

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 23/5/2007

OA No.169/1995

Bhim Prasad s/o Shri Parman, aged about 35 years, resident of c/o Shri Rajvir Sharma Advocate, Raj Sadan, Near Manoj Cinema, Kota Jn. at present he has been removed from the service.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Sr. Divisional Electrical Engineer (TRO), Western Railway, Kota Junction.

.. Respondents

Mr. Rajvir Sharma, counsel for the applicant

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

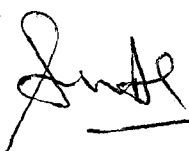
Hon'ble Mr. A.P.Nagrath, Administrative Member

ORDER

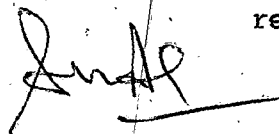
PER HON'BLE MR. S.K.AGARWAL, JUDICIAL MEMBER

In this Original Application filed under Section 19 of the Administrative Tribunals Act, applicant makes a prayer to quash and set-aside the impugned order dated 26.5.93 (Ann.A1) by which applicant was removed from service and to direct the respondents to reinstate the applicant in service with all consequential benefits including back wages.

2. Facts of the case, as stated by the applicant, are that while working as Clerk the applicant was served with a memorandum of



chargesheet dated 17.8.90. Applicant vide letter dated 28.8.90 requested the respondent Department to furnish Hindi version but he could not get it. Thereafter applicant filed reply to the memorandum of chargesheet on 4.10.90. The charges levelled against the applicant, according to the memorandum of chargesheet, was of insubordination and lack of devotion and sincerity in his work and duty. It is stated that after submitting the reply of the chargesheet the applicant was not informed legally and properly about the conduct of the enquiry and ex-parte enquiry was conducted by the Enquiry Officer. It is also stated that Disciplinary Authority sent a copy of the enquiry report to the applicant and applicant made a request with reference to the enquiry report to furnish copy of the original enquiry report and its Hindi version, because the copy of the enquiry report which was sent to the applicant was a carbon copy and was not legible, but the same was not provided to the applicant. It is further stated that order of suspension and order of removal of the applicant from service are illegal and against the principles of natural justice. No preliminary enquiry was conducted before issuing the chargesheet. The Disciplinary Authority failed to apply the provisions as contained in Rule 7 of the Railway Servants (Discipline and Appeal) Rules, 1968 and finding of Enquiry Officer are based on no evidence. It is also stated that it was the duty of the Enquiry Officer to give an opportunity to the applicant to produce his evidence/defence but Enquiry Officer did not even like to inform the applicant for any date of enquiry and the same was conducted ex-parte. Therefore, such enquiry report and punishment based on such enquiry is not sustainable in law. It is also stated that Disciplinary Authority has passed the impugned order of removal of the applicant from service without application of mind. Therefore, the order of removal is not sustainable in law. In view of above, applicant filed this OA for the reliefs as above.

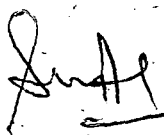


3. Reply was filed. It is stated in the reply that intimation was sent by the Enquiry Officer to the applicant regarding the enquiry vide letter dated 21.10.1991 and vide this letter applicant was asked to submit the name of his defence assistant. The applicant vide his letter dated 4.11.1991 has stated that no DAR is pending against him, therefore, Enquiry Officer proceeded ex-parte. It is also stated that Hindi version as asked by the applicant was sent to him at his residential address on 13.4.93 but postal authority returned that letter unserved as the employee was not available at his residence at the time of delivery and applicant did not inform the Department regarding change of his address. It is also admitted that notice imposing penalty of removal was also returned unserved as the applicant was not available at the address at the time of delivery. It is stated that applicant did not cooperate with the enquiry deliberately and enquiry was conducted ex-parte. It was denied that applicant was not informed about the appointment of Enquiry Officer and the Enquiry Officer holding the applicant guilty is based on no evidence. It was also denied that applicant was not given any opportunity to defend himself and to cross examine the witnesses.

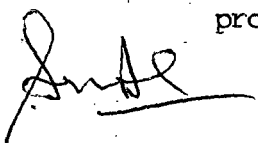
4. Rejoinder was filed reiterating the facts stated in the OA.

5. Heard the learned counsel for the parties and also perused the whole record including the file pertaining to the departmental enquiry of the applicant.

