

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

OA.693/2002

Date of Decision : 07.07-2004

Mr.M.Krishna Kumar : Applicant(s)

Smt.J.Choudhary : Advocate for the applicant (s)

Versus

Union of India & Others : Respondent (s)

Mr.M.N.Banerjee &

Mr.H.B.Shrivastava: Advocate for the respondent(s)

CORAM:

Hon'ble Mr.M.P.Singh : Vice Chairman

Hon'ble Mr. Mr.A.S.Sanghvi : Member (J)

ORDER

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Mr.M.Krishna Kumar
House No.L.I.G.48, Housing Board Colony,
Near Head Post Office, Jabalpur.

: Applicant

Advocate: Smt.J.Choudhary

Versus

1. Union of India, through:
Chairman, Railway Board,
Rail Bhavan, New Delhi.
2. General Manager,
Central Railway,
Mumbai CST.
3. Chief Signal Telecommunication Engineer,
Central Railway, Mumbai CST.
4. Additional Divisional Railway Manager,
Central Railway, Jabalpur.
5. Neeraj Kumar Pandey,
Senior Divisional Signal,
Telecommunication Engineer,
Central Railway, Jabalpur.

: Respondents

Advocate: Mr.M.N.Banerjee
& Mr.H.B.Shrivastava

ORDER
OA.693/2002

Date: 07-7-2004

Hon'ble Mr.A.S.Sanghvi

: Member (J)

The applicant is challenging the orders passed by the
Disciplinary Authority dated 8.2.2001 imposing the penalty of

removal from service on him and praying that he be reinstated in service by quashing and setting aside the order of penalty. The relief prayed for by the applicant reads as under:-

- " (1) Quash the order of removal and other co-related orders/letters and reinstate with full back wages and benefits till date (including the period of put off duty) treated as duty/direct the respondents to take him back on duty as Section Engineer (Signals) in the correct pay scales pertaining to the services.
- (2) Direct the respondents that he be treated as being in continuous service.
- (3) Direct the respondents to maintain/regularise his leave according to rules.
- (4) Send the record of the case.
- (5) Direct the respondents to pay all the arrears withheld from time to time as admissible under the rules."

2. It appears from ^a most clumsy and incoherent pleading, that the applicant working as a Section Engineer in Signal Deptt. was served with a charge sheet dated 27.1.2000 leveling the charges of unauthorised absence from duty w.e.f. 9.10.99 till the date of the charge-sheet, and on the denial of the charges, an inquiry was conducted in the charges. The Inquiry Officer in his report dated 13.1.2001 gave the findings that the charges against the applicant were proved. The Disciplinary Authority after supplying the copy of the report of the Inquiry Officer to the applicant and inviting his representation thereon, vide his order dated 8.2.2001 held the

applicant guilty of misconduct for remaining absent from duty and imposed the penalty of removal from service. The appeal preferred by the applicant has come to be rejected and therefore, this OA.

3. It further appears that the applicant was served with another charge-sheet on dated 2.1.2001 for unauthorised absence and thereafter again he was served another charge-sheet dated 7.6.2001 leveling the same imputation of unauthorised absence from duty w.e.f. 23.1.2001. The inquiry in the charges of unauthorised absence levelled against the applicant vide charge sheet dated 2.1.2001 was completed earlier and the penalty of reduction to lower scale in the same time scale for a period of four years with cumulative effect was imposed by the Disciplinary Authority vide order dated 8.2.2001. The inquiry initiated vide charge-sheet dated 27.1.2000 seems to have been kept pending while the second inquiry was completed and this inquiry initiated with the charge -sheet dated 27.1.2000 has come to be finalised with the Disciplinary Authority's order dated 27.7.2001 imposing the penalty of removal from service with immediate effect on the applicant. The applicant has challenged this penalty as well as the inquiry in the charges~~sheet~~^{sheet} before us in this OA but unfortunately in a most clumsy pleading has mixed up the facts of the subsequent two charge-sheets and the inquiry

conducted in the charges of those charge-sheet. Several paras of the OA have been deleted by the applicant to clear the picture but still, the pleadings remain quite clumsy and incoherent. In any case, the main ground on which the inquiry is assailed by the applicant is that the charge-sheet given to him was defective and the subsequent inquiry held in the charges was illegal, irregular and ab initio void. It is also contended by him that he was never informed about the dates of the inquiry and the Inquiry Officer who was highly prejudiced against him had proceeded with the inquiry ex parte. It is also alleged that the Inquiry Officer and the Disciplinary Authority had manipulated the dates of the inquiry to justify their proceedings with the inquiry, though the applicant was not given any intimation about the dates of the inquiry. It is also contended that this was pointed out in his representation against the inquiry officer's report as well as even in his appeal but neither the Disciplinary Authority nor the Appellate Authority had considered these aspects and mechanically passed the orders imposing the penalty on him as well as upholding the penalty. It is also contended by the applicant that he was not allowed to resume duty from 9.10.99 by the respondent No.5 and complaining about the same, he had moved OA.845/99. The Tribunal had by way of interim relief on dated 19.4.2000 directed the respondents to permit the applicant to resume duty. Pursuant to the

