

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORIGINAL APPLICATION NO.1 OF 1998

Date of Order - the 14th December, 2000.

THE HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN
THE HON'BLE MR. M.P. SINGH, ADMINISTRATIVE MEMBER.

Sri Subash Ch. Bhowmick,
Son of Late Rathindra Kumar Bhowmick,
Aged about 35 years,
2nd F/Man, N.F. Railway, Lumding
(since removed from service),
P.O. Lumding, Village Ramthakur Basti,
District Nagaon, Assam.

- APPLICANT

By Advocates Mr. G.K. Bhattacharyya & Mr. G.N. Das.

- Versus -

1. Union of India,
Represented by the General Manager,
N.F. Railway, Maligaon, Guwahati.
2. Divisional Railway Manager (P),
N.F. Railway, Lumding.
3. Divisional Mechanical Engineer,
N.F. Railway, Lumding.
4. Asstt. Mechanical Engineer,
N.F. Railway, Lumding.

- RESPONDENTS

By Advocate Mr. B.K. Sharma, Railway Advocate.

JUDGMENT

M.P. SINGH, ADMINISTRATIVE MEMBER -

The applicant has filed this original application under Section 19 of the Administrative Tribunal Act, 1985

challenging ...

challenging the order dated 25th November, 1993 passed by the Senior Divisional Mechanical Engineer, N.F. Railway, Lumding imposing the penalty of removal from service and the order dated 3rd February, 1994 passed by the Divisional Railway Manager (P), N.F. Railway, Lumding rejecting his appeal.

2. The brief facts of the case as stated by the applicant are that his father while serving as a Tinsmith under N.F. Railway died in harness on 29th January, 1983. The applicant was appointed as a Khalasi on compassionate ground and he joined his duties on 15th April, 1984. He was promoted as Engine Cleaner with effect from 29.1.1986 and subsequently as Fireman with effect from 24th March, 1987. While serving as Fireman at Badarpur, the applicant fell sick and reported to the Medical Officer, Badarpur and he was in the sick list with effect from 25th September, 1989. During the last week of November, 1989, he received a telegram informing him that his mother was seriously ill at Lumding and as such inspite of his illness, he came to Lumding to attend his mother. During this period, he was under treatment of a private doctor and after recovery, he reported for duty. He submitted a medical certificate covering the period from 25th November, 1989 to 28th February, 1990 from the private doctor and he was allowed to resume his duties. The applicant was under the impression that the matter was settled and that the short period would be regularised by granting leave due to him.

3. The applicant was served with a memorandum of charge on 29th October, 1990 issued by the Assistant Mechanical



Engineer

Engineer by which he was informed that it is proposed to hold an inquiry against him on the basis of one imputation of misconduct. The imputation was that the applicant was under sick list with effect from 25th September, 1989 to 24th November, 1989 and subsequently, he was struck out with effect from 25th November, 1989 due to non-attendance of O.P.D. by the applicant and he had since then absented himself from duty unauthorisedly with effect from 25th November, 1989 to 28th February, 1990. The applicant submitted a reply denying the charges and explaining as to why he had to remain absent during this period. Subsequently, he received a letter dated 3rd July, 1991 from the Respondent No.4 whereby he was informed that the Inquiry Officer had been appointed to inquire into the charges. The applicant thereafter was not aware about any inquiry being held and he also did not appear before the Inquiry Officer to inquire about the fate of his inquiry proceeding. The applicant on 6th November, 1992 had appeared before the Inquiry Officer but he was not informed about anything. During July/August, 1993, the Judicial Magistrate, Hojai had issued a distrace warrent against him and also a warrent of arrest against his sister and aged mother and the applicant had to take steps in the Court and due to all these reasons, the applicant admittedly neglected the departmental proceeding pending against him.

4. Thereafter, the applicant received the impugned order dated 25th November, 1993 passed by the Respondent No.3 whereby the applicant was informed that since he failed to

 submit ...

submit any defence to the memorandum of charges and also failed to attend the inquiry on the dates fixed, the inquiry had been held ex parte and charge of remaining absent from duty with effect from 25th November, 1989 to 28th February, 1990 had been proved and that he was removed from service with effect from 10th December, 1993. The applicant had filed an appeal before the Respondent No.2 against the order of the disciplinary authority and the same was rejected by the order dated 3rd February, 1994. Being aggrieved, he filed this O.A. seeking a direction to set aside the aforesaid orders as mentioned in Para 1 above.

