

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.359/99

Date of order: 9-9-2002

Rajendra Kumar Parmarthak, S/o Sh.Deep Chand Parmarthak,
R/o Railway Quarter No.17/B, Western Railway, Loco Coloney
Kota Junction, Kota, working as Head Clerk, Kota.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Kota Junction Kota.
3. Senior Divisional Electrical Engineer (TRD) Western Railway, Kota Junction, Kota.

...Respondents.

Mr.Rajveer Sharma - Counsel for applicant.

Mr.U.D.Sharma - Counsel for respondent.

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant while working as Head-Clerk with the respondents was charge-sheeted vide memorandum dated 29.1.98 containing the allegation that while working as such he had drawn double payment during the period August 1996 to January 1997 from Bill Unit No.408(4) as well as from Bill Unit No.085 and such act of the applicant constitute misconduct under the provisions of Railway Servants (Conduct) Rules, 1966. The said charge-sheet was served on the applicant on 5.2.98. The applicant was required to furnish his written statement of defence within a period of 10 days from the date of receipt of the charge-sheet. On his failure to submit the written

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statement of defence on or before 15.2.98, the Enquiry Officer was appointed who directed the applicant to intimate the name of his Defence Assistant within a period of 10 days vide letter dated 15.4.98. Thereafter, the Enquiry Officer started the process of conducting enquiry and issued letter dated 13.6.98 to the applicant intimating him to appear in the enquiry which will be held on 22.6.98 and asking him again to intimate the name of Defence Assistant before the date fixed. On 22.6.98, the applicant appeared in the enquiry and requested to furnish the copy of Muster-roll upon which the payment has been made by the DRM Office. Apart from that it was also requested by the applicant that he is suffering from Azoospernia and he has been referred to Jag Jeevan Ram Hospital, Bombay by the Senior Medical Officer, Western Railway, Kota vide order dated 5.6.98 therefore he may be permitted to undertake the treatment and give him time to defend the enquiry. This request of the applicant was declined by respondent No.3 vide order dated 8.7.98 and he was not allowed to get the treatment till the completion of enquiry. Thereafter, the enquiry was held on ~~16.7.98~~ 17.7.98 and finally on 27.7.98. On 27.7.98, the Enquiry Officer examined two witnesses ex-parte and copy of the statement of witnesses were sent to the applicant vide letter dated 30.7.98. The case of the applicant is that since he was sick and no copy of Muster-roll was supplied to him and also that no intimation regarding ex-parte proceeding was ever given to him as such he was denied the reasonable opportunity to defend his case. His further case is that he was not given an opportunity to cross examine the witnesses as such, such evidence cannot be relied upon and the impugned order Anxx. Al dated 3.11.98 passed by the disciplinary authority, whereby the applicant has been dismissed from service and the order dated

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22.4.99 (Annx.A17) passed by the Appellate Authority, based on the enquiry report, are not legally sustainable and as such these orders deserve to be set aside. It is on these allegations, the applicant has filed this O.A for quashing and setting aside the impugned orders Annx.A1 & Annx.A17.

2. The respondents have contested the case by filing reply affidavit. Their main case is that despite repeated opportunity the applicant failed to furnish the name of his Defence Assistant before the Enquiry officer and also he did not file the written statement of defence within the time allowed, as such the enquiry was properly held. It is further averred that the applicant was supplied with all the documents mentioned in the charge-sheet and as such the applicant was not entitled to a copy of Muster-roll which do not form part of the listed documents.

3. Regarding the contention of the applicant that he could not attend the enquiry proceedings because of his ill health, it has been stated that respondent No.3 had made a reference to the Sr.Divisional Medical Officer, Railway Hospital, Kota, seeking clarification about the sickness of the applicant and the Sr.Medical Officer, Kota, vide his letter dated 6.7.98, informed respondent No.3 that the applicant was a case of sterility which does not need any emergency reference and treatment and he could very well proceed with the enquiry to finish up at his leisure at the end of which he may be sent to his treating Surgeon. It was only thereafter that the request of the applicant for permitting him to proceed Bombay for treatment was declined as he could continue his treatment after conclusion of the enquiry proceedings. It has further been stated that no doubt the applicant did submit a sickness certificate from a Private Doctor dated 25.7.98 received on

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27.7.98 at 10.40 AM (Annex.A10) on which date the enquiry has been fixed but the Enquiry Officer decided to proceed ex-parte as the listed witnesses were present. The statement so recorded were sent to the applicant vide letter dated 30.7.98. It was, therefore, open to the applicant to have requested the Enquiry Officer to re-summon the said two witnesses for their cross examination. Since no such request had been submitted by the applicant as such no prejudice has been caused to the applicant and it is a case of deliberate noncooperation of the applicant to participate in the enquiry proceedings on the pretext of his sickness.

4. We have heard the learned counsel for the parties and also perused the material on record.

5. The main case of the applicant is that no reasonable opportunity has been afforded to him and ex-parte enquiry has been held relying on the statement of witnesses without testing the veracity thereof and as such violative of the principles of natural justice and also the provisions as postulated by Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. The applicant has prayed for quashing of the order of dismissal from service.

6. The counsel for the applicant has submitted that as per Rule 9(12) of the Railway Servants (Discipline & Appeal) Rules, 1968, the applicant should have been given at least 10 days time after the presenting Officer has produced his evidence so that the applicant could consider if he would participate in it and prepare his defence. Not giving such an opportunity to the applicant will amount denial of natural justice to him and it is against the well established principles of natural justice. On our query to the learned counsel for the respondents, he has ^{fairly} ~~clearly~~ conceded that before proceeding ex parte enquiry the

applicant was not put to notice that in case he does not appear on the fixed date, ex-parte proceedings shall be held against him. However, he has submitted that since the applicant has given sufficient opportunity to defend his case which opportunity he failed to avail and also that in case the statement of witnesses were recorded ex-parte, he could have requested the Enquiry officer to afford him an opportunity to cross examine those witnesses and as such no prejudice has been caused to the applicant and principles of natural justice has been complied with in the instant case.