directions given by the Tribunal he was permitted to resume duty and taking note of this fact the Tribunal vide order dated 12.10.2000 disposed of the OA.845/99. According to the applicant when the OA was disposed of he was very much on duty and therefore, the charge-sheet given to him leveling imputation of unauthorized absence from duty between the period 9.10.99 to 25.11.2000 was not only defective and erroneous but also given with malafide intention. He has also contended that during this period he was sick and was admitted in the Railway Hospital. He had submitted his medical certificate which was obtained from the Railway Hospital, but still with malafide intention of harassing him, the Respondent No.5 had served him with the charge-sheet and without any evidence of his unauthorised absence, had imposed the penalty of removal from service on him. He has also contended that he has been served with the other two charge-sheets only with an intention to harass him by the respondent No.5 though he had submitted the medical certificate for medical leave and the respondent No.5 knew very well that he was undergoing medical treatment. On all these grounds the applicant has prayed for quashing of the charge-sheet and the penalty imposed on him.

4. The respondents on the other hand in their counter have contended inter alia that the charge-sheet dated 27.1.2000

was served by a registered post at the home address of the applicant and after the receipt of the charge-sheet the applicant had not sent any intimation about his sickness or any reason for remaining absence from duty. After the inquiry was started the Inquiry Officer had intimated the applicant about the date of inquiry on 25.5.2001. The applicant however did not respond to the said intimation and the inquiry was adjourned to 15.6.2001. The applicant was intimated about this adjourned date but he did not attend the inquiry on 15.6.2001 also. The inquiry thereafter was adjourned to 23.6.2001 but on that day also the applicant failed to turn up. The intimation of the date of 23.6.2001 was given by registered post to the applicant. Since the applicant did not attend the inquiry on all these three days, the Inquiry Officer had no choice but to proceed with the inquiry ex parte. The same was held on 23.6.2001 and the prosecution witnesses were examined. The Inquiry Officer thereafter submitted his report to the Disciplinary Authority and the Disciplinary Authority supplied the copy of the inquiry officer's report along with the show cause notice to the applicant on 10.7.2001 by registered AD post. The applicant had replied to the show cause notice but demanded copies of the documents which were already sent and received by him. He however did not show cause why he should not be punished and therefore, the Disciplinary Authority accepting the inquiry officer's finding imposed the

punishment of removal from service on the applicant. The appeal preferred by the applicant has also been rejected by the Appellate Authority and the subsequent revision preferred by the applicant has also come to be rejected. The respondents have maintained that the inquiry was conducted as per rules and regulations and that all opportunity was given to the applicant to remain present and contest the inquiry. They have maintained that the applicant was duly intimated about the dates of the inquiry and there was no infringement of the principles of natural justice. The applicant did not care to reply to the charge-sheet nor sent any medical certificate nor did he take part in the inquiry and therefore, now he cannot be heard to challenge the inquiry proceedings. They have prayed that the OA be dismissed with costs.

5. The Respondent No.5 has also filed his affidavit denying the charges of personal bias and malice made by the applicant against him.

6. We have heard the learned counsel of both the parties at length and carefully gone through the documents produced on record.

7. Mrs. J.Choudhary, learned counsel appearing for the applicant has at the outset assailed the charge-sheet given to

the applicant and submitted that the charge sheet had been given to the applicant by the respondent No.5 with malafide intention to harass him and to remove him from service. According to her, the applicant was asked to take a special medical examination but when he went for medical examination, the Chief Medical Superintendent had declined to examine him on the ground that there was no reason for his medical examination. When the applicant attempted to resume the duty the respondent No.5 did not permit him to resume the duty. The applicant had therefore, no other alternative but to move the Central Administrative Tribunal by filing OA .511/99 and the Tribunal vide order dated 8.10.99 directed the applicant to send his representation along with a copy of the order to respondent No.1 and on receipt of such representation, the respondent No.1 was also directed to dispose of the same by a speaking order within six weeks and communicate the decision to the applicant. Pursuant to the direction given by the Tribunal, the applicant had represented his case. However, subsequently, he was not permitted to resume the duty and was told that he was put of duty w.e.f. 9.10.99. The applicant had no other alternative but to again approach the Tribunal and in OA.845/99 the Tribunal had by way of interim relief, directed the respondents on dated 19.4.2000 to permit him to resume his duty immediately. According to Mrs.Choudhary the applicant had thereupon

