Central Administrative Tribunal
Mumbai Bench

OA No.106/2000

Mumbai this the 10th day of June, 2003.

Hon'ble Mr. V.K. Majotra, Member (Admnv)

Hon'ble Mr. Shanker Raju, Member (Judl)

Shri Pandurang Vithoba Shingade,
R/o Upali Khurd, Tal Mhada,
Distt. Solapur -Applicant

(By Advocate Shri D.V. Gangal)

-Versus-

1. General Manager,
Central Railway,
Headquarters office,
Mumbai, CST, Mumbai-400 001.

2. Dy. Controller of Stores,
Central Railway,
Mumbai Division, Mumbai CST,
Mumbai-400 001.

3. Asst. Controller of Stores,
(Diesel),
Central Railway,
Pune -Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)

Hon'ble Mr. Shnaker Raju, Member (J):

Applicant impugns in this OA respondents' penalty order dated 16.10.95, removing him from service and by way of an amendment appellate order dated 26.10.96, served uponhim in 2000, reducing the punishment to reduction to lower stage in the minimum of the time scale of pay for a period of five years with cumulative effect. He has sought quashment of the aforesaid orders with direction to treat the intervening period from removal to re-instatement as spent on duty with all consequential benefits.

2. Applicant has filed MA-110/2000 for condonation of delay, inter alia, contending that after the dismissal order and on preferring an appeal same was not disposed of despite reminders. On this a representation to Labour Enforcement Officer was filed on which comments have been called from the respondents by an order dated 3.8.96. Thereafter when nothing was heard OA was filed after a dealy of about one year and nine months but as the appellate order was served during the pendency of the OA and as applicant has a good case on merits the same be heard and disposed of on merits, condoning the delay.

3. Applicant while working as a khalasi due to major mental depression had undergone treatment from a Psychiatric from 5.9.94 to 6.10.95 and was declared fit to resume duty. Aforesaid medical certificate was also acknowledged by the Railway Medical Officer who found him fit on examination by a certificate dated 7.10.95 by issuing applicant the duty certificate.

4. Applicants performed duty with the respondents from 8.10.95 to 16.10.95 when impugned order of removal was served upon him, against which an appeal was preferred which was not responded to, leading to the filing of the present OA and during its pendency by an order dated 26.10.96, not earlier communicated to applicant and was communicated alongwith the written statement of respondents where penalty was reduced, applicant was re-instated.

5. Sh. Gangal, learned counsel for applicant stated that impugned orders are illegal on the ground that on remaining absent for a period of 34 days that too on medical grounds and the medical certificates having been retified by the Railway Medical Officers where the duty certificate was issued has assigned finality to the medical record and in absencer of any communication as to second medical examination to judge the authenticity of medical record the same are admissible and as applicant was neither wilful nor unauthorized the punishment imposed is against law and is also disproportionate to the charge alleged.

6. However, it is stated that the enquiry has been held in flagrant violation of Rule 9 of the Railway Servants (Discipline & Appeal) Rules,1968. It is in this conspectus stated that assuming that applicant has been served upon the chargesheet and on his refusal to the registered notice holding of an ex-parte proceeding cannot be countenanced as, as per rule 9 (b) if no written statement is submitted in the defence by the railway servant an enquiry officer is appointed and as per rule 9 (12) if the railway servant fails to appear within the specified time or refuses to be present the case is to be adjourned to a later date not exceeding 30 days with further notice of 10 days to the railway servant for discovery of production of any document and thereafter to examine oral and documentary evidence with an opportunity to cross examaine the railway servant and before closing the case an opportunity to produce the defence to be accorded to the railway servant and thereafter findings are recorded. In the aforesaid conspectus it is stated that merely on the basis of one

communication and that too has not been established during the course of hearing as to production of any proof regarding refusal by applicant to the communication the other procedure laid down under rule 9 has not been followed with the result applicant has been held guilty and punished without affording him a reasonable opportunity, which is in violation of the principles of natural justice.

7. Moreover, it is further contended that the enquiry report has not been served upon applicant prior to imposition of punishment as from the pleadings in the OA it is apparent that what has been sent to applicant is the notice with removal of service dated 16.10.95 which is nothing but the impugned order of punishment and as the enquiry report has not been served upon him he has been greatly prejudiced as he could not controvert and rebut the conclusions arrived at by the enquiry officer, which is in violation of the ratio laid down by the Apex Court in Managing Director, ECIL, v. B. Karunakar, JT 1993 (6) SC 1.

