employee and has also indicated that the decision of the appellate authority is illegal and against the provisions of Article 21 of the Constitution of India. Accordingly, the impugned order is liable to be quashed.

3. During the course of arguments, the learned counsel for the applicant has also taken a plea that the charge sheet was never served upon the applicant. The learned counsel for the applicant also indicated that the entire proceedings are conducted at the back of the ex-employee, as such, it requires interference by this Tribunal. The learned counsel for the applicant has also requested for summoning the original records which were summoned and perused.

4. On behalf of the respondents, detailed reply is filed and through which, it is indicated that the O.A. is barred by limitation and the ground taken for the delay condonation are also untenable, as such, liable to be rejected. Apart from this, it is also indicated by the respondents that the applicant approached the respondents with a sick-fit certificate issued by the Railway Hospital, Gonda, but in the said certificate, there is no indication about the mental sickness of the applicant. Therefore, for want

of knowledge and sufficient evidence, the averments so indicated by the applicant regarding his illness are denied by the respondents.

5. It is also indicated by the respondents that the applicant was issued charge for unauthorised absence from 7.4.1994 to 03.01.1995 i.e. about 9 months and after considering the reply submitted by the applicant, the disciplinary authority issued another charge sheet after cancelling the earlier one.

6. It is also indicated by the respondents that the deceased employee took plea of illness of his wife and after considering the reply of the applicant, the punishment of withholding of three sets of passes is imposed upon the applicant. 6. The respondents also taken a plea that the applicant was removed from service on account of unauthorised absence during 23.12.2000 to 16.7.2001 through charge sheet dated 28.7.2001. Apart from this, it is also argued by the respondents counsel that the charge sheet was duly send by the Registered Post to the applicant vide receipt No. 574 on 6.8.2001 at last known address of the applicant which was returned back and thereafter, the charge sheet was duly pasted at the notice board at the place of posting of the applicant and accordingly, the services is presumed to be done by the respondents.

7. Subsequently, the disciplinary authority appointed the inquiry officer to conduct the inquiry. The applicant was duly informed but he did not turn up to face, the enquiry, therefore, ex-parte inquiry was conducted and the report was supplied to the applicant by Registered Post vide receipt No. 2198 dated 1.7.2002 and the same was also pasted on the working place of the applicant in presence of two witnesses.

8. The learned counsel for the respondents also indicated that after due pasting of the charge sheet as well as the inquiry report, the service is complete and the matter was placed before Disciplinary Authority who passed the order of removal from service which is not illegal as such, it cannot be said that the applicant was not afforded full opportunity and

the principle of natural justice are violated. Accordingly, the present O.A. deserves to be dismissed out rightly.

9. The learned counsel for the respondents also argued and submitted that the medical certificate so annexed with the O.A. pertains to Prem Nath alias Chote Lal whereas, in the original application as well as in the service record, the name of the applicant is only Prem Nath 1st. The respondents also produced the original records for perusal of the bench which are perused.

10. During the pendency of the O.A., the applicant Prem Nath 1st died and the substitution application was moved which was allowed.

11. No rejoinder reply is filed by the applicant.

12. Heard the learned counsel for the parties and perused the records.

13. The deceased employee namely Prem Nath 1st was working with the respondents organisation and after serving for a longer period, a charge sheet was issued upon him vide charge sheet dated 28.7.2001. Along with the charge sheet, statement of imputation and misconduct is also mentioned and it is also indicated that the applicant was unauthorised by absent from 23.12.2000 to 16.7.2001.

14. The copy of the charge sheet was sent to the applicant through Registered Post vide receipt No. 573 but the same was returned back unserved. Subsequently, the same was pasted on the notice board in presence of two witnesses on 6.8.2001. The respondents thereafter, appointed the inquiry officer and the applicant was informed through registered post to submit the reply. The applicant was also informed about the date of inquiry through Registered Post vide postal receipt No. 4106 dated 29.4.2002 and the said notice was also returned back unserved. Subsequently, the statement of Sri K. K. Singh was recorded and thereafter, the inquiry officer submitted the report on 25.6.2002 indicating there in that the applicant remain unauthorisedly absent from

23.12.2000 to 16.7.2001. He was informed about the inquiry proceedings and when he fail to submit any reply, the inquiry officer submitted the report. 10. Apart from this, it is also to be indicted that the applicant was informed about the date of inquiry on number of times. The applicant was informed/sent the report of the inquiry officer through registered post vide postal receipt No. 2198 dated 1.7.2002 and was asked to submit the reply if any within 15 days. The applicant again fail to submit any reply to the same as such, the disciplinary authority passed the order of removal.

15. The copy of the removal order was duly sent to the applicant vide order dated 7.8.2002 by registered post vide receipt No. 447 dated 9.8.2002. The copy of the removal also pasted on the notice board in presence of two witnesses.

16. Through original records, it is also seen that the removal order was published in the News Paper on 15.2.2003 after the due approval of the competent authority and the applicant was informed about the enquiry proceedings as well.

17. The applicant though annexed number of medical certificates and prescriptions along with O.A., but the name of the applicant is shown as Prem Nath alias Chotte Lal whereas, in the O.A., it is only shown as Prem Nath 1st not alias Chotte Lal.

18. Apart from this, the applicant is shown to be unauthorisedly absent from duty w.e.f. 23.12.2000 to 16.7.2001 and the medical certificate /prescription so annexed are of the year 2002 and not prior to that date.

19. The bare perusal of the original record shows that the opportunity of the charge sheet, the date of the inquiry, the inquiry officer report and the punishment order were duly sent to the applicant through Registered Post, but when the same could not be served upon the applicant and returned back un-served, they were pasted on the notice boards but

despite that the applicant neither appeared before the inquiry officer nor submitted any replt to the same and challenges the removal order dated 7.8.2002 in the O.A. filed in 2009. The applicant has also filed an application for condonation of delay and has indicated that since he was mentally sick, therefore, he could not challenge the same. Along with the application for condonation of delay, he also fail to submit any relevant documents.

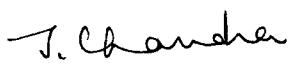
20. Be that as it may, the scope of judicial review in disciplinary proceedings is very limited. Only it can be interfered when there is a procedural irregularities or principles of natural justice are violated.

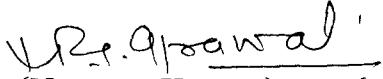
21. As observed by the Hon'ble Apex Court in the case of 8. In terms of the decision rendered by the Hon'ble Apex Court in the case of ***Union of India v. G. Annadurai, 2010 1 SCC (L&S) 278*** :

“5. Thereafter, in course of the enquiry, statements of four witnesses were recorded and several documents were proved. Copies of the statements of the witnesses examined and documents exhibited were sent to the respondent by registered post asking him to submit his written statement for defence or appear before the enquiry officer. This was done on 6-3-1998. Again there was no compliance with the order. Enquiry was concluded and it was held that the charges were proved.”

22. It is once again reiterated that the ex-employee was given full opportunity to participate in the inquiry, neither he has submitted the reply nor filed any appeal against the removal order, as such, it is clear that the applicant has not cooperated with the inquiry proceedings. Apart from this, the removal order is passed in the year 2002 and the O.A. was preferred in 2009, as such, we are not inclined to inferred in the present O.A. Accordingly, the present O.A. is barred by limitation as well.

23. Accordingly, the O.A. is dismissed on merit as well as on limitation. No order as to costs.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)