5. The respondents have contested the case and stated that the applicant was under sick list from 25th September, 1989 to 24th November, 1989 vide RMC No.1044 and subsequently his name was struck off from the sick list with effect from 25th November, 1989 by Medical Superintendent, O.P.D., Badarpur due to non-attendance. He was absenting from duty since then, i.e. from 25th November, 1989 without any authority or information. He was issued with a resumption letter dated 15th February, 1990 but instead of resuming his duties, he continued to be absent without any intimation or authority. He was allowed to resume duty on 1st March, 1990 with D.F.C. from Railway Doctor and on the same date, he was sanctioned two days casual leave by Loco Foreman but he absented from duty upto 9th November, 1990 without any intimation and authority. He was allowed to resume duty on 10th November, 1990 with D.F.C. from Railway Doctor.

6. All the above actions on the part of the applicant are unbecoming of a railway servant and constituted misconduct under the provisions of the rules. According to them, the applicant never submitted any reply denying the charges and explaining as to why he remained absent from duty. The statement regarding submission of a reply is an afterthought with the sole purpose of making out a case. The admission on the part of the applicant that he did not appear before the Inquiry Officer and enquire about the fate of his proceedings clearly indicate that the applicant did not bother to appear before the Inquiry Officer in spite of issue of notice. He also did not make any request to the Inquiry Officer seeking adjournment and/or to give another date. After the inquiry was concluded by the Inquiry Officer, the enquiry report was submitted to the disciplinary authority. The disciplinary authority forwarded a copy of the enquiry report to the applicant but he refused to accept the same. A remark was given on the envelope as follows :- "Party refused this letter - redirect to sender". Such endorsement was given on 4.1.1992. The disciplinary authority after going through the enquiry report decided to give another opportunity to the applicant and accordingly, 29th October, 1992 was fixed for personal hearing of the applicant and he was asked to appear on the said date. But the applicant did not attend the same as he was absenting. Again a copy of the enquiry report was sent vide letter dated 5th October, 1993 to the applicant but he refused to accept. In view of the aforesaid reasons, the O.A. is liable to be dismissed with costs.



7. Heard both the learned counsel for the rival contesting parties and perused the record.

8. During the course of argument, the learned counsel for the applicant submitted that the inquiry was held ex parte. The applicant was not supplied with relied upon documents and thus, he was denied the opportunity to defend himself. A copy of the enquiry report was not sent to the applicant to enable him to represent against the findings of the Inquiry Officer. The learned counsel for the applicant also submitted that the order passed by the disciplinary authority and appellate authority are cryptic and without application of mind. On the other hand, the learned counsel for the respondents stated that the ex parte inquiry was held because despite a number of notices sent to the applicant to attend the inquiry proceedings, he did not participate in the inquiry. The inquiry was conducted against the applicant and the charges were proved. A copy of the inquiry report was also sent to him but he refused to accept the same. A letter intimating the date to the applicant to appear before the Enquiry Officer was sent to the applicant on 8th July, 1991 which was duly accepted by him on 9th July, 1991. In fact, the applicant has admitted his guilt while submitting his appeal. He, however, conceded that the order passed by the appellate authority is a cryptic one and does not discuss the issues raised by the applicant in his appeal.

9. On perusal of the record placed before us, we find that an ex parte inquiry against the applicant for

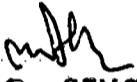
unauthorised

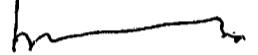


unauthorised absence has been conducted by the respondents. Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 prescribes the procedure for imposing the penalty. As per the said procedure, if the disciplinary authority is not satisfied with the written explanation and decides to enquire the matter, the disciplinary authority may itself enquire or if an enquiry officer is appointed, a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour shall be delivered to the railway servant and thereafter further procedure as prescribed under the relevant rules is to be followed by the disciplinary authority. In this case, the applicant has not been supplied with the relied upon documents and the procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968 has not been followed by the respondents. In the absence of relied upon documents, the applicant was not given an opportunity to defend his case which is against the principles of natural justice. Moreover, a copy of the enquiry report has also not been supplied to the applicant. Even the issues raised by the applicant in the appeal have not been discussed by the appellate authority while passing the order dated 3rd February, 1994. The orders passed by the disciplinary authority and appellate authority are very cryptic. The contention of the learned counsel for the respondents that the guilt of the applicant had been admitted by the applicant is not tenable as the applicant has not pleaded guilty before the inquiry officer. In view of the aforesaid reasons, the impugned orders dated 25th November, 1993 and 3rd February, 1994 imposing penalty of removal from service are not sustainable in law and as such, liable to be dismissed.



10. For the reasons stated above, the O.A. is allowed and the orders dated 25th November, 1993 and 3rd February, 1994 are quashed and set aside. The respondents are directed to reinstate the applicant in service with all consequential benefits except back wages within a period of 3 (three) months from the date of receipt of a copy of the order. However, we make it clear that the respondents are at liberty to hold fresh disciplinary proceedings against the applicant in accordance with law and rules from the stage of issuing the charge sheet to the applicant. No order as to costs.


(M.P. SINGH)
MEMBER (ADMN.)


(D.N. CHOWDHURY)
VICE-CHAIRMAN

mk