

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH:
JAIPUR.

O.A.No. 359/93 : Date of order: 21.8.1995

Roshan Lal : Applicant

Versus

Union of India & Ors. : Respondents.

Mr. S.Kumar : For the applicant
Mr. S.S.Hasan : For the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Member (Administrative)
Hon'ble Mr. Rattan Prakash, Member (Judicial)

O R D E R

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

In this application under Section 19 of the Administrative Tribunal's Act, 1985 Shri Roshan Lal has prayed that order dated 4.6.1993 (Annexure A-1) passed by respondent No.3 Assistant Signal and Telecommunication Engineer(T) Kota Division, Kota imposing penalty of removal from service on the applicant may be quashed with all consequential benefits.

2. The applicant's case is that he was initially appointed on the post of Khallasi in Railway Electrification Project, Mathura on 13.1.1981 and thereafter he was dis-continued. He was re-engaged as a Gangman in Sawai Madhopur on 6.6.1983 and was later appointed in Telecommunication Department in June 1989. Since then he had been working in the said department at different places. A charge-sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules was issued to the applicant vide Memorandum dated 22.2.1989. After the applicant pointed out certain infirmities in the said charge-sheet, it was cancelled vide order dated

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23.6.1989 (Annexure A-2). Simultaneously vide Annexure A-3 dated 23.6.1989 a fresh charge-sheet under Rule 9 of the aforesaid rules was issued to the applicant. The applicant represented vide letter dated 28.6.1989 (Annexure A-4) against the said charge-sheet. The respondent No.4 Assistant Engineer Sawai Madhopur considered the matter and cancelled the charge-sheet dated 23.6.1989 vide letter dated 28.6.1989 (Annexure A-5). However, respondent No.4 vide letter dated 28.6.1989 (Annexure A-6) issued an order of appointment of enquiry officer to enquire into the charges in the charge-sheet dated 23.2.1989 and 23.6.1989. Certain dates were fixed for conducting the enquiry. The applicant appeared in response to the date fixed but was informed that the charge-sheet had been dropped. No witnesses were examined and the applicant's own statement was not recorded at that stage. By order dated 15.6.1992 the applicant was informed that he had not submitted any representation against the findings of the enquiry officer whose report was alleged to have been served on the applicant vide order dated 3.3.1992. The applicant was served with a copy of the letter dated 16.5.1992 with covering letter dated 3.3.1992 (Annexure A-8). The applicant submitted a detailed representation dated 3.8.1992 stating that no enquiry report had been supplied to him.

3. Further according to the applicant, there are various errors and irregularities in the proceedings. The date of charge-sheet has been shown as 23.6.1992 and the letter dated 16.5.1992 has been attached with letter dated 3.3.1992. The applicant has not been

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supplied with copy of the documents listed in the charge-sheet. In fact, the enquiry officer's report shows that no enquiry was conducted. The applicant has been held guilty on the basis of in-admissible evidence which is a document of IOW Aligarh, Northern Railway. The author of the document has not been examined. Eventually penalty of removal from service was imposed upon the applicant vide ~~CC~~ order dated 4.6.1993 (Annexure A-1). While passing the penalty order, the respondent No.3 has taken into consideration extraneous material such as letters dated 17.7.1989, 11.7.1989, 17.4.1993, 6.6.1993 and 17.3.1989 which are not within the knowledge of the applicant. Even the date of issue of the charge-sheet is doubtful and at one stage it is mentioned that it is dated 26.3.1989 and at another stage that it is dated 23.8.1989 while yet at another place it is mentioned ^{as} being dated 23.6.1992. He has also assailed the findings of the disciplinary authority on merits.

