

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 674/92 (159/87) 199
TAX No.

DATE OF DECISION 1.7.94

THOMAS C

Petitioner

SHEK J.K. KAUSHIK.

Advocate for the Petitioner (s)

Versus

UNION OF INDIA & ORS.

Respondent

SHRI K.N. SHRIMAL

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. GOPAL KRISHNA, MEMBER (J).

The Hon'ble Mr. C.P. SHARMA, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*.
2. To be referred to the Reporter or not ? *yes*.
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*.
4. Whether it needs to be circulated to other Benches of the Tribunal ? ~~yes~~ *yes*.

(C.P. SHARMA)
MEMBER (A)

C.Krishna
(GOPAL KRISHNA)
MEMBER (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Decision: 1.7.94.

OA 674/92
(OA 159/87)

THOMAS C ... APPLICANT.

Vs.

UNION OF INDIA AND OTHERS ... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).

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

For the Applicant ... SHRI J.K. PAUSHIK.

For the Respondents ... SHRI K.N. SHRIMALI.

Per HON'BLE MR. O.P. SHARMA, MEMBER (A).

In this application filed u/s 19 of the Administrative Tribunals Act, 1985, Shri Thomas C has prayed that the order Annexure A-5 dated 26.11.86, communicating the decision for removal of the applicant from service by the disciplinary authority, and the order dated 5.3.87 (Annexure A-8), passed by the appellate authority upholding the order of the disciplinary may be quashed. There is a further prayer that the Railway Servants (Discipline & Appeal) Rules and the Railway Servants (Conduct) Rules be declared ultra vires of the Constitution of India.

2. At the commencement of the arguments the learned counsel for the applicant stated that the applicant did not press the grounds relating to the Discipline & Appeal and Conduct Rules for Railway Servants being declared as ultra vires of the Constitution.

3. The applicant's case is that he was appointed as a temporary Cleaner in Jaipur Division by order dated 4.8.80 against the Sports quota. On the ground that the applicant felt some continuous pain in his abdomen, he applied for 30 days' leave w.e.f. 9.1.84. The leave was sanctioned and he proceeded to his hometown Quilon for getting treatment. The applicant remained under treatment at Quilon from 8.3.84 to 15.6.86, as seen from the medical certificate Annexure A-2. Thereafter the applicant remained under treatment at a Government Ayurvedic Hospital w.e.f.

16.6.84 to 13.12.86 when he was declared fit. Medical certificate and fitness certificate are at Annexures A-3 and A-4 respectively. On 1.12.86, the applicant received a communication dated 26.11.86 from the respondent No.3 namely Divisional Electrical Engineer, Jaipur Division, (Annexure A-5), by which he was ordered to be removed from service. The applicant's case is that there is a reference to two earlier letters in the said communication but these had never been delivered to him. After becoming fit for assuming duty the applicant came back to join duty but was not allowed to join duty. He came to know that a disciplinary enquiry had been ordered against him and one Shri R.K. Hajela had been appointed as enquiry officer. However, there was no indication in the communication dated 26.11.86 (Annexure A-5) that any enquiry had been instituted against him. Although three letters were stated to have been sent to the applicant by registered post, he received only the last letter (Annexure A-5), in spite of the fact that there was no change in his address at quilon. It was due to the negligence of the postal authorities that the letters might not have been served on him, as seen from the remark "not found" on such letters. The order Annexure A-5 shows that the applicant was actually not removed from service but it is only the opinion of the disciplinary authority that he should be removed from service. Thus, the letter dated 26.11.86 (Annexure A-5) did not culminate ⁱⁿ any order of punishment. His appeal against the order Annexure A-5 was dismissed. The appeal was actually examined by an authority subordinate to the appellate authority and the order disposing of the appeal is therefore illegal.

4. The respondents in their reply have stated that the applicant has not approached this Tribunal with clean hands. The application seeking leave of 30 days from 9.1.84 (Annexure R-1) shows that the applicant sought leave in connection with his sister's marriage, whereas in the OA he has stated that he sought leave as he was having some pain in his abdomen. They have added

