

(11)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.62/96

Date of order: 25.7.2000

Abdul Rashiad, S/o Shri Abdul Vahiad, R/c House No.1010, Gangapole,
Chowki Chai Darwaja, Jaipur.

...Applicant.

Vs.

1. Union of India through the Chief Operating Superintendent, Western Railway, Church Gate, Bombay.
2. The DOS(E), Western Railway, Kota.
3. The Sr. DOM, Western Railway, Kota.

...Respondents.

Mr. A.N. Gupta - Counsel for applicant.

Mr. Manish Bhandari - Counsel for respondents.

CORAM:

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

Hon'ble Mr. N.P. Nawani, Administrative Member.

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

In this Original application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned orders dated 17.7.92 (Annex.A1), 30.11.92 (Annex.A2) and 19.12.95 (Annex.A3) and to direct the respondents to treat the applicant continuous in service till the date of his superannuation as if no removal order was ever issued and to pay arrears of salary and other dues as admissible to him with interest.

2. In brief the case of the applicant is that he was initially appointed on the post of Rest Giver-Platform Porter on 1.5.1960. In the year 1962 he was designated as Sealman and in the year 1984 he was again designated as Platform Porter. Thereafter he was designated as Pointman and Liverman. It is stated that he fell seriously ill w.e.f. March 1984 and he became insane therefore he could not attend his duties. It is stated that no charge sheet was ever served upon him till date and no proper departmental enquiry was conducted by the respondents. It is traversity of justice that without giving any charge sheet to him, a departmental enquiry was held and order of removal of the applicant was passed on 17.7.92. The applicant filed an appeal which was dismissed. Thereafter, he filed a revision petition which was also dismissed. It is stated that the impugned order of removal dated 17.7.92, the order of the appellate authority dated 30.11.92 and the order of the revisionary authority dated 19.12.95 are per se illegal, unconstitutional, invalid and without jurisdiction as neither any charge sheet was issued nor any imputation of charge or statement of allegation was issued upon him. The applicant did not file any statement of his defence, therefore, the



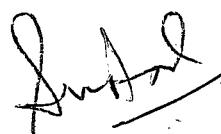
order of removal in such circumstances is per se illegal and the orders passed by the appellate authority and the revisionary authority are also illegal and liable to be quashed. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that the applicant was unauthorisedly absent since 12.3.84 and this absence continued for years together. It is stated that the charge sheet was sent to the applicant by registered post and Enquiry Officer was also issued a letter dated 11.7.91 and the applicant appeared on 13.7.91 where his statement was recorded and the Enquiry Officer gave his report and thereafter the disciplinary authority imposed the punishment. It is stated that the appellate authority has rightly rejected the appeal and so also the revisionary authority has also rejected the revision petition. Therefore, it is stated that the applicant has no case for interference by this Tribunal and the O.A is devoid of any merit, the same is liable to be dismissed.

4. Rejoinder has also been filed reiterating the facts mentioned in the O.A which is on record.

5. Heard the learned counsel for the applicant and also perused the whole record.

6. On a perusal of the averments made by the parties, it appears that no proof of service of charge sheet to the applicant was filed by the respondents before the Tribunal. It is stated only that a registered letter was sent to the applicant containing the memorandum of charge sheet to which the applicant has categorically denied. The applicant was also not served the imputation of charges and statement of allegations which were mandatory to serve upon the delinquent. It is also clear that no written defence was filed by the applicant and the departmental authorities did not care to take the written defence of the applicant. The only contention of the respondents in this case has been that the applicant appeared on 13.7.91 and his statement was recorded. It is not known why he was not served upon the charge sheet when he appeared before the Enquiry Officer and without ensuring whether a charge sheet was served upon the applicant or whether the imputation of charges and statement of allegations were served upon the applicant, the Enquiry Officer recorded the statement of the applicant. No other evidence was collected by the Enquiry Officer in this regard so as to prove the charges against the applicant. If a detailed enquiry was conducted by the Enquiry Officer, he should reach to the conclusion why the applicant was absent for such long period, on account of illness, insanity or otherwise. This could have been known to the Enquiry Officer only by making a detailed and fair enquiry. It also reveals that no show cause



notice was issued to the applicant before imposing the punishment order (order of removal).

7. In such circumstances, we are of the considered opinion that in a case where it is not established that a memorandum of charge sheet, imputation of charges and statement of allegations were served, the enquiry conducted and punishment imposed upon such an enquiry report by the disciplinary authority is per se ab initio void and illegal and in the same way the order of the appellate authority as also the revisionary authority passed on such order of removal are also per se illegal and liable to be quashed.

8. We, therefore, quash the impugned orders Anxx.A1 dated 17.7.92, Anxx.A2 dated 30.11.92 and Anxx.A3 dated 19.12.95 and direct the respondents to reinstate the applicant in service within a period of one month from the date of receipt of a copy of this order. This order shall not preclude the respondents to initiate the disciplinary proceeding against the applicant in accordance with rules. The respondents shall take a decision regarding the back wages to the applicant upon his representation, as per General Financial Rules applicable for this purpose.

9. No order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member (J).