

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

T.A. No. 1983/86

Dt. of order: 5-10-1983

Devi Sahai

: Applicant

Vs.

Union of India & Ors. : Respondents

Mr. K. Kamal Singh : Counsel for applicant

Mr. Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice Chairman

Hon'ble Mr. O.P. Sharma, Member (Adm.)

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADM.).

Devi Sahai, had filed a suit in the Court of Munsif & Judicial Magistrate First Class, Bandikui seeking a declaration that the penalty of removal from service imposed on him by the order dated 25.5.78 is illegal and that he is entitled to be continued on the post of Pointsman with all consequential benefits. The suit was transferred to this Tribunal and was registered as T.A. No. 1983/86.

2. The applicant was given a charge sheet dated 20.9.76 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on the ground of prolonged absence from duty during the period from December 1975 to September 1976, and for some periods thereafter. Initially Shri Mohan Reshwani, was appointed as Inquiry Officer. The applicant objected to his appointment by writing successive letters. Mr. Mohan Reshwani, was changed and Shri Mohan Singh Meena, was appointed as Inquiry Officer. Shri Mohan Singh Meena, issued three letters to the applicant fixing dates of enquiry. Regarding the last date of enquiry fixed for 7.1.1978, the letter sent to the applicant informing him about the date of enquiry was returned unserved on the applicant.

The Inquiry Officer there after held the enquiry ex parte. On the basis of the statement of one Shri Mahesh Dut Sharma, Chief Clerk, Office of the Station Master, Bandikui, which was shown as recorded on 7.5.77, the Inquiry Officer, held the charge against the applicant as proved. The Disciplinary Authority by the order dated 25.5.78 imposed the penalty of removal from service on the applicant. The appeal preferred by the applicant was dismissed by the Appellate Authority.

3. The applicant has stated that the third notice, fixing the date of enquiry, issued by Mr. M.S. Meena, therein the mentioned ~~Annex~~ charge sheet which was not the subject matter of enquiry by him. On the date fixed by the 4th notice which was 20.12.77, the applicant went to Rajgarh Railway Station, which was the venue of enquiry, but the Inquiry Officer was not present. The applicant obtained necessary certificate from the Station Master Rajgarh, about his presence on the date fixed for enquiry. The fifth notice issued by Mr. M.S. Meena, fixing 7.1.78 as the date of enquiry was not served on him. Therefore, the holding of ex parte enquiry by the Inquiry Officer was not justified. The applicant has further stated that even ⁱⁿ the enquiry held ex parte, it is necessary to hold the entire enquiry in accordance with the prescribed procedure. This however was not done by the Inquiry Officer. The appeal preferred by the applicant against the order of removal from service was dismissed by the Appellate Authority without reasons and without considering the charges and the evidence in support of these.

4. Regarding/procedure adopted by the Inquiry Officer, the applicant stated that the Inquiry Officer relied upon Shri Mahesh Chand's written statement, but no evidence of Shri Mahesh Chand was recorded by the Inquiry Officer and no copy of Shri Mahesh Chand's statement was given to the applicant. The applicant has also alleged that

the verdict of guilty against the applicant was given by the Inquiry Officer on ~~the~~ pressure from the Disciplinary Authority.

5. In their reply, the respondents have stated that it was by a slip of pen that ⁱⁿ one of the notices issued to the applicant fixing the date of enquiry, reference to a wrong charge sheet has been given. On one of the dates fixed for enquiry by Mr. M.S. Meena, the Inquiry Officer could not remain present because of his other pre-occupation. Intimation regarding the date of enquiry fixed for 7.1.78 was sent by R.P.A.D but the postman gave a wrong report and returned the registered letter to the Inquiry Officer. The Inquiry Officer thereafter finalised the enquiry, not considering it necessary to record evidence of any witnesses. The respondents have maintained that all actions in this case by the Inquiry Officer, the Disciplinary Authority and the Appellate Authority were taken correctly and therefore, there is no merit in the application.

6. Earlier, after the suit was transferred to this Tribunal, the applicant had made an application dated 13.5.88, seeking production of the file relating to disciplinary action against him, before the Tribunal. On some earlier dates on which hearing was fixed before the Tribunal, there were specific orders that the file of disciplinary action should be produced. But there was no such specific order on the last date fixed namely 21.9.93 on which date the case was finally heard and order was reserved. It is, however, possible to dispose of this matter without reference to the file relating to the disciplinary action. We have heard the learned counsel for the parties and have carefully perused the records ourselves.

Q.S.

10. There are notings in the file of the Department Exhibit A-13 dated 20.7.78, regarding the appeal filed by the applicant against the order of removal from service. In these notings it has clearly ^{been} mentioned that the official wants a personal hearing. In this case, as already stated above, an ex parte enquiry was held. It was therefore all the more necessary that the Appellate Authority should have granted a personal hearing to the applicant particularly when he had asked for it. Instead the Appellate Authority straight away rejected the appeal without giving any reasons (Exhibit A-12).

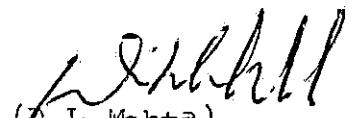
11. From a narration of the above facts and circumstances, it is clear that the applicant was denied a proper opportunity to defend himself during the disciplinary proceedings. If there is an isolated omission here and there by the Inquiry Officer or the Disciplinary Authority or the Appellate Authority but it does not result in substantive denial of justice to the applicant, such omission can be ignored. This is not one such case. In this case a series of irregularities/omissions on the part of the Inquiry Officer, the Disciplinary Authority and the Appellate Authority, have resulted in denial of justice to the applicant. The very purpose of prescribing an elaborate procedure as integral part of disciplinary proceedings is to ensure that the charged official has a proper opportunity to defend himself, regardless of the gravity of the charges framed against him. Since in this case, there has been a total denial of an effective opportunity of being heard to the applicant, the disciplinary proceedings culminating in the imposition of penalty of removal from the service on the applicant are vitiated. Accordingly, the order dated 25.5.78, removing the applicant from service, ^(Exh.A1) the Inquiry Officer's report dated 10/28.2.1978 (Annex.A-16A) and Appellate Authority's order dated 21.2.79 (Annex.A-12) are all

set aside. The respondents are however, free if they so choose to initiate fresh proceedings against the applicant from the stage of holding enquiry, *ab initio*.

12. The T.A. is disposed of accordingly with no order as to costs.


(O.P. Sharma)

Member (Adm.).


(D.L. Mehta)

Vice Chairman.