from
that the plea that the applicant suffered abdominal pain and
undertook treatment is an after-thought and the certificates
produced by him in this connection are bogus. If a railway servant
falls ill, he is under an obligation to approach the nearest
Railway Hospital and also to intimate his office about his sickness.
They have further stated that certificates Annexures A-3 and A-4
do not show that the applicant undertook the treatment from
16.6.84 to 13.12.86. When the applicant did not turn up for duty,
the disciplinary authority decided to initiate disciplinary
proceedings against him for unauthorised absence and sent a copy
of the charge-sheet at his local address as well as leave address
given by him. However, the charge-sheet came back unserved. Since
the whereabouts of the applicant were not known and the charge-
sheet could not be served, then there was no option for the
disciplinary authority but to dispense with enquiry. Shri R.K.
Hajela was never appointed as enquiry officer in this case because
the disciplinary authority was of the view that it was not
reasonably practicable to hold enquiry. The ✓ of order
Annexure A-5 was that the applicant stood removed from service.
If it was not so, it is not clear why he submitted appeal against
the said order to the appellate authority. The appeal was
considered by the appellate authority and he dismissed it by order
dated 5.3.87 on the ground that it had no force.

5. During the arguments the learned counsel for the applicant
stated that the provisions of Rule 14 (ii) of the Railway Servants
(Discipline & Appeal) Rules regarding dispensing with enquiry had
not been correctly applied in this case. For dispensing with
enquiry it was necessary for the disciplinary authority to record
reasons in writing. The Tribunal must satisfy itself that such
reasons were recorded by the disciplinary authority before
dispensing with enquiry. There is no indication in the order of
the disciplinary authority that reasons for dispensing with enquiry
had been recorded in this case. The learned counsel for the
applicant relied upon para-30 of the Full Bench Judgement of the

Patna Bench of the Tribunal, delivered on 14.12.87 in the case of D.N. Singh & Ors. Vs. UOI & Ors. In this para the Tribunal held that the appellate authority is also bound to consider whether it was reasonably practicable to hold an enquiry, at the time of hearing the appeal, and if enquiry was reasonably practicable, the appellate authority should set aside the order of the disciplinary authority and either hold an enquiry or direct an enquiry by the disciplinary authority. This procedure has not been followed by the appellate authority in this case.

6. Next he relied upon the judgement of the Hon'ble Supreme Court in Satyavir Singh and others Vs. UOI & Ors., reported at ATR 1986 SC 78. He placed reliance on para-62 of the said judgement, according to which even where it is not reasonably practicable to hold enquiry, the matter must proceed ex-parte on the basis of the material before the disciplinary authority. Next he relied upon the judgement of the Calcutta Bench of the Tribunal in Mukhdeo Prasad Vs. UOI & Ors., SLJ 1988 (4) (CAT) 395. In this judgement the Tribunal held that where a charge-sheet sent by post was received back as 'refused', removal from service is under Rule 14(ii) on the ground that it was not reasonably practicable to hold enquiry was not justified. Further, he relied upon the judgement of the Hon'ble Supreme Court in Jai Shanker Vs. State of Rajasthan, reported at AIR 1966 SC 492, wherein the Hon'ble Supreme Court had held that removal from service for overstaying leave, without giving opportunity to show cause, is illegal. The Hon'ble Supreme Court held in this case that removal in such circumstances is not automatic. Finally, he relied upon the judgement of the Hon'ble Supreme Court in the case of Ram Chander Vs. UOI & Ors., reported at ATR 1986 (2) SC 252, wherein the Hon'ble Supreme Court laid down that three requirements laid down in Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules must be followed. The learned counsel for the applicant laid particular stress on paragraphs 3, 4 and 5 of the said judgement. In conclusion he argued

that even where the enquiry had been dispensed with and penalty order was passed, it was obligatory on the part of the authority to consider whether enquiry was now feasible or practicable and if so either to hold enquiry or to direct such enquiry to be held. In these circumstances, according to him, the order removing the applicant from service is not sustainable.

7. We have heard the learned counsel for the parties and have gone through the records, rules and the judgements cited before us. There is no averment in the application that reasons were not recorded by the disciplinary authority while dispensing with enquiry. In the absence of any such averment there would be no occasion for the Tribunal to call for the records and to verify whether in fact any such reasons were recorded or not. The normal presumption is that official acts have been done in accordance with the prescribed rules and procedure, unless there is an averment to the contrary. In the circumstances, we are not inclined to accept the argument of the learned counsel for the applicant that the Tribunal must now check-up whether reasons for dispensing with enquiry have been recorded in writing or not.

8. The learned counsel for the applicant himself conceded that it is not necessary to record in the order of the disciplinary authority reasons for dispensing with enquiry. In the circumstances, absence of such reasons in the order of the disciplinary authority does not in any way vitiate the order.

