

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
OA 563/2001 DATE OF ORDER: 5.12.2003

Nanga Singh son of Shri Poonam Singh aged about 49 years, resident of Village Gudi, Post Office Beer, District Ajmer, last employed on the post of Gangman in the office of Permanent Way Inspector, Kishangarh, Western Railway.

.... Applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Divisional Engineer (West) Western Railway, Jaipur Division, Jaipur.
3. Assistant Engineer Fulera, Western Railway, District Jaipur.

.... Respondents.

Mr. C.B. Sharma, Counsel for the applicant.

Mr. Tej Prakash Sharma, Counsel for the respondents.

CORAM:

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

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER (ORAL)

The applicant while working as Gangman was issued charge sheet vide Memo dated 6.8.1998/01.09.1998 with the allegation that he remained unauthorised absent without prior information w.e.f. 19.2.1998 onwards. The said allegation was required to be proved on the basis of letter No. 637/2/ dated 21.7.1998 as can be seen from Annexure A/~~III~~ list of documents appended with the charge Memo. Further from the perusal of Annexure A/~~IV~~, it is evident that no witness was cited as witness for proving the aforesaid charge. Respondent No. 3 found the applicant guilty and inflicted the penalty of removal from service vide order dated 7.12.1999 (Annexure A/2). The applicant filed an appeal vide letter dated 27.12.1999. The said appeal was dismissed by the Appellate Authority vide order dated 9.5.2001 (Annexure A/3). Feeling aggrieved, the applicant has filed the present OA.

2. Notices of this application was given to the respondents. The respondents have filed reply whereby contesting the case. It has been stated that full opportunity was given to the applicant. It is further stated that letter was sent to the residence of the

applicant intimating him that he was unauthorised absent w.e.f. 13.2.1998. On 3.4.1999, through a Registered A.D., an information was given to the applicant to be present before the Inquiry Officer on 19.4.1999 at 10.00 AM with two Defence Representatives. On 19.4.1999, the applicant requested to the Sr. Permanent Way Inspector, Western Railway, Phulera to provide fifteen days time to produce his defence. Thereafter, the next date was fixed on 06.05.1999 and the applicant was informed but neither the defence representatives nor any reply whatsoever has been produced by the applicant before the Inquiry Officer. The Inquiry Officer had no option except to serve the notice for date of hearing through a registered post and hence, a registered notice regarding the date of hearing dated 25.5.1999 has been served to the applicant. But the applicant did not present before the Inquiry Officer and the applicant himself did not avail the legal right provided by the Inquiry Officer. Since the applicant was not co-operating in the inquiry proceedings and hence, the last and final opportunity was given by the Inquiry Officer to the applicant to appear on 26.4.1999 at 9.30 at Kishangarh. It is further stated that Inquiry Officer had given full and fair opportunity to the applicant to defend his case before him but no heed has been paid by the applicant and hence, the Inquiry Officer has submitted finding of the inquiry to the Disciplinary Authority, who passed the order ^{after} due consideration of the finding of the Inquiry Officer and applied his mind as per rules. The applicant preferred an appeal and the same was also considered and the applicant was given chance of personal hearing. It is further stated that the respondents have acted as per rules as no documents has been placed on record by the applicant which shows that the applicant was on unauthorised absence.

3. We have heard the learned counsel for the parties.

4. The learned counsel for the applicant argued that though the applicant was apprised of the charge which it was proposed to take action against him but he was not in a position to defend himself and show cause notice against the proposed action as no document was relied upon and no witnesses were cited to prove the said charge. The Inquiry Officer who held the Charged Official being proved guilty placed reliance on the documents which was not the part of the listed documents annexed with the charge-sheet.

5. We see considerable force in the submissions made by the learned counsel for the applicant.

46

6. We have perused the charge memo dated 6.8.1998/Cl.C9.1998 (Annexure A/1) alongwith Annexures A/~~IV~~ and A/~~IV~~. Annexure A/~~III~~ contains the list of documents which are relied upon for proving the charge-sheet. In ~~this~~ ^{Annexure} only one document i.e. letter No. E/637/2 dated 21.7.1998 has been relied upon in support of the charge levelled against the applicant whereas against Annexure A/~~IV~~, which contains the list of witnesses to prove the charge, No witnesses have been cited for proving the charge in question.

7. We have perused the letter No. E/637/2 dated 21.7.1998 relied upon by the respondents in support of the charge and find mention in Annexure A/~~III~~ with charge memo ^{and} was made available for our perusal. From the perusal of this document, it is clear that in all name of eleven persons were included in this document and the name of the applicant find mentioned at sl. No. 10. This document is signed by the Sr. Section Engineer, Kishengarh. Against the name of the applicant, the following entry has been made "Shri Manga remained absent w.e.f. 19.2.1998" ^{against}. Similarly, other persons whose name find mentioned in the said document, period of absence has been mentioned against their names. This is the only document which has been relied upon by the Department to prove charge against the applicant. It may be stated here that at the most, this letter can be said to be a document on the basis of ^{on} which inquiry was started and article of Memo was subsequently issued and as such should not have included in the list of document relied upon. Thus practically there was no list of document, which was proposed to be relied upon to prove the charge levelled against the applicant.

