

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 190 of 2000.

Dated this _____ the 25TH day of June, 2002.

Shri R. M. Dubey, _____ Applicant.

Shri G. S. Walia, _____ Advocate for the
Applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri Suresh Kumar, _____ Advocate for the
Respondents.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? no
- (iii) Library ? yes

S.L. JAIN
(S.L. JAIN)
MEMBER (J).

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Dated this _____ the 25th day of June, 2002.

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Hon'ble Shri S. L. Jain, Member (J).

R. M. Dubey,
Ex. Jr. Engineer, Grade 'A',
Residing at -
Railway Quarter No. 795/1 A,
West Yard, Bulsar,
Gujarat

...

Applicant

(By Advocate - Shri G. S. Walia)

VERSUS

1. Union of India through
The General Manager,
Western Railway,
Head Quarters Office,
Churchgate,
Mumbai - 400 020.

2. Divisional Railway Manager/
Additional Divisional
Railway Manager (T),
Mumbai Division,
Western Railway,
Mumbai Central,
Mumbai - 400 008.

3. Sr. Divisional Electrical
Engineer (TS),
Western Railway,
Bulsar,
Gujarat State.

... Respondents.

(By Advocate - Shri Suresh Kumar)

O R D E R

PER : Shri S. L. Jain, Member (J).

This is an application under Section 19 of the
Administrative Tribunals Act, 1985 to quash and set aside the

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order passed by the Disciplinary Authority and Appellate Authority dated 21.05.1997 and 23.02.2000 respectively with the direction to the Respondents to take the Applicant back on duty with all consequential benefits.

2. The Applicant joined the Railways on 11.10.1972. He was promoted to the post of Junior Engineer on ad hoc basis with effect from 16.09.1992. He was subsequently promoted to officiate as Master Craftsman in the restructured cadre on regular basis. The Respondents issued the charge sheet dated 15.03.1996. Thereafter, an ex-parte enquiry was conducted. After receipt of the report of the Enquiry Officer the applicant was held guilty for the charge levelled against him vide order dated 25.9.1996 and the penalty awarded was order of removal from service. The applicant preferred an appeal against the said order which was rejected vide order dated 23.02.2000 confirming the penalty of removal from service.

3. The grievance of the Applicant is that the charge-sheet dated 15.03.1996 was not served on him, the Inquiry Officer conducted the enquiry on 09.11.1996, 20.11.1996, 10.12.1996 and 30.12.1996 without notice to him, as such, the Inquiry Officer conducting the enquiry on the aforesaid dates, has acted illegally and violated the provisions of Article 311 of the Constitution Of India and the Railway Servants (Discipline & Appeal) Rules, 1968. The Applicant's further grievance is that the Respondents conducted the ex-parte enquiry when he was sick, under treatment of the Doctor and was unable to participate in the enquiry. Hence this O.A. for the above said reliefs.

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4. The Respondents resisted the claim of the Applicant, detailed the service career of the Applicant in para 5 (a) to (g) of the Written Statement and stated that the charge-sheet relates to unauthorised absence for the period commencing from 07.10.1995 to 15.03.1996. On 20.03.1996 the Respondents has sent the charge-sheet to the Applicant through U.P.C. on the address i.e. Railway Quarter No. 795/L A-2/D Valsad, West Yard. On 09.05.1996 the Respondents had served the charge sheet on the permanent home address by Registered A.D. but it was returned with the remark that "nobody resides at the address". On 21.06.1996 Shri A. H. Sayyad was appointed as Enquiry Officer and intimation regarding the same was sent to the Applicant by Registered Post. On 02.09.1996 again a copy of major penalty charge sheet and the appointment of Enquiry Officer by Registered A.D. post was sent to the applicant. The said letter alongwith the documents was duly confirmed by the Wife of the Applicant vide letter dated 08.09.1996. On 01.11.1996 the Applicant was asked to nominate his Defence Assistant and was also intimated that the Enquiry is fixed on 09.11.1996. Vide letter dated 19.11.1996 the Applicant was intimated by the Inquiry Officer about the date of hearing being fixed on 28.11.1996. Vide letter dated 30.11.1996 the Applicant was intimated by the Inquiry Officer about the next date of hearing being 10.12.1996. Vide letter dated 18.12.1996 the Inquiry Officer had again informed the Applicant about the hearing fixed on 30.12.1996. All these letters were addressed on the address of the Railway Quarter where the Applicant was residing and from where the Applicant had lastly communicated with the Respondents vide letter dated 08.09.1996 through his wife. The Respondents claim that the Inquiry was conducted as per procedure laid down and prayed for dismissal of the O.A. alongwith cost.

