

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
ORIGINAL APPLICATION NO:305/2000
DATED THE 24th DAY OF NOVEMBER, 2004

CORAM:HON'BLE SHRI A.K.AGARWAL, VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN, MEMBER(J)

Shri Pravin M Meshramkar,
Station Master, Paldhi Western Railway
Residing at 'Ashirwad' Ekta Colony,
Behind Ganeshwadi, Jalgaon. ... Applicant

By Advocate Shri S.V.Marne

V/s.

1. The Union of India,
Through
The General Manager,
W.Rly, Churchgate,
Mumbai.
2. The Additional Divisional
Railway Manager,
W.Rly, Mumbai Central.
3. The Senior Divisional Operating Manager,
W.Rly, Mumbai Central.
4. The Area Manager, n W.Rly,
Valsad. ... Respondents

By Advocate Shri R.R.Shetty

(ORDER)

Per Shri Muzaffar Husain, Member(J)

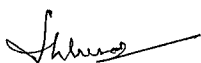
The applicant in this OA is challenging the order dated 31/1/1998 passed by disciplinary authority removing the applicant from service and order dated 10/5/1999 as well as order dated 6/3/2003 passed by the Appellate Authority and Revisional Authority upholding the punishment.

2. The facts of the case giving rise to filing of this OA are as follows:-

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3. The applicant at the relevant time was working as Assistant Station Master, Paldhi. A memorandum of chargesheet dated 15/3/1996 for his unauthorised absence from duty was issued against the applicant which according to the applicant was not served upon him. Enquiry Officer conducted the enquiry in which the applicant did not participate. A copy of enquiry report dated 29/6/1997 was served on the applicant on 27/12/1997. The applicant demanded certain documents to prepare his reply against the Enquiry report. These documents were not supplied to him. The disciplinary authority passed impugned order dated 31/1/1998 of removal from service of the applicant. The appeal preferred by the applicant against that order was rejected. The applicant submitted Mercy Petition on 20/5/1999 and Revision Petition dated 22/4/2000 stating that Mercy Petition be treated as Revision Petition under Rule-24 of Railway Servants (Discipline and Appeal) Rules 1968. It was rejected by General Manager vide order dated 6/3/2003 hence this OA.

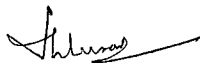
4. Respondents in reply supported the action taken by them in holding the enquiry and in imposing the penalty of removal from service on the applicant, they has also controverted the averments made by the applicant.



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5. We have heard learned counsel for the applicant as well as the respondents and perused the material placed on the record. Learned counsel for the applicant assailed the impugned order on various legal infirmities.

- a) The chargesheet is illegal as the applicant was sick as recorded in Muster Roll and Enquiry Officer's report.
- b) The applicant was not served the memorandum of chargesheet nor enquiry officer communicated the date and place of enquiry to the applicant and hence the departmental enquiry is illegal. Pasting of chargesheet and letter at the locked/unoccupied quarter by the applicant is illegal.
- c) The findings of the enquiry officer are not based on evidence hence perverse. The respondents duly served the enquiry officer's report, order of removal from service and appellate order on the applicant but failed to serve the chargesheet at the correct address. The orders of these authorities and findings are against the applicant. The applicant is denied the opportunity to defend and prove his innocence and denied the right to cross examine. The appellate authority and the revisionary authority did not consider the points raised by



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the applicant. Hence the orders are perverse.

6. At the outset learned counsel for applicant contended that respondents have failed to communicate to the applicant the chargesheet at the appropriate address where the applicant was living. The proper address of the applicant was "Praveen M Meshramkar, "Aashirwad" Ekata Colony, behind Ganesh Wadi, Jalgaon" and the respondents were well aware about the address as it was recorded in the book of administration of Western Railway and respondents continued to correspond with the applicant at the wrong address. Consequently applicant was not served memorandum of chargesheet nor has been served the dates of enquiry and its result and the enquiry was conducted exparte. Learned counsel has drawn our attention to the following documents to show that respondents were aware of the above address of the applicant:-

- i) Letter dated 17/4/1990 from the Applicant to the Station Superintendent, Western Railway, Paldhi with regular Rubber Stamp acknowledgement of the S.S.(Annexure A-1)
- ii) Packet cover from Area Manager, Western Railway, Valsad, Registered Letter No.2880 dated 31/1/1994 to the applicant at the above address (Annexure A-2).
- iii) Packet cover from Area Manager, Western Railway, Valsad, Registered Letter No.1356 dated ...5.



27/11/1994 to the Applicant at the above address
(Annexure A-3).