6. On perusal of averments of the parties, it is abundantly clear that there has been gross violation of rules/procedure/principles of natural justice while conducting the

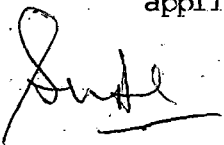


enquiry/disciplinary proceedings. Applicant was not informed regarding the appointment of the Enquiry Officer and the Enquiry Officer did not like to inform the delinquent regarding the date of enquiry proceedings for which applicant was expected to appear. The Enquiry Officer was duty bound to afford an opportunity to the delinquent to defend his case and ex-parte enquiry could only be done when the delinquent failed to appear/participate in the enquiry without any reasonable and probable cause. It appears that the Enquiry Officer in this case informed the delinquent vide letter dated 21.10.91 which is a request to the delinquent to submit name of his defence counsel and reply to this letter dated 21.10.91 was also given by the applicant vide letter dated 4.11.91. Thereafter it appears that a reminder was sent vide letter dated 14.11.1991 asking the applicant to submit name of his defence counsel within 48 hours and applicant did not reply to this letter. It appears that Enquiry Officer took a presumption by not replying the letter dated 14.11.91 that applicant does not want to contest the enquiry proceedings. The Enquiry Officer escaped notice of the fact that in a departmental proceedings if delinquent is competent enough to put up his own case, it is not necessary for him to engage a defence assistant, but in these circumstance it was the duty of the Enquiry Officer to inform the applicant regarding the date of conducting the enquiry proceedings so that the delinquent may appear and may protect his interest. It appears that no intimation was given by the Enquiry Officer to the delinquent and statement of Shri R.S.Bakshi on 23.12.91, Shri N.D.Sharma and P.K.Verma on 8.1.92 were recorded ex-parte without giving opportunity of cross examining the witnesses of the prosecution to the delinquent. From the averments of the parties it is also clear that no opportunity was afforded to the applicant for his defence. Ex-parte proceedings can be drawn only when the delinquent fails to appear/participate in the enquiry proceedings without any reasonable and probable cause but in this case ex-parte proceedings were drawn against the applicant without any



intimation/information regarding the date of enquiry proceedings to the applicant which is undisputely the gross violation of principles of natural justice. It appears from the averments of the parties that applicant made representation on 4.10.90, 29.11.90, 27.12.90 and 20.2.1991 stating that he should be informed about the enquiry and in the last letter dated 20.2.91 it has been specifically stated by the applicant that if no information is given to the applicant within 10 days from the receipt of letter, it will be taken for grant that standard form No.5 (chargesheet) has been cancelled but inspite of that letter no intimation was given to the delinquent/applicant regarding the conduct of enquiry and enquiry proceedings have been drawn ex-parte which was undisputely the gross violation of principles of natural justice.

7. It is also undisputed fact that notice of removal from service of the applicant was not served upon the applicant and the service was effected only by pasting the same on the Notice Board. It also appears that Disciplinary Authority accepted the report of the Enquiry Officer without application of mind and thereafter NIP was never served upon the applicant and its service was effected by pasting the same on the Notice Board in the presence of two witnesses. It is not the case of the respondents that applicant has absconded or his whereabouts were not known. Notice of removal from service and NIP can be served upon the applicant easily by deputing some special messenger, but the same was not done and thereafter without service of notice of removal from service of the applicant and without the service of NIP the Disciplinary Authority imposed the punishment of removal from service on the applicant which is in our considered view in gross violation of procedure/rules/ principles of natural justice and in the circumstances mentioned above, this order of removal of the applicant from service is not sustainable in law.



8. The allegations, in brief, against the applicant are regarding disobeying the instructions of his superiors on 20.7.90 and applicant is habitual of non complying the instructions and he is not inclined to carry out his work. The charges against the applicant appears to be ambiguous. No documentary evidence appears to have been filed by the Department in support of the charges levelled against the applicant. No preliminary enquiry appears to have been conducted in this matter which relates to the year 1990. Therefore, we are of the considered opinion that no useful purpose shall be served for directing the respondents to re-enquire the matter.

9. We therefore, allow this application and quash and set-aside the impugned order dated 26.5.1993 (Ann.A1) and direct the respondents to take back the applicant in service forthwith. The applicant shall be entitled to back wages for which four months' time is allowed to the respondent Department. The applicant shall also be entitled to all consequential benefits, i.e. seniority, promotion etc. No order as to costs.

  
(A.P. NAGRATH)

Adm. Member

  
(S.K. AGARWAL)

Judl. Member