4. ~~CC~~ The respondents in the reply have stated that the charge against the applicant was of producing forged and bogus card while taking employment in the Railways. Charge-sheet dated 22.2.1989 had been withdrawn on technical grounds and thereafter instead a fresh charge-sheet dated 23.6.1989 was issued which was the basis of enquiry conducted against the applicant. What was withdrawn by letter dated 28.6.1989 (Annexure A-5) was the covering letter by which charge-sheet dated 23.6.1989 (Annexure A-3) had been forwarded to the applicant. However, the charge-sheet dated 23.6.1989 was not withdrawn. If it is accepted that by letter Annexure A-5 charge-sheet dated 23.6.89 was withdrawn, then the charge-sheet dated 23.2.1989

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stood revived. Thus in any case both the charge-sheets were not cancelled. Certain dates were fixed for conducting the enquiry and the applicant had appeared before the enquiry officer on 26.11.1989 (Annexure R-2). By Annexure R-1 dated 11.7.1989 the applicant's Defence Assistant had offered to assist the applicant during the enquiry. The applicant had also submitted his written brief which was also taken into account by the disciplinary authority before passing the final order. The mention that the charge-sheet is dated 23.6.1990 could be a typographical error. The applicant had/held guilty on the basis of documentary evidence and it was not necessary that such documentary evidence is proved by its author. No such objection had in fact been raised by the applicant during the enquiry proceedings. The applicant did not subsequently appear before the enquiry officer with a view to delaying the matter. The enquiry officer therefore had no option but to conduct the enquiry *ex parte*. The question of recording the statement of the applicant or putting him any general question^s would have arisen only if the applicant had cooperated with the enquiry officer. As far as enquiry officer was concerned, he had given full opportunity to the applicant to defend himself.

5. We have heard the learned counsel for the parties and have perused the record. We find that considerable confusion has been created in this case by letter Annexure A-5 dated 28.6.1989 in which it was stated that letter dated 23.6.1989 (Annexure A-2) had been withdrawn. By Annexure A-2 dated 23.6.1989 the charge-sheet dated 22.1.1989 had been withdrawn. The argument of the learned counsel for the respondents is that what was withdrawn by letter Annexure A-5 dated 28.6.1989 was the letter

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Annexure A-2 dated 23.6.1989 but not the accompanying charge-sheet. All this is however not clear from Annexure A-5. Thus the applicant could have a legitimate grievance about whether a charge-sheet was really in existence on the basis of which enquiry could be conducted. There is no denial that the applicant did appear before the enquiry officer once on 26.12.1989 and also engaged a Defence Assistant. However, these documents do not show that which charge-sheet was proposed to be enquired into. Also there appears to be substance in the contention of the applicant that the sole document listed in the charge-sheet on the basis of which the charge was proposed to be proved against him had not been made available to him by the disciplinary authority. We are of the view that in view of the confusion created by letter Annexure A-5 and not making available to the applicant the sole document on the basis of which charges were to be proved against the applicant ^{the situation} resulted in denying a fair opportunity to the applicant to defend himself.

6. While a proper opportunity to defend himself was not given to the applicant during the proceedings, as held by us above, we cannot ignore the fact that the charge against the applicant is serious and it deserves to be properly enquired into. In these circumstances, we set-aside the order Annexure A-1 dated 4.6.1993 by which penalty of removal from service was imposed upon the applicant. The learned counsel for the applicant argued that there is no subsisting charge-sheet on the basis of which a fresh enquiry can be held. We do not agree. If the charge-sheet dated 23.6.1989

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stands withdrawn by letter Annexure A-5, then charge-sheet dated 22.2.1989 stands revived. The respondents shall conduct a fresh enquiry on the basis of the charge-sheet dated 22.2.1989, from the stage after ~~the issue of~~ the issue of charge-sheet. The respondents shall take subsequent disciplinary proceedings including holding of enquiry, if necessary, according to the prescribed procedure and shall complete ^{the} entire disciplinary proceedings including passing of the final order within a period of six months from the date of receipt of the copy of this order.

7. The Original Application stands disposed of accordingly with no order as to the costs.


(RATTAN PRAFULL)
MEMBER (J)


(C.P. SHARMA)
MEMBER (A)