7. We have considered the matter and we are of the view that there is no compliance of Rule 9(12) of the Railway Servants (Discipline & Appeal) Rules, 1968 which is mandatory and afford such opportunity to the delinquent officer to disprove the charge levelled against him. By not giving such opportunity to the delinquent will amount to denial of justice to him and it is against the well established principles of natural justice.

8. In the instant case, when the matter was fixed on 27.7.98, the applicant enclosed a medical certificate from a Doctor alongwith letter dated 27.7.98 (Annex.A10), which date the enquiry was fixed before the Enquiry Officer. A reading of this letter Annex.A10 reveals that the applicant has requested that he will not be able to attend the enquiry proceedings fixed for 27.7.98 on account of his sudden illness. The receipt of this letter on 27.7.98 is not disputed by the respondents. Their plea is that since two witnesses were present on that date as such their statements were recorded ex-parte and copy of the statement was also sent to the applicant vide letter dated 30.7.98 for information. It is further stated in the letter dated 30.7.98 that the photo copy of the medical certificate as submitted by him is not acceptable. Thus, it is only vide

letter dated 30.7.98 the applicant came to know that the ex parte proceedings have been initiated against him on 27.7.98 after recording the statement of witnesses ex-parte without giving an opportunity to the applicant to cross examine those witnesses. Further that no notice was given to the applicant as contemplated under Rule 9(12) of the Railway Servants (Discipline & Appeal) Rules, 1968 for the purpose of preparing his defence. It is true that as per Rule 9(23) of the Rules of 1968, ex-parte proceedings can be held. But where the applicant has participated in the enquiry proceedings and at a subsequent stage he could not appear on account of his illness, in such cases before proceedings ex-parte, he should have been given at least 10 days time for preparing his defence after the Presenting Officer has produced his evidence. Therefore, the provision contained in Rule 9(12) of the Rules of 1968 are fully attracted in the instant case which reads as under:

"Rule 9(12)-The inquiring authority shall, if the Railway servant fails to appear within the specified time or refuses or omits to plead, requires the Presenting Officer, if any, to produce articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Railway servant may for the purpose of preparing his defence give a notice within 10 days of the order or within such further time not exceeding two days as the inquiring authority may allow for the discovery or production of any documents which are in possession of Railway Administration but not mentioned in the list referred to in the sub-rule (6)."

9. In the instant case such a procedure has not been adopted. After recording the ex-parte evidence on 27.7.98 the Enquiry Officer did not proceed with the matter further and submitted

his report after despatching the statements of witnesses to the applicant for his information vide letter dated 30.7.98. From the conjoint reading of Rule 9(23) and Rule 9(12), it is clear that Rule 9(23) regulate the procedure of ex parte enquiry at the time after the communication of the charge-sheet while Rule 9(12) relates to the stage of oral enquiry and evidence. All that is required by Rule 9(12) is that in a case where the delinquent railway employee initially participated in the enquiry by replying to the charge-sheet, etc. but subsequently for any reason he failed to appear, he should be given at least 10 days time after the Presenting Officer has produced his evidence. It is to give him time to consider if he would participate in it and prepare his defence.

10. In the instant case, as already stated above, the Enquiry Officer recorded statement of two witnesses on 27.7.98 ex parte ignoring the medical certificate given by the applicant for his absence for the said date on account of his sudden illness, the Enquiry Officer also did not give any opportunity to the applicant for the purpose of preparing his defence and concluded the enquiry and submitted his report on 13.8.98. Thereafter, on the basis of the enquiry report, the Disciplinary Authority passed the impugned order dated 3.11.98 which was affirmed by the appellate authority vide order dated 22.4.99. We do not think that legal position gets averted just because the applicant has not asked for cross examination of the witnesses. Whether he asked it or not, the requirement of law is that at least 10 days notice has to be given to the applicant for the purpose of preparing his defence in case the ex parte evidence has been recorded. Having not done so, it is in violation of the rules. The fact remains that the applicant has been denied the opportunity to prepare his defence as also

to cross examine the witnesses and he has been inflicted with major penalty of dismissal from service which is in violation of the provisions of the rules and Article 311 of the Constitution. Thus, we find that the applicant did not get the minimum 10 days time to consider his defence. Accordingly, for noncompliance with the provision of Rule 9(12) of the Railway Servants (Discipline & Appeal) Rules, 1968, the order passed by the Disciplinary Authority dated 3.11.98 (Annex.A1) is improper. Consequently, the order passed by the Appellate Authority is also improper and invalid.

11. In view of the facts and circumstances of this case, we hold that the applicant has been deprived of his right to defend himself. Therefore, we quash the impugned order dated 3.11.98 (Annex.A1) passed by the Disciplinary Authority and the order dated 22.4.99 (Annex.A17) passed by the Appellate Authority, based on the ex-parte enquiry report. The applicant shall be reinstated in service within 15 days from the date of receipt of this order. The ex-parte enquiry report also stands quashed. This will not preclude the respondents department to initiate disciplinary proceedings against the applicant from the stage of recording of the prosecution witnesses as per rules, to be completed expeditiously. No order as to costs.


(M.L.Chauhan)

Member (J)


(H.O.Gupta)

Member (A).