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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH

O.A.No.1522/95

Date of Decision: 24.3.1998.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR.H.RAJENDRA PRASAD, ADMINISTRATIVE MEMBER

Sardar Khan,
S/o Hasan Khan,
59 years,
R/O Hyderabad.

..Applicant

(By Advocate Mr.N.Rama Mohan Rao)

vs.

- 1. Union of India, rep. by its General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
- 2. The Divisional Railway Manager(Broad Gauge),
Transportation Branch,
Sanchalan Bhavan, SC Railway,
1st Floor, Secunderabad.
- 3. The Divisional Operating Superintendent,
S.C.Railway,
Secunderabad. ..Respondents

(By Advocate Mr.V.Rajeswara Rao, Standing Counsel for Railways)

The Application having been heard on 6.3.98, the Tribunal on delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant Shri Sardar Khan while working as Pointsman at Lalaguda was promoted as Guard, Goods train by order dated 16.6.1988 and was posted at Bidar. He reported for duty at Bidar on 9.8.1988 and availed of joining time for 10 days between 10.8.88 to 19.8.88. However, as he failed to report for duty from 20.8.88 to 13.1.1989 and as he remained absent continuously from 25.1.89 onwards he was served with a memorandum of charges dated 12.10.89 on

15.12.89. He submitted a reply denying the charge. However, the disciplinary authority decided to hold an enquiry against him and appointed an enquiry officer. The enquiry officer without serving on the applicant any intimation in regard to the date or venue of the enquiry, held the enquiry ex parte on 12.10.90. He concluded that the applicant was guilty and submitted a report to the disciplinary authority finding the applicant guilty. The disciplinary authority served on the applicant a copy of the enquiry report and called upon him to submit his explanation, if any. The applicant submitted his explanation on 13.12.90 explaining the circumstances under which he was unauthorisedly absent and requesting that the enquiry officer's report may be set aside and the proceedings be dropped. Thereafter the disciplinary authority, the third respondent passed the order dated 18.7.91 imposing on the applicant a penalty of removal from service. His appeal to the appellate authority was disposed of by the order Annexure -12 with the following decision:-

" I have gone through the case. There is no case for consideration since all DAR proceedings are followed correctly".

Though the applicant filed a revision, that was also rejected by the order dated 17.8.92. It is aggrieved by these orders and the fact that the applicant has been removed from service, according to him, without holding a proper enquiry, the applicant has filed this application impugning the order of the disciplinary authority Annexure-11 dated 18.7.91 the order in appeal dated 23.8.91 and the order in revision dated 17.8.92 and for a declaration that the applicant has retired from the service of the South Central Railway and that he is entitled to the terminal benefits including

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pension, gratuity etc. It has been alleged in the application that the enquiry officer has not held the enquiry in accordance with the rules inasmuch as the applicant was not given any intimation of the date of enquiry, denying him reasonable opportunity to defend himself violating the principles of natural justice. The orders of the appellate and revisional authorities are also challenged on the ground that they are vitiated by non-application of mind.

2. The respondents in the reply statement contend that it was the applicant who did not avail himself of the opportunity given to him to defend the charge of unauthorised absence. As a memorandum of charges was served on the applicant on 15.12.89, it was the duty of the applicant to have appeared before the disciplinary authority to prove his innocence, contend the respondents. As the applicant did not furnish his residential address to the Station Superintendent, Bidar, where he reported for joining duty as a Guard, neither the disciplinary authority nor the enquiry officer could send any communication to the applicant's residential address in regard to the enquiry for want of his address. It was not obligatory either on the part of the disciplinary authority or the enquiry authority to find out his residential address from the place of his previous posting and to issue a notice in that address, contend the respondents. Since twice the notice was exhibited in the office at Bidar regarding the enquiry, it is not correct to contend that the applicant did not have sufficient notice of the enquiry, according to them. The respondents, therefore, contend that as the enquiry was held in conformity with the rules, the challenge against the impugned orders is without force and that the application is liable

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to be dismissed.