8. Similarly, there was no witnesses cited by the respondents in the list of witnesses, "Annexure A/~~IV~~ appended with the charge memo to prove the charge by way of oral evidence. Strange enough the inquiry Officer unmindful ^{of scope and} functioning of inquiry, held the Charged Officer guilty of the charge whereby relying upon the material which was not part of the listed documents and against which the Charged Officer has no opportunity to defend himself. It is well settled law by the decision of catena of decision of the Apex Court that even in ex-parte proceedings, entire gamut of the inquiry has to be gone through. The Inquiry Officer should sent notices to the witnesses, documentary evidence should be produced and marked, the Presenting Officer should examine the prosecution witnesses and the Inquiry Officer should present such questions as it thinks to be fit. As already stated, in the instant case, neither there was any document relied upon to prove the charge nor any witness was cited to support the allegation levelled against the applicant. As such, the Charged Officer has no opportunity to defend his case in Inquiry Proceeding.

60.

9. That apart, even if it is presumed that the charge was required to be proved on the basis of letter No. E/637/2 dated 21.7.1998, listed and relied *vide Annexure A/IV* appended to the charge sheet, the mere exhibition of the said document is not enough. The contents of the same was required to be proved by the *author of said document* by *stating* citing witnesses in the list of witnesses (Annexure A/IV of the charge Memorandum). At this stage, it will be useful to quote *instructions* of the Railway Board dated 15.11.1984 which reads as under:-

"A case has come to the notice of the Railway Board wherein statements of certain persons were listed as relied upon documents in the charge-sheet. However, the concerned persons were not listed as witnesses during the enquiry to corroborate the charges. As the un-corroborated statements of the witnesses carry no evidentiary value, Central Vigilance Commission, to whom the case was referred for advice, have commented adversely upon the wrong procedure adopted in that case.

With a view to ensuring that such cases do not recur in future, Board desire that great care should be taken while framing charge-sheets and whenever statements are included in the relied upon documents the authors of such statements should be listed as witnesses in Annexure-IV of the Charge Memorandum.

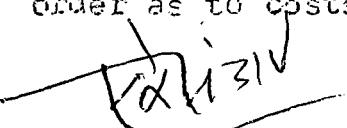
10. Thus from the portion quoted above, it is evident that mere mentioning and relying upon the documents in the list of documents annexed with the charge sheet is not sufficient. The *author of said document* should also be cited as witness in Annexure IV so that the statement made and relied upon can be corroborated by such persons.

11. In the instant case, even though if it is presumed that the letter No. E/637/2 dated 21.7.1998 could have been included in the list of documents to prove the charge. (even though we have already held that this document cannot be termed as document to prove allegation against the applicant. At the most, it can be said to be a document on the basis of which charge memo could have been issued to the applicant) No witness was cited to prove the contents of this document and to prove the allegation levelled against the applicant. Thus facts remains that except levelling charge and allegation against the applicant in the charge memo, no document was produced and relied upon as evidence to prove charges levelled against the applicant. Till such evidence was produced, it cannot be said that charge contained in the charge sheet stand proved against the applicant and the net result of this is that the charge sheet was defective and the applicant

had no opportunity to defend himself without knowing on which document and on what evidence the charge is going to be proved. Thus the entire procedure adopted by the respondents as well as charge memo issued against the applicant is defective. On the basis of such defective charge sheet no finding against the applicant could have been arrived at and it was not permissible for the Inquiry Officer to rely upon the material, which was not the part of the charge memo, and to give finding against the delinquent official on the basis of material collected of which the applicant has no knowledge. Similarly, it was not permissible for the Disciplinary Authority and Appellate Authority to accept the ~~ex parte~~ finding given by the Inquiry Officer in his report and inflict the gravest penalty of removal from service without any legally permissible evidence. The submission of the respondents in the reply that the applicant has not placed any document on record which shows that the applicant was unauthorised absent cannot be accepted. The burden to prove the charge is against the respondents. The respondents have miserably failed to discharge this duty.

12. Consequently the impugned SF-5 dated 6.8.1998/1.9.1998 (Annexure A/1), NIP dated 7.12.1999 (Annexure A/2), imposing the penalty of removal from service and Appellate order dated 9.5.2001 (Annexure A/3) are hereby quashed. It is made clear that in case the respondents wants to proceed with the matter, in that eventuality, the respondents should enclose the list of documents and list of witnesses alongwith the charge sheet memo so that full opportunity can be given to the applicant to defend his case against the charge to be levelled against him.

13. With these observations, the OA is disposed of with no order as to costs.


(A.K. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)