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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 467/95 199
T.A. No.

DATE OF DECISION 3.11.1997

Kedar Nath Petitioner
Mr. Shiv Kumar Advocate for the Petitioner (s)
Versus
Union of India & Ors. Respondent
Mr. Manish Bhandari Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. O.P.SHARMA, MEMBER (ADMINISTRATIVE)

The Hon'ble Mr. RATAN PRAKASH, MEMBER (JUDICIAL)

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?
4. Whether it needs to be circulated to other Benches of the Tribunal?

Ratan Prakash
(Ratan Prakash)
Judicial Member

O.P.Sharma
(O.P.Sharma)
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

O.A.NO. 467/1995

Date of order: 3-11-1994

Kedar Nath S/o Shri Halyan Sahai, aged about 56 years, P/o Railway Quarter No.T/97E, Type I, Guard Line Bandi Kui, Distt. Dausa, Last employed on the post of Phallasi (working as FCA) under S.S. Bandikui, Western Railway.

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Senior Divisional Operating Manager, Western Railway, Jaipur.
3. Assistant Operating Manager (II), Western Railway, Jaipur.

: Respondents

Mr. Shiv Kumar counsel for the applicant
Mr. M.K. Rawat, Sr. Clerk, Departmental Representative for the respondents.

CORAM:

HON'BLE SHRI O.P.SHAHMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAI PRAKASH, MEMBER (JUDICIAL)

O-R-D-E-R

(PER HON'BLE SHRI RATAI PRAKASH, MEMBER (JUDICIAL))

The applicant Shri Kedar Nath has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to claim that the impugned order dated 1.10.1984 (Annx.A/1), SF 5 for major penalty, punishment order dated 26.11.1985 (Annx.A/2) imposing the penalty of removal from service and the order dated 16.12.1994 (Annx.A/3) rejecting his appeal be declared illegal and the same be quashed and the applicant be allowed all consequential benefits.

2. Facts as averred by the applicant in the OA are that the applicant was initially appointed on the post of Cleaner with the Respondent Railways on 18.5.1961 and was confirmed on this post on 1.1.1963 and that he discharged his duties as Cleaner to the entire satisfaction of the authorities till 14.1.1984 when he fell ill. According to him he was subsequently absorbed as a Phallasi in the Traffic Department. He made a representation for his promotion to the post of First Class Coach Attendant and was promoted to this post w.e.f. 2.2.1984. It is also averred that his case was referred to the Divisional

Medical Officer vide letter dated 13.6.1983 (Annx.A/4) to ascertain his fitness and thereafter the applicant was ordered to be transferred to his substantive post of Cleaner/Thallasi under C.F.O. Bandikui vide letter dated 24.7.1985 (Annx.A/5).

3. It is the grievance of the applicant that when he fell ill on 14.1.1984 and was bed-ridden he had treatment from a private Doctor. He sent an information of his sickness to his Controlling Officer, but on becoming fit for duty on 25.5.1984; he was not taken on duty. When all his efforts to take him on duty failed, he submitted a detailed representation dated 20.2.1986 (Annx.A/6) to take him on duty on the post of First Class Coach Attendant (FOCA). A lot of correspondence ensued on the subject, yet getting no relief and having been terminated from service he challenged his order of termination dated 26.11.1985 by filing OA No.920/89 Kedar Nath Vs. UOI. The Tribunal vide its order dated 7.9.1994 (Annx.A/8) directed the respondents to supply to the applicant copies of chargesheet (Annx.A/1), enquiry report, punishment order (Annx.A/2) etc., and the appellate authority was also directed to dispose of the appeal within a period of three months from the date of its filing. A detailed appeal made by him accordingly on 26.9.1994 (Annx.A/9) having been rejected by the Appellate Authority vide its order dated 26.12.1994 (Annx. A/3); he has now approached the Tribunal to claim the aforesaid reliefs.

4. The main grievance of the applicant now is that his order of removal purported to be under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1958 dispensing inquiry envisaged under Rule 9 of the said Rules; is arbitrary and illegal and liable to be quashed as it does not disclose any reasons to dispense with such an inquiry.

5. The respondents have opposed this application by filing a belated reply to which no rejoinder has been filed by the applicant. Disputing factual position about his appointment; it has been averred by the respondents that the applicant was initially appointed on the post of Coal Man in the scale of Rs. 70-8- (A) at Loco Shed, Sawai Madhopur on 18.5.1961 where he was declared permanently unfit for the duties of his work and accordingly was recommended and absorbed as Thallasi under the Traffic Inspector, Bandikui in the Traffic/Commercial Department. It has been denied that the applicant was ever promoted to the post of First

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Class Coach Attendant w.e.f. 1.2.1984. However, alongwith others his services were also utilized occasionally as EOCA against leave and sick vacancies. The stand of the respondents has been that the applicant remained unauthorisedly absent from 14.1.1984 and thereafter administration initiated disciplinary action against him by issuing a chargesheet through Registered Post but as the applicant was not available at his last known address, the letters so sent to him returned undelivered which is evident from the postal remarks on Registered A.D letter Annexure P/1. Subsequent efforts to deliver the chargesheet to the applicant also went futile as the whereabouts of the applicant were not known and accordingly the Railway administration rightly took action against him and passed the order of punishment. According to the respondents even the final order of punishment was also received back unserved through the Postal Department as is apparent from the remarks of the Postal Department on Registered Post Envelope Annexure R/2. Respondents also deny that the applicant sent any representation on 20.2.1986 (Annx.A/6). This has been denied on the basis that since this representation dated 20.2.1986 refers to General Manager's letter dated 6.7.1989; hence this representation dated 20.2.1986 is an after thought and is a false document. Lastly, it has been urged that as the whereabouts of the applicant were not known, the Railway administration was left with no option, but to invoke the provisions of Rule 14(ii) of the Rules of 1968. It is denied that the appeal of the applicant has been rejected abruptly but by a speaking order. It has, therefore, been urged that the application deserves rejection.

6. We heard the learned counsel for the parties at great length and have examined the record in great detail.

7. In the above background, therefore, the point for determination is "whether services of a railway Government servant can be terminated by invoking the provisions of Rule 14(ii) of the Railway Servant (Discipline & Appeal) Rules, 1968 by dispensing the enquiry envisaged under Rule 9 of these Rules on the ground of continued absence and his whereabouts being not known despite best efforts to hold the enquiry?"

8. On behalf of the applicant it has been vehemently argued that once enquiry under Rule 9 of the aforesaid Rules, 1968 has been initiated vide

Memorandum of chargesheet dated September, 1984/1.10.1984 (Annx.A/1) it was incumbent upon the respondents to complete the enquiry as envisaged under Rule 9 of the said Rules. The respondents having not complied with the mandatory provisions of Rule 9 of the said Rules, 1968, the impugned order dated 26.11.1985 (Annx.A/2) of removal of the applicant from service under rule 14(ii) of the Railway Servant (Discipline & Appeal) Rules, 1968 is highly arbitrary, illegal and liable to be quashed. It has also been argued that even the detailed appeal made by him on 16.12.1994 (Annx.A/3) consequent upon the directions given by this bench in OA No.920/89 decided on 7.9.1994 has been disposed of in perfect disregard of the law and is liable to be quashed.

9. On the contrary, it has been urged on behalf of the respondents that they have invoked the provisions under Rule 14(ii) of the 1968 Rules only after ascertaining that the whereabouts of the applicant are not known and that the disciplinary enquiry cannot be held as per requirement under Rule 9 of the 1968 Rules. In support of this argument, the learned counsel for the respondents has also drawn our attention to the Envelopes (Annexures R/1 and R/2) addressed to the applicant on his last known address through which efforts were made to furnish to the applicant the chargesheet in the matter. The learned counsel for the respondents has also produced the relevant office file through which efforts were made and proceedings were recorded on the aspect of the service of the chargesheet etc., to the applicant.

10. On the basis of the record it has been urged by the learned counsel for the respondents that neither the order of termination of the service of the applicant (Annx.A/2), nor the order of the Appellate Authority rejecting the appeal of the applicant has been disposed of cursorily, but in accordance with the provisions contained under Rule 14(ii) of the 1968 Rules. It has, therefore, been stressed that the OA deserves dismissal.

11. We have given anxious thought to the arguments addressed by both the learned counsels. It is undisputed that under the Railway Servant (Discipline & Appeal) Rules, 1968 whenever the disciplinary authority is of the opinion that there are grounds for enquiring into the truth for any imputation of misconduct and misbehaviour against a Railway Servant which

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may entail major penalty specified under Clauses (v) to (ix) of Rule 6 of these Rules; an enquiry has to be conducted as detailed out under Rule 9 of the 1968 Rules. It is only under exceptional circumstances where a go-bye is given to the procedure for imposing major penalties under Rule 9 of the 1968 Rules. The relevant provision which makes a provision to follow the special procedure in exceptional cases has been laid down under Rule 14 of the 1968 Rules. Rule 14 of the Railway Servant (Discipline & Appeal) Rules, 1968 reads as under:-

"14. Special procedure in certain cases:

Notwithstanding anything contained in Rules 9 to 13:

(i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an enquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit :

Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before only an order is made in a case falling under Clause (i).

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

It is by virtue of sub-clause (ii) of Rule 14 of the 1968 Rules which confers upon the disciplinary authority, the authority to dispense with the enquiry under Rule 9 of these Rules. According to this sub-clause the only requirement to dispense with the enquiry by the disciplinary authority are two namely, (i) the subjective satisfaction of disciplinary authority about the holding or not holding the disciplinary enquiry; (ii) recording the reasons in writing to the effect that it is not reasonably practicable to hold an enquiry in

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the manner provided under these Rules. If the aforesaid two ingredients are fulfilled then only the disciplinary authority instead of adopting the procedure under Rule 9 to impose major penalty can follow the special procedure laid down under Rule 14(ii) of these Rules. In the instant case, it has been made out that all efforts made by the respondents to furnish to the applicant the memo of chargesheet failed. Repeated efforts were made to trace out and to serve the memo of chargesheet upon the applicant who alleges to have fallen ill on 14.1.1984 and did not report for duties thereafter. All communications sent to him were addressed at his last known address as is evident from the postal endorsements on the envelopes Annexures R/1 and F/2. Besides these documents, from the record of the applicant which has been made available by the respondents and perused by us, it is made out that the respondents at no stage hurried about the conduct of the enquiry. Even in the order of the disciplinary authority dated 26.11.1985 (Annx.A/2) it has been disclosed that the applicant has been absenting from duty from 14.1.1984. He was sent with a memo of chargesheet dated 1.10.1984 at his home address at Bandikui under Acknowledgement Due Receipt but the same was received back undelivered with the remarks 'Not Known'. The disciplinary authority has further disclosed in its order that it is after careful consideration of the papers, documents and records placed before him and after applying his mind to all the facts available on record, he came to the conclusion that the applicant has been absenting from duty from 14.1.1984 in an unauthorised manner without observing the rules and regulations laid down in this respect so much so that his whereabouts are also not known. Arriving at this conclusion and holding that the applicant has failed to maintain absolute integrity and devotion to duty which tantamounts to serious misconduct violative of Rule 4 of the Railway Services (Conduct) Rules, 1966; the disciplinary authority came to the conclusion that not only he is satisfied but fully convinced that it is not reasonably practicable to hold enquiry into the matter against the applicant according to the procedure laid down under Rule 9 of the Rules of 1968 and consequently he has passed the impugned order removing the applicant from service w.e.f. the date of the order dated 26.11.1995.

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12. The contention of the learned counsel for the applicant is that once the enquiry under Rule 9 of the Rules of 1968 has been initiated, it should have been proceeded and concluded in accordance with the Rules and not by curtailing the procedure and adopting the extraordinary measure of dispensing with the enquiry and thereafter removing the applicant from service vide impugned order dated 26.11.1985. In this regard, it is suffice to observe that ordinarily once a decision has been arrived at by the disciplinary authority to conduct an enquiry under Rule 9 of the 1968 Rules, it should have been continued till the end as prescribed under Rule 9 thereof, yet when the delinquent employee has himself absented from duty and his whereabouts are not known and all efforts to trace him out and serve the chargesheet failed then the only course left open for the disciplinary authority is to take a reasonable decision as to whether it is reasonably practicable to hold the enquiry as envisaged under Rule 9 of the 1968 Rules. The only requirement under Rule 9 to go ahead with the disciplinary enquiry is to deliver or cause to be delivered to the Railway servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and to require the Railway servant to submit a written statement of his defence within the time prescribed by the disciplinary authority. It is pertinent to note that even in the Railway Servant (Discipline & Appeal) Rules, 1968 a specific rule has been introduced as to how the orders and notices etc., issued under these Rules are to be served. Rule 26 of these Rules which deals with service of orders, notices etc., reads as under:-

"Every order, notice and other process made or issued under these rules, shall be served in person on the Railway servant concerned or communicated to him by registered post."