3. We have very carefully perused the pleadings and the other materials available on record and have heard the learned counsel appearing on either side.

4. Learned counsel of the applicant with considerable vehemance, argued that the order of the disciplinary authority dated 18.7.91 imposing on the applicant a penalty of removal from service is wholly unjustified as this order was passed on a report of the enquiry which was held in utter disregard to the principles of natural justice. He brought to our notice the fact which is undisputed that before holding the enquiry ex parte neither the enquiry officer nor the disciplinary authority had served on him any intimation regarding the venue and date of the enquiry. While the respondents do not dispute the fact that no notice was served on the applicant regarding the date and venue of the enquiry, they seek to justify the action of holding the enquiry without serving such notice on the ground that having accepted the chargesheet, it was obligatory on the part of the applicant to have appeared before the authority concerned and proved his innocence. We are of the considered view that this stand of the respondents taken in the reply statement is untenable and opposed to the principles of natural justice. Even after the service of the chargesheet, on appointment of the enquiry officer, it is incumbent on the enquiry officer to inform the applicant by notice of the place and date fixed for holding the enquiry for if that is not done, it would not be possible for the applicant to appear and participate in the enquiry. The fact that the address of the applicant was

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not available in the office at Bidar, is not a justification at all for not sending a notice intimating the date of enquiry to the applicant in his residential address. As the applicant was prior to his joining duty at Bidar working as a Pointsman at Lalaguda under the South Central Railway, if only the enquiry officer or the disciplinary authority had taken care to obtain his address from the office at Lalaguda, it would have been possible for the enquiry officer to obtain the residential address of the applicant and send the intimation by registered post in that address. As the applicant was not available at Bidar, even according to the respondents, as he was unauthorisedly absent from duty, no purpose would have been served by putting the notice at the notice board at Bidar where the applicant was not available. If the intention by putting the notice was to inform the applicant of the date and venue of the enquiry, that would have been achieved only if the intimation was sent to his residential address where he was expected to be present. If a letter addressed to the residential address of the applicant was returned unserved, it would have been appropriate for the enquiry officer to resort to substituted service either by publication in newspaper or by affixing the notice of enquiry in the building where the applicant resided last. Since the enquiry officer has not taken recourse to any such action to have effective service of the notice of enquiry on the applicant, we have to accept the case of the applicant that the enquiry has been held behind the back of the applicant without notice to him and denying him the reasonable opportunity to be heard, violating the principles of natural justice. The contention

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taken in the reply statement of the respondents that once the chargesheet is served on a Railway servant, it is his duty to appear and prove his innocence, is against the provisions contained in the Railway Servants (Discipline and Appeal) Rules and absolutely meaningless. The so-called ex parte enquiry which was held by the enquiry officer in this case under these circumstances is vitiated for non-observance of the principles of natural justice. A look at the enquiry report would clearly show that the enquiry officer had no knowledge of the procedure of the enquiry as also the scope of the enquiry. Annexure-I is the annexure to the memorandum of charge dated 12.10.89. Annexure-I to the memorandum of charge contains the articles of charge and Annexure-II contains the statement of imputations. Annexure-III to the memorandum of charge is a list of documents. The documents listed are (i) Extract of Regular Inspection Report No.C/T/195/1/BIDR/89 dated 7.7.89 and (ii) certified Muster Copy of BIDR station. Annexure-IV thereto is the list of witnesses in which the witnesses to be examined for sustaining the charge has been shown as 'Nil'. However, from the enquiry report, it is seen that two witnesses, Sri S.Veeraraju and Shri D.Manmohan Rao were examined. It is also seen that apart from the two documents shown in the list of documents as Annexure-III to the memorandum of charge, a third document, statement of SS, Bidar is also seen to have been relied on by the enquiry authority. It is not stated in the enquiry report that the presenting officer wanted to examine the witnesses whose names are not shown in Annexure-IV to the memorandum of charge or that he wanted a statement of SS, Bidar to be exhibited. The examination of the witnesses whose names were