resumed the duty on 25.4.2000 and taking note of this fact the Tribunal vide order dated 12th October 2000 disposed of the OA.845/99 observing that the OA had become infructuous. She has also pointed out that the Tribunal had observed that if the applicant preferred a representation as regards pay and allowances, etc. then the same may be decided within a period of six weeks from the date of its receipt. This order of the Tribunal on dated 12th October, 2000 clearly suggests that the applicant had resumed the duty and was continuing to perform duty between 25.4.2000 to 12.10.2000. She has further invited our attention to a certificate annexure R-J XVII issued by the Director of Indian Railways Institute of Signal Engineering and Telecom, Secunderabad and submitted that the applicant had been directed to take a Refresher course and he had attended the institute between 5.6.2000 to 30.6.2000 and successfully completed the refresher course. If the applicant had been sent for such a refresher course, Secunderabad and had successfully completed the course then the charge levelled against him of unauthorised absence from duty till 27.11.2000 false to the ground and clearly demonstrate that the applicant had been falsely charged by the Disciplinary Authority of unauthorised absence even though he was continuing to perform duty during this period.

8. We have carefully considered the submissions made by Mrs.Choudhary and having regard to the documents adduced on record, we have no other alternative but to agree with the submission made by Mrs.Choudhary that the applicant had been falsely charged of unauthorised absence though he was on duty between 25.4.2000 to 12.10.2000.It is pertinent to note that in OA.845/99 the present Respondent No.5 i.e. the Senior Divisional Signal Telecom Engineer was made a party and allegations were made in the OA itself that when he attempted to attend the office on 9.10.99 he was not allowed to perform the duties and was told that he was on put off duty verbally. Assuming for the sake of arguments that these allegations were not true even then there is no escape from the ground reality that the Tribunal had given directions in this OA to the respondents to permit the applicant to resume duty. Such a direction could not have been given by the Tribunal if the Tribunal was not satisfied that the respondents were wrongfully restraining the applicant from resuming the duty. It is also pertinent to note that this direction has come to be given only after hearing the learned counsel of the respondents. Since the present respondent No.5 was the party in that OA, it cannot be gain said that he had the knowledge of interim relief directions given by the Tribunal and also of the compliance of these directions of the Tribunal. It is also to be noted that the respondents in the reply have nowhere tried

to refute this position and the learned counsel for the respondents also had no answer when we questioned him about the resumption of the duty by the applicant on 25.4.2000 pursuant to the directions of the Tribunal and his being sent for refresher course to Secunderbad. Another significant aspect of the matter is that when the Tribunal disposed of the OA.845/99 on dated 12th October 2000 holding that the applicant had been allowed to join duty and in the circumstances the OA had become infructuous, neither the counsel of the applicant nor of the respondents had pointed out that the applicant was not performing duty or raised any objection to the Tribunal, observing that the OA had become infructuous as the applicant had resumed the duties. The presumption arises that the applicant was carrying on his duty on 12th October 2000 i.e. the date on which the Tribunal disposed of the OA as if that had not been so, the learned counsel of the applicant would have definitely not allowed the OA to be disposed of as infructuous and the OA was disposed of. If he was not being allowed to perform the duty or if he was remaining unauthorisedly absent, then the learned counsel of the respondents would have pointed out the same to the Tribunal. In view of this position, it transpires that till the date of the order i.e. 12th October 2000 the applicant was performing his duty and therefore, he could not have been charged for unauthorised absence between 25.4.2000 to

25.11.2000 . Another significant aspect is that the Tribunal while disposing of the OA.845/99 had observed that if the applicant preferred a representation, as regards pay and allowance, etc. then that should be decided within a period of six weeks from the date of its receipt indicating thereby that the period between 9.10.99 to 25.4.2000 was required to be regularised by the competent authority as the allegation of the applicant was that he was not allowed to perform duty and was told that he was on put off duty . This position clearly indicates that the charges leveled against the applicant of unauthorised absence between 9.10.99 to 25.4.2000 were false and hence, the inquiry held on the false charges cannot be sustained. Since the respondent No.5 who acted as the Disciplinary Authority was also a party in the OA.845/99, cannot claim that he had no knowledge about the directions given in the previous OA and that he was not aware about the applicant resuming duty. The allegations made by the applicant about the respondent No.5 having malice or prejudice against him gets substantiated to some extent in the manner and method in which the charge-sheet dated 27.1.2000 was given to the applicant. The conduct of the inquiry against the applicant also lends support to this conclusion. Even though the applicant had in his reply to the charge-sheet dated 11.2.2000 denied the charges pointing out the direction of the Tribunal and demanding the copies of the

documents showing that he was intimated the dates of the inquiry proceedings, it is observed by the Inquiry Officer and the Disciplinary Authority that he had not denied the charges. It is an undisputed position that the inquiry had proceeded ex parte against the applicant and the Inquiry Officer had given his finding that the charges levelled against the applicant were proved. We are unable to understand on what evidence the Inquiry Officer could have given such a finding when the documents referred to above clearly reveal that he was on duty for major period of the alleged unauthorised absence . It clearly suggests that the Inquiry Officer's finding was nothing but finding not based on record or evