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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW Bench.

U.A. No.29 of 1990 (L)

Shri J.D. Rai Applicant

vs.

Union of India & Others ... Respondents

Hon. Mr. Justice U.C. Srivastava, J.C.

Hon. Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was appointed as Lower Division Clerk by Commandant 11 BRG on 7-12-1976 against an existing vacancy at Jalapahar, Darjeeling. He was transferred to Lucknow in 1983 when the entire staff was shifted from Darjeeling to Lucknow. On 3-10-1984 he was reverted to Lower Division Assistant although he was promoted to the higher grade. The applicant's wife died on 23-1-1978 leaving behind two children. He married again in the year 1981 but the second wife also died after prolonged illness on 27-10-1983. The applicant's mother who was looking after the children also died and the second son became a victim of epileptic fits. Therefore, there was no aged member in the family to look after his son. So the applicant stayed back in Darjeeling for longer period to hospitalise and look after his son, for which, according to the applicant, he sent periodical applications from his address. Thereafter on 23-8-1987 a charge sheet was served upon

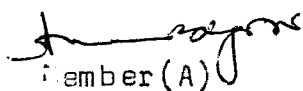
the applicant by Respondent No.3, who, according to him, is not the competent authority to charge sheet him. The charge levelled against him was regarding his long absence from duty. The Enquiry Officer submitted his report only after sending telegram in this behalf. Thus, according to the applicant, no opportunity was given to him. It appears that the disciplinary authority after holding an enquiry through Enquiry Officer passed an order dated 22-3-1989 retiring the applicant compulsorily.


2. Now the applicant has come before the Tribunal against retiring the applicant compulsorily. The respondents stated that more than one opportunity was given to the applicant. It was also stated by the respondents that the applicant is a habitual absentee from duty and once he was penalised by stopping 3 increments for remaining absent for 167 days, without cumulative effect. It was also incorporated in records that he was absent from duty from 24-11-84 to 19-11-85. According to the applicant he has sent application in this regard due to his family trouble. It was stated by the respondents that the applicant was present for long during the enquiry conducted by Maj.Gen. Shri Bhatia, who has submitted his enquiry report and thereafter the order was passed. The enquiry report has been placed on records. The signature of the applicant on enquiry report shows that the applicant has perused the same. The past absence of the applicant for which he was penalised was also taken into consideration and thereafter the finding was

recorded. According to the Enquiry Officer, no written statement was submitted by him. It was intimated to the applicant that in case no written statement is filed, exparte enquiry will be held. The applicant joined on duty on 5-7-1988 after the absence of one year six months and 12 days.

3. The entire report does not indicate that any enquiry was held and the applicant was associated with the same. Nowhere it was stated that the applicant was given an opportunity to appoint a defence assistant or to cross-examine any witness. The records which are produced before us ~~do~~ not show that any oral statement was recorded or any enquiry proceedings ~~has~~ taken place in which the applicant was present. These facts make it abundantly clear that the enquiry was not conducted in accordance with the rules. Though the applicant sent telegram stating that the written statement follows he was never given opportunity to submit his written statement. The disciplinary authority should have waited for the written statement of the applicant or should have asked the applicant as to whether he would file written statement or not. Even if the written statement was not filed, the disciplinary authority was not exonerated from the responsibility to hold an enquiry and **give** the Enquiry Officer's report to the applicant and ask for his version on the same. Nothing of the sort was done. Therefore, the enquiry was nothing but a sham enquiry. Accordingly the punishment given, based on such sham enquiry, cannot be legal and cannot stand. Therefore, the application is allowed and the

order of compulsory retirement is quashed. However, it will be open for the disciplinary authority to hold an enquiry in accordance with the law giving the applicant an opportunity of being heard. The applicant also cannot escape his responsibility altogether, for the period during which he has not worked. Though he will be deemed to be in service during this period he will **not** be entitled to back-wages ^{from} ~~upto~~ the stage of his compulsory retirement ^{to his responsibility.} No order as to cost.


Member (A)


Vice-Chairman

Dated 15th April, 1992, Lucknow.

(tgk)