7. Learned counsel for the respondents on the other hand contended that chargesheet was sent by hand to the Railway Quarter allotted to the applicant where it was pasted on the door of Railway Quarters on account of non availability of the applicant. It was also sent by Registered Post acknowledgement due, to his home address, i.e. at Omkar Nagar, Zilla Peth, Jalgaon. Thereafter, memoranda dated 10/6/1997 and 18/6/1997 were also pasted on his Railway quarter. The said Railway Quarter was allotted to applicant by order dated 1/9/1987. In this connection, the applicant contended that though he sought to be allotted Railway Quarter at Paldhi, but he flatly refused to accept any quarter. The Railway Administration started recovering rent of the unoccupied Railway Quarter by the applicant from July, 1987. the applicant submitted representations dated 9/8/1987m 10/11/1987 for stopping illegal recovery of H.R.A. The illegal recoveries were continued and the representations remained unattended. Copies of representations dated 9/8/87 and 10/11/87 are marked as Annexure A6 and A7 respectively followed by representation dated 9/6/88 Annexure A8. Thus, it is seen that the chargesheet was not personally served on the applicant at the appropriate address at which the applicant was residing and the adress was well within the

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knowledge of the respondents. Pasting of the chargesheet at the residence i.e applicant's railway quarter cannot be deemed to be sufficient service in view of the fact that the applicant was not in occupation of the Railway Quarter. Rule-26 of the Railway Servants (Discipline and Appeal) Rules 1968 provides "every order, notice and other process made or issued under the Railway Servants (Discipline & Appeal) Rules 1968 shall be served in person on the Railway servant concerned or communicated to him by registered post. In the present case the respondents failed to establish that the chargesheet was duly served upon the applicant as required under Rule 26 (Railway Servants (Discipline and Appeal) Rules 1968. The Hon'ble Supreme Court in case of Union of India V/s. Dinanath Shantaram Karekar 1999(1) SCSLJ 245 held as under:

(A) Disciplinary Proceedings- Chargesheet served by Registered post-Postal department returned the registered cover with the remark 'Not Found' - Held it cannot be legally treated to have been served - No further efforts to serve the chargesheet - Under the circumstances single effort to serve the Chargesheet not sufficient-Initiation of disciplinary proceedings held bad.

(B) Disciplinary Proceedings - Show Cause Notice - Chargesheet served to the employee was returned by the postal department with the remark 'Not Found' - Show cause notice issued in the Newspaper without making any earlier effort to serve him personally (by peon) or by Registered post-Nothing on record to show that the newspaper in which the show cause notice was published was a popular newspaper which was expected to be read by the public in general or that it had a wide circulation in the area or locality where the

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employee lived-Show cause notice cannot be held to have been served on the employee.

In the present case there is no sufficient personal service of the memorandum of chargesheet on the applicant and it cannot be said that the chargesheet was served upon him. Therefore, the entire proceedings are vitiated.

8. Learned counsel for the applicant also contended that he was served enquiry report dated 29/6/97 which was received by the applicant on 27/12/97. The applicant demanded certain documents to prepare his reply against the enquiry officer's report by his representation dated 17/1/1998 (Annexure A-10) but these documents were not supplied and therefore order passed by the disciplinary authority without giving him appropriate opportunity to represent against the report dated 29/6/97. *h*

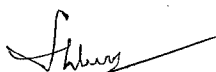
Learned counsel for the respondents on the other hand contended that the charge against the applicant was for unauthorised absence and not following proper Medical Rule. The applicant nowhere dealt with the said charge or raised any ground against the said charge. This itself shows that applicant has no defence against the charge. It is seen that applicant was not supplied the documents asked for. Atleast some of the documents which were relevant to make a written reply could have been supplied to him. But respondents did not provide

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any of the documents mentioned in Annexure A-10 and the disciplinary authority passed the impugned order without giving him an opportunity to represent against the enquiry report for want of documents. Therefore, it amounts to violation of principles of natural justice.

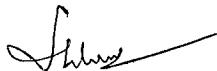
9. Learned counsel for the applicant contended that the order dated 31/1/1998 passed by the disciplinary authority is a non speaking order. We have gone through the order passed by disciplinary authority. It is in a printed proforma and the disciplinary authority has not passed detailed and speaking order. Whereas it is incumbent upon the disciplinary authority, a quasi-judicial authority to support its order by recording reason. Recording reason gives transparency to the order of disciplinary authority as well as equal opportunity to the delinquent to have his say against the finding and being the last opportunity before imposition of punishment and more particularly when the order is appealable, it becomes more important for the authority to record reason so that it may be challenged before the higher authority. This is the object and logic behind laying down the instructions to pass speaking orders. This order is absolutely mechanical as well as non speaking without containing any reasons in support and thus does not conform to the mandatory provisions laid down in the Rule and is liable to be set aside.



10. Learned counsel for the applicant also contended that the order of the appellate authority is also non speaking order. We have gone through the order dated 10/5/1999 passed by the Appellate Authority. The same is not better than the order of the disciplinary authority. The contentions taken by the applicant in his appeal dated 22/3/1998 have not at all been mentioned, discussed or considered. The Appellate Authority have not followed the instructions laid down by the Railway Board in passing the said order. These instructions oblige upon the appellate authority to record detailed reason. Failure to comply with the same vitiates this order as well.