8. It is further stated that from the perusal of the removal order even the findings/enquiry report have not been figured and taken note and there is no agreement of the disciplinary authority as to the findings arrived at which shows non-application of mind and the order passed is without reasons and in view of the instructions of Railway Board issued in 1978 and 1985 being a quasi-judicial authority non-speaking order is liable to be set aside. In so far as appellate order is concerned, it is contended that the same has been

arbitrarily withheld without any justification for four years from applicant and has been passed without recording reasons as well.

9. On the other hand, respondents' counsel Sh. Masurkar contended and took a preliminary objection as to limitation, contending that applicant on his dismissal has approached the Labour Enforcement Officer under the Industrial Disputes Act, 1947 and having chosen his remedy and aware about the cause of action and non-disposal of appeal has filed this OA in 2000, which is clearly barred under Section 14, 20 and 21 of the Administrative Tribunals Act of 1985.

10. On merits it is contended that applicant was sent chargesheet through registered A.D. but the same was refused by applicant. Applicant who had not attended the enquiry was served with the penalty order dated 16.10.95 which was not acknowledged and was pasted at the door of applicant's residence in presence of two witnesses.

11. We have carefully considered the rival contentions of the parties and perused the material on record.

12. In so far as limitation is concerned, applicant was dismissed on 16.10.95 and his appeal was not disposed of within one and a half years, i.e., upto 1997. Thereafter, applicant had gone to the Labour Enforcement Officer where particulars have been sought but as nothing was heard he preferred this OA. During the pendency of the present OA alongwith reply respondents

have annexed copy of the appellate order dated 26.10.96, which has never been communicated to applicant though it shows that it has been passed in response to letter dated 12.8.99 but yet the same was not communicated and on its receipt a cause of action had accrued in favour of applicant. Moreover, as held by Apex Court in Pallav Sheth v. Custodian, (2001) 7 SCC 549 that Section 17 of the Act embodies Fundamental Principals of justice and equity and a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him have been wilfully concealed from him. If one has regard to the aforesaid, the appeal was not disposed of though the appellate order was issued in 1996 was withheld from applicant and was disclosed to him only in 2000.

13. From the perusal of the case on merits we are of the considered view that the same has merit. The Apex Court in Rattan Singh v. Vijay Singh, (2001) 1 SCC 469 held that in the matter of condonation of delay liberal and broad based construction is necessary.

14. Having regard to the extreme punishment imposed upon applicant in utter and flagrant violation of the procedural rules in the interest of justice and equity, we condone the delay.

15. As admittedly the enquiry report was not served upon applicant and what has been communicated is the final order, which has seriously prejudiced applicant and as he could not rebut the ex-parte proceedings, the conclusions arrived at by the enquiry officer, keeping in view the mandate in ECIL's case (supra) punishment is

not sustainable in law. Moreover, as per rule-9 of the rules ibid mere supply of chargesheet through postal A.D. is not a sufficient compliance and even assuming that it has been reduced, though no proof has been tendered before us respondents cannot be absolved of following the other procedure, which envisages 30 days adjournment of the proceeding and accord of opportunity at every stage to produce defence. Nothing establishes compliance of the aforesaid procedure which is substantive and mandatory. As applicant has been deprived of an opportunity to effectively defend in the enquiry, the ex-parte proceedings resorted to cannot be countenanced and the findings of the enquiry officer as well as punishment imposed on such enquiry held in violation of the rules, cannot be sustained in law.

16. Moreover, we find that the disciplinary authority has passed a mechanical and bald order, showing non-application of mind. It is very surprising that the enquiry report has not at all been mentioned and acknowledged as well as agreed to by the disciplinary authority in its order, which is contrary to the Board's letter which mandates the disciplinary authority, acting as a quasi-judicial authority, to pass a speaking order, giving reasons.

17. In the result, for the foregoing reasons, OA is allowed. Impugned order of removal is quashed and set aside. As applicant has already been re-instated back in service, the intervening period shall be treated as spent on duty for all purposes. The aforesaid

directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

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