It is thus evident that there being a specific provision as to the manner and mode through which order, notice and other process issued under these Rules has to be served to a Railway servant i.e. either to be served in person or to be communicated to him by registered post and the Respondent Railways having adopted the same course and finding that the

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memo of chargesheet sent through registered post has been received back and his whereabouts are not known, it would be presumed that the memo of chargesheet issued to the applicant was duly served and that the applicant wilfully avoided its service upon himself. Hon'ble the Supreme Court also has held in the case of Union-of-India-Vs.-Ujagar-Lal, 1997-SCC (L&S) 473 that when a notice is sent by a registered post acknowledgement due and neither acknowledgement due receipt, nor unserved notice is received back, it would be held that the notice has been duly served upon the addressee; more so when it is the last known address of the addressee. In the instant case the address given on the postal envelopes Annexures R/1 and R/2 is undisputably the last known address of the applicant of Government accommodation with the respondents. It is evident from the postal endorsement that the postal employee repeatedly went to the address on the envelope, but it could not be delivered. In the aforesaid circumstances, we are of the view that the disciplinary authority did arrive at a correct conclusion about his satisfaction as to the non-availability of the applicant on the last known address of the applicant and also arriving at the correct conclusion about the fact of the 'whereabouts of the applicant being not known'. It is on the basis of this practical situation found out by the disciplinary authority that he concluded that as the whereabouts of the applicant were not known, it is not practicable to hold the enquiry under Rule 9 of the Rules of 1968. We do not subscribe to the argument of the learned counsel for the applicant that no detailed reasons have been given by the disciplinary authority in the impugned order to dispense with the enquiry envisaged under Rule 9. The reason is that the disciplinary authority is required to apply its mind and come to a conclusion as to whether the factual report submitted before him alongwith other records is true and justifies the conclusion arrived at by it. In the instant case in the impugned order dated 26.11.1985 it has been amply disclosed by the disciplinary authority that the applicant has been absenting from duties since 14.1.1984 and that the registered notices sent to him have been received back and that his whereabouts are not known. It is after arriving at this finding that he has concluded that it is not practicable to hold the enquiry under Rule 9 of the Rules of 1968. It is

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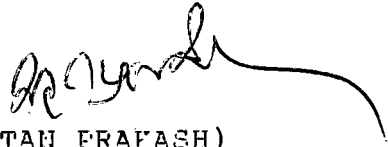
also to be noted that nowhere the applicant has alleged any malafide or prejudice or an attitude of bias against him on the part of any of the respondents. It all goes to show that the disciplinary authority under an exceptional circumstance was constrained to come to a conclusion that it is not practicable to hold the enquiry. Had it been otherwise, the respondents would not have taken any steps or made any efforts to serve the memo of chargesheet upon the applicant repeatedly.

13. Another factor which also goes against the applicant is about his treatment by a private doctor on his illness w.e.f. 14.1.1984. This is a bald assertion on part of the applicant and is not supported by any documentary evidence. Moreover, even if it is believed that he was under the treatment of a private doctor initially he has not been able to show as to why he did not take his treatment from Railway doctor when he was a railway employee residing continuously in Railway accommodation. Not only this, the applicant has not been able to disclose the nature of illness suffered by him w.e.f. 14.1.1984 and that he was prevented in any manner to communicate his whereabouts to the respondents. It all goes to show that it was for reasons undisclosed on part of the applicant that he absented from duties wilfully and did not take any precautions to receive his official dak at his last known address. The applicant himself is responsible for his own conduct and the conclusions arrived at by the respondents about his whereabouts being not known cannot be faulted with on any ground. We are also mindful of the settled position of law that dispensing ^{with} the enquiry envisaged under the Rules and to follow the exceptional step of removing a railway employee from service is a harsh step and should not be adopted in routine manner by the disciplinary authority, yet it is also equally true that every case where such an extreme step is taken; has to be weighed on its own facts and circumstances. Further we do not find in this case that the disciplinary authority has taken the decision lightly to dispense with the enquiry or that there has been any arbitrariness or ulterior motive on its part to proceed in an exceptional manner. The facts and circumstances herein have been found to be such that it was not reasonably practicable for the disciplinary authority to hold the enquiry as envisaged under Rule 9 of


the Rules of 1968 and accordingly we do not find any fault in the order of disciplinary authority in removing the applicant from service under Rule 14(ii) of the aforesaid Rules vide Annexure A/2.

14. On the aspect of disposal of the appeal by the appellate authority it is suffice to mention that the appellate authority has duly considered the appeal made by the applicant consequent upon the directions given by the bench in its decision dated 7.9.1994 in the applicant's OA No.920/89. A perusal of the order of the appellate authority dated 16.12.1994 (Annx.A/3) affirms that the appellate authority has given due consideration to the assertions made by the applicant in his appeal and the appeal has been disposed of after examining all assertions made by the applicant in his appeal as also by the applicant in person before it. We accordingly find no illegality in the order of the appellate authority dated 16.12.1994 (Annx.A/3).

15. In view of the above discussions, our answer to the question raised in this OA is in the affirmative. There being no merit in this OA, the OA is dismissed with no order as to costs.


(RATAN PRAKASH)

JUDICIAL MEMBER


(O.F.SHARMA)

ADMINISTRATIVE MEMBER