9. Regarding the Full Bench Judgement in D.N. Singh's case, we have perused paragraph 30 thereof carefully but we do not find anything therein which supports the case of the applicant. The ^{in this case} appellate authority has passed a detailed order and mentioned therein the circumstances in which the enquiry was to be dispensed with. Impliedly the appellate authority has given a finding not only that the action of the disciplinary authority in dispensing with enquiry was correct but that there are no changed circumstances to justify to holding of the enquiry at this stage. Regarding the

judgement of the Hon'ble Supreme Court in Satyavir Singh's case, para-3 thereof does not at all support the case of the applicant. Para-62 is reproduced below :-

"It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority."

It only states that where the civil servant absconds or cannot be served or does not participate in the enquiry, the matter must proceed ex-parte on the basis of the material before the disciplinary authority. When the Hon'ble Supreme Court hold that the matter must proceed ex-parte what they mean is not that "enquiry" as envisaged in Rule-9 of the Railway Servants (Discipline & Appeal) Rules or Rule-14 of the DCS (CCA) Rules must necessarily be held but that the disciplinary proceedings must proceed ex-parte. What the disciplinary authority has done in this case is that after dispensing with enquiry it has proceeded on the basis of the material before it and passed necessary order. We do not find that the Hon'ble Supreme Court's judgement supports the applicant's case in any way.

10. As regards the judgement of the Calcutta Bench of the Tribunal in Mikhdeo Prasad's case, the facts of the case are different from those of the applicant before us. The case before the Calcutta Bench proceeded on the fact that there was a refusal by the applicant to accept the charge-sheet. In the instant case, the charge-sheet was not served on him on the address given by the applicant though sent by registered post and it was impliedly presumed that the applicant was not available or had absconded. As regards the ratio of the judgement of the Hon'ble Supreme Court in Jai Shanker's case, the facts of this case are completely different from those in the present case and the conclusion of the Hon'ble Supreme Court is also not relevant in the present case. What the Hon'ble Supreme Court had held in Jai Shanker's case is

that there is no automatic removal from service when a person overstay his leave. An opportunity to show cause is necessary before taking any action against a Govt. servant who has over-stayed leave. In this case the disciplinary authority tried to serve a charge-sheet on the applicant and only when the charge-sheet came back unserved, the disciplinary authority came to the conclusion that it was not reasonably practicable to hold enquiry in the case and thereafter proceeded on the basis of the material before it. As regards the judgement of the Hon'ble Supreme Court in Ram Chander's case, the Hon'ble Supreme Court have indeed laid down that the three requirements under Rule 22(2) of the Railway Servants (Discipline & Appeal) Rules should be observed. These conditions are, whether the procedure laid down in the rules has been complied with, whether the findings of the disciplinary authority are warranted by the evidence on the record, and whether the penalty imposed is adequate, inadequate or severe. A careful reading of the order of the appellate authority shows that he had fully applied his mind to the facts of the present case, even though there is no separate finding on each of these points. A reading of his order in totality shows that he has given his findings on all these points. In this case no enquiry was held. Therefore, the question to be considered was whether the action of the disciplinary authority in dispensing with enquiry was justified. On this aspect, the appellate authority has given his finding. The argument of the learned counsel for the applicant is that it is not the function of the appellate authority to give any finding on the question whether dispensing with enquiry was justified or not. If that is so then the only aspect on which the appellate authority was required to give any finding was whether the penalty imposed was adequate, inadequate or severe. The appellate authority has given a finding that the penalty imposed was justified in the circumstances of the present case. Thus, in substance the requirements of Rule 22(2) and the ratio laid down by the Hon'ble

Supreme Court in Ram Chander's case have been fully met in this case.

11. Coming to the merits of the present case, it is a fact that the applicant applied for leave in January, 1984 for the purpose of going for his sister's marriage, whereas in the application he has stated that he applied for leave due to pain in abdomen. Thus, there is substance in the averment of the respondents that the applicant has not approached this Tribunal with clean hands. Even otherwise, when the charge-sheet was sent to the applicant at the Kerala address given by him and it came back unserved, the disciplinary authority was not unjustified in drawing the inference that the applicant was not in fact available at the address given by him or that he was absconding. Dispensing with enquiry in such circumstances was not unjustified. There was a long absence of the applicant from January, 1984 to December, 1986. During this period he never bothered to communicate with the respondents or to send any medical certificate. His conduct also, therefore, shows him in a very poor light.

12. Taking all the facts and circumstances of the case into account, we are of the view that there is no substance in this application. It is, therefore, dismissed with no order as to costs.

(O.P. SHARMA)
MEMBER (A)

G.Krishna
(GOFAL KRISHNA)
MEMBER (J)