J.P.

5. The Learned Counsel for the Applicant relied Rule 26 of the Railway Servants (Discipline & Appeal) Rules, 1968, which is extracted below :

"26. Service of orders, notices, etc.

Every order, notice and other process made or issued under these rules, shall be served in person on the Railway servant concerned or communicated to him by registered post."

6. The Learned Counsel for the Applicant relied on State of Punjab V/s. Balbir Singh reported in AIR 1977 SC 649 and argued that as soon as the Respondents had communicated i.e. despatched the charge-sheet and intimated regarding the next date of hearing by registered post their duty comes to an end and the same should be treated to have been communicated to the Applicant. The Learned Counsel for the Applicant relied on 1998 SCC (L&S) 1837.. Union of India & Others V/s. Dinanath Shantaram Karekar & Others particularly para 6 to 10 of the said authority which deals with the case referred by the Learned Counsel for the Applicant i.e. to say State of Punjab V/s. Balbir Singh (AIR 1977 SC 629) and argued that the said principle cannot be applied in case of disciplinary cases. Para 10 of the said judgement is worth mentioning, which is extracted below :

"10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be involed and

P. J. -

"actual service" must be proved and established. It has already been found that neither the charge-sheet nor the show cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

7. The Learned Counsel for the Respondents placed before us the file regarding Disciplinary proceedings. On perusal of the said file, we are of the considered opinion that in reply of letter dated 02.09.1996 issued by the Respondents which was accompanied by the charge-sheet, the wife of the Applicant has sought an adjournment for fifteen days. Had the letter been not reached to the Applicant, there was no occasion for seeking an adjournment. As such, we are unable to come to a finding that the charge-sheet was not served on the applicant.

8. The Learned Counsel for the Respondents argued that after seeking an adjournment for fifteen days the applicant failed to appear and also did not contact the Enquiry Officer for the next date of hearing in disciplinary proceedings case, as such, he is not entitled to any relief. He has placed before us the postal envelopes by which the next date of hearing was intimated to the Applicant as they could not be delivered/received by the Applicant. We have perused those envelopes and none of the envelopes discloses the fact that postal authorities made the endorsement "refused". One of the envelope states "not claimed". This situation arises where the Postman reaches to the addressee given on the envelope but does not find the addressee there, in such case leaves an intimation for the addressee to collect the same and if the addressee fails to collect, the endorsement made is "not claimed". It cannot be treated as a "refusal". As such, we are of the considered opinion that Applicant was never served

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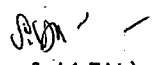
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with the next date of hearing. The Respondents were bound to serve when on application of the applicant's wife they had adjourned the hearing and also further acted to serve the applicant about the next date of hearing.

9. The object of actual service regarding the next date of hearing in disciplinary proceedings is to afford an opportunity to the employee concerned, to appear and proceed with the case. Such an opportunity is being not afforded to the Applicant, who has even not submitted his defence.

10. In the result, we are of the considered opinion that principles of natural justice are not being adhered to by the Respondents before arriving to the conclusion of the guilt of the applicant.

11. In the result, the O.A. is allowed. The order of the Disciplinary Authority and the Appellate Authority dated 21.05.1997 and 23.02.2000 respectively are quashed and set aside. The matter is remitted to the Enquiry Officer to proceed with the enquiry after the Applicant submits his reply to the charge-sheet, which shall be submitted by the Applicant by 15.07.2002 without any further communication from the Enquiry Officer and thereafter, to proceed with the enquiry in accordance with law, rules and instructions and conclude the enquiry within a period of four months from the date of receipt of the copy of the order. No order as to costs.


(S. L. JAIN)
MEMBER (J).


(B. N. BAHADUR)
MEMBER (A).