11. The order passed by Revisionary authority dated 6/3/2003 also shows non application of mind. The perusal of the record indicates that the applicant submitted Mercy Petition dated 20/5/1999 which was not traceable in the respondents office therefore applicant submitted revision petition dated 22/4/2000 and stated therein that his Mercy Petition be treated as Revision Petition under Rule 24 of Railway Servants (Discipline & Appeal) Rules 1968 but the revision petition was dismissed on the technical ground that it was submitted after lapse of 11 months and without giving any reason. It is a matter of record that the applicant submitted a Mercy Petition dated 20/5/1999 well within the time and later on

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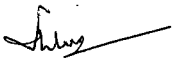
submitted revision dated 22/4/2000 to treat Mercy Petition as Revision Petition which not decided till then. The order of the Appellate Authority was passed on 10/5/1999 and the Mercy Petition was filed on 20/5/1999 within a period of 45 days of the Appellate authority's order. The order of Revisional Authority shows non application of mind and thus liable to be quashed.


12. For the reasons recorded above we are of the considered view that the enquiry has not been conducted in accordance with the Rule as such impugned orders cannot be sustained in law. Accordingly OA is partly allowed. Impugned order of the disciplinary authority, appellate authority and revisional authority are quashed and set aside. The respondents are granted liberty to hold fresh enquiry against the applicant on the same chargesheet after supplying the copy of the memorandum dated 15/3/1996 to the applicant. The enquiry proceedings shall be completed within a period of six months from the date of receipt of copy of this order. However, this will not lead to reinstatement or to backwages as held by the Apex Court in the case of Managing Director, ECIL, Hyderabad and Others V/s. S.Karunakar and Others 1993 SCC (L&S) 1184 and in Hiran Mayee Bhattacharyya V/s. Secretary, S.M.School for Girls and Ors 2003 SCC (L&S) 1033 that there need be no

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reinstatement nor wages need be paid when the Court directs that the Principles of Natural justice should be followed. In the circumstances, there will be no order as to costs.


(MUZAFFAR HUSAIN)
MEMBER (J)


(A.K. AGARWAL)
VICE CHAIRMAN

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

Friday
Dated this Thursday the 10th day of August, 2005

Coram: Hon'ble Shri A.K. Agarwal - Vice Chairman
Hon'ble Shri Muzaffar Husain - Member (J)

Contempt Petition No.42 of 2005
(In OA 305 of 2000)

Pravin M. Meshramkar
(By Advocate Shri D.V. Gangal) - Petitioner


Versus

Shri M.Z. Ansari,
General Manager,
Western Railways,
Churchgate, Mumbai.

Shri Arvendra Kumar,
Divisional Railway Manager,
Western Railways, Bombay Central,
Mumbai.

Shri Pranay Prabhakar,
Senior Divisional Operating
Manager, Western Railways,
Bombay Central, Mumbai.

Shri Niraj K. Maurya,
Area Manager,
Western Railways, Bombay Division,
Valsad.



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Shri Mukul Haldar,
Enquiry Officer
(Traffic Inspector),
Bombay Division,
Western Railways,
Surat.

- Cotemnors

ORDER


Per: A.K.Agarwal - Vice Chairman

This Contempt Petition has been filed by the petitioner aggrieved by non-compliance of Tribunal's order dated 24.11.2004 given while disposing of OA 305/2000. The learned counsel for the petitioner alleged that the respondents were directed to complete the enquiry proceedings against the petitioner within a period of six months but have taken no effective action for the same. The learned counsel submitted that order of the Tribunal was received by the respondents on 2.12.2004 and thus the period of holding the enquiry is over on 1.6.2005. He contended that after the expiry of this period no further enquiry can be held.



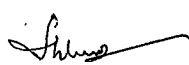
2. The learned counsel for the respondents submitted that the petitioner has filed another OA 303/05 wherein the same charge sheet issued to him on 15.3.1996 has been impugned. The Tribunal vide its order dated 7.6.2005 had granted a stay on conducting the departmental proceedings for a period of fifteen days. For this reason the Enquiry Officer had fixed 24.2.2005 as the next date. However, since the interim relief granted in that OA has been continued, no progress in the departmental proceedings has been possible.


3. We have heard both the counsel and have gone through the material placed on record. The first objection raised by the petitioner's counsel is that after completion of initial period of six months which was over on 1.6.2005, no further enquiry can be held. On this point a Full Bench of CAT vide order dated 20.8.2004 while disposing of OA 2107/02 has held that failure to comply with the order of the Tribunal within the prescribed time limit shall not render the order illegal; unless there is inordinate delay which causes prejudice to the



concerned person. As far as facts of the instant case are concerned, the petitioner by filing OA on 3.6.2005 has obtained a stay order from conducting departmental proceedings, therefore, non-completion of departmental proceedings cannot be regarded as causing prejudice to the petitioner. Further, there is no willful default on the part of the respondents since the disciplinary authority could not proceed further in view of the stay order given by the Tribunal in the other OA.

4. Keeping in view the facts herein before, we hold that respondents have not committed any contempt of court. The Contempt Petition is dismissed accordingly. Notices are discharged.


(Muzaffar Husain)
Member(J)


(A.K. Agarwal)
Vice Chairman