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not shown in Annexure-IV to the memorandum of charge and relying on the statement of the Station Superintendent, Bidar, which was not shown as a document which the disciplinary authority proposed to be relied on, without notifying the applicant of the admission of additional evidence, is violative of the provisions in the Railway Servants (Discipline & Appeal) Rules. Curiously enough, beyond the scope of the enquiry entrusted with him, the enquiry officer has discussed that as the applicant had not completed 21 days of continuous working as a Guard, the applicant should not be treated as a Guard for the purpose of evaluating his position in service. This was absolutely unwarranted. The finding of the enquiry officer is based on his following observations in paragraph 8 to 10 of the report which reads as follows:

"8.SS. BIDAR has certified that the charge of absentism of Sri Sardar Khan, Guard/Bidar for the periods i.e., 20.8.88 to 23.1.89 and 25.1.89 to till date is true.

9.Shri D.Manmohan,Guard 'C'/Bidar has certified that the DAR enquiry notice was pasted on the notice board of Bidar Railway Station for period of 10 days on 3.11.89 and on 20.8.90.

10.Shri D.Manmohan has stated that Shri Sardar Khan while working as a PM'A' at LGD also was irregular in attendance."

The finding recorded by him, reads, as follows:

" After careful study of the case | the imputation of charges levelled against Sri Sardar Khan, Guard/Bidar for the periods of absence entitled in the chargesheet folio No.3 and the institution of enquiry vide article of DAR 1968 and come to the following conclusion without prejudice.

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"I hold him guilty of the charges. The PMC submitted on 12.12.89 to SS/Bidar for the period 25.1.89 to 9.12.89 by the party has not observed the private medical rules published in item 149 G.No.6 dated 15.12.65 of I.Rly and E.M. provisions 1474, 1476 & 1477.

Further from 10.12.89 till date there is no PMC or any other document to sustain the charge of absentism.

He should not be treated as Guard for evaluating his position of service."

We have extracted this part of the enquiry report to demonstrate the callous and indifferent nature in which the case has been dealt with by the enquiry officer. It is based on this report of the enquiry that the disciplinary authority has passed the order dated 18.7.91 removing the applicant from service. The disciplinary authority also has not come to any conclusion of his own in regard to the guilt of the applicant on a consideration of the evidence adduced at the enquiry. In the impugned order the disciplinary authority has observed that the DAR enquiry was conducted ex parte since in spite of reasonable opportunity given to the applicant, the enquiry could not be held with him being present and that being fully satisfied that the principles of natural justice were observed and reasonable opportunity were extended in exercise of powers conferred on the disciplinary authority under Railway Servants (Discipline and Appeal)Rules, he decided to impose upon the applicant a penalty of removal from service. The penalty has been imposed without entering a finding by the disciplinary authority as to whether the applicant was guilty or not. This order of the disciplinary authority therefore is totally lacking in application of mind and is therefore unsustainable.



5. The order of the appellate authority is also wanting in application of mind. It is absolutely cryptic and non-speaking. It reads as follows:

"The undersigned has carefully considered your appeal No. Nil dated 5.8.1991 in terms of Rule 22(B) of the Railway Service D and A rules, 1968 and decided as under:-

"I have gone through the case. There is no case for consideration, since all DAR proceedings are followed correctly."

Under sub-rule (2) of Rule 22 of Railway Servants (Discipline and Appeal) Rules, 1968, the appellate authority is bound to consider whether the procedure laid down in the rules has been complied with and if not whether such non-compliance has resulted in the violation of any provision of the Constitution or failure of justice, that whether the finding of the disciplinary authority are warranted by evidence on record and whether the penalty imposed was adequate, inadequate or severe. The appellate authority has not in this case considered the fact that an intimation regarding the date and venue of the enquiry was not given to the applicant and that this has resulted in violation of the principles of natural justice and in the negation of the guarantee in Article 311 of the Constitution of India. It has also failed to see that there was no finding arrived at by the disciplinary authority. The appellate authority has again failed to consider whether the penalty was adequate, inadequate or unduly severe. Hence the order of the appellate authority is also unsustainable. The order of the reviewing authority is also liable to be set aside for the same reason.

6. In the light of what is stated above, we are of the considered view that the impugned orders are wholly unsustainable and are liable to be struck down.

7. Having found that the impugned orders are liable to be struck down, we have to consider what relief can be granted to the applicant in this case. The orders of the disciplinary authority, the appellate authority and the revisional authority are set aside mainly on the ground of failure to afford reasonable opportunity to the applicant in defending himself thereby violating the principles of natural justice. However, it has also been found that the disciplinary authority has not entered a finding of guilt before awarding the penalty. Normally in such circumstances while setting aside the order of penalty, the disciplinary authority is given liberty to hold an enquiry in accordance with the rules giving the Railway servant reasonable opportunity to defend. In this case after a lapse of such a long period, we are of the considered view that no useful purpose would be served by adopting such an exercise. Further during the period for which the applicant was kept out of service it may be necessary to pay to the applicant atleast subsistence allowance. We are of the considered view that such a dispensation would not be congenial to either public interest or interest of justice. In the peculiar facts and circumstances of this case, we are of the considered view that while setting aside the impugned orders, it would meet the ends of justice if the respondents are directed to treat that the applicant despite the impugned orders of removal from service continued in service till the date of his superannuation and to release to him

terminal benefits such as pension, gratuity etc. excluding the period for which he has been absent unauthorisedly.

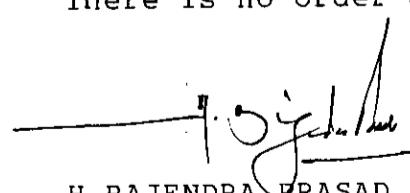
8. In the conspectus of facts and circumstances, we dispose of this application with the following declarations and directions:

(a) The impugned orders dated 18.7.91 of the Disciplinary Authority, dated 23.8.1991 of the appellate authority and dated 17.8.92 of the revisional authority are set aside.

(b) The respondents are directed to treat that the applicant continued in service despite the impugned order of removal from service till the date of his superannuation, compute his retiral benefits and to make available to the applicant the arrears of pension, gratuity and other benefits accordingly. The period during which the applicant was absent shall be treated as dies-non without a break in service. The period between the date of removal from service and the date of applicant's superannuation shall be treated as qualifying service for the purpose of pensionary benefits but shall not be treated as duty for any other purpose.

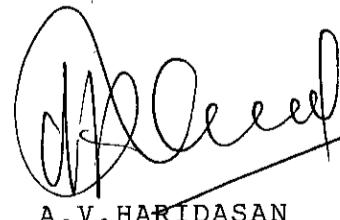
(c) The above exercise shall be completed and the arrears of pension and other retiral benefits shall be made available to the applicant by the respondents as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order.

9. There is no order as to costs.



H. RAJENDRA PRASAD
ADMINISTRATIVE MEMBER

24 MAR 98



A.V. HARIDASAN
VICE CHAIRMAN

O.A.1522/95

To

1. The General Manager, SC Rly
Railnilayam, Secunderabad.
2. The Divisional Railway Manager (Broad Gauge)
Transportation Branch, Sanchalan Bhavan,
ASC Rly, 1st Floor, Secunderabad.
3. The Divisional Operating Superintendent,
SC Rly, Secunderabad.
4. One copy to Mr. N.Ramamohan Rao, Advocate, CAT.Hyd.
5. One copy to Mr. V.Rajeswar Rao, SC for Rlys, CAT.Hyd.
6. One copy to HHRP.M.(A) CAT.Hyd.
7. One copy to DR(A) CAT.Hyd.
8. Copy to All Reporters as per standard list of CAT.Hyd.
9. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE A V Haridasan
VICE-CHAIRMAN (Ernakulam
AND Bench)

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

DATED: 24-3-1998

ORDER/JUDGMENT:

M.A./R.A./C.A. No.

in
O.A. No. 1522/95

T.A. No.

Q.W.P

Admitted and Interim directions
Issued.

Allowed

Disposed of with direction

Dismissed.

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected.

No order as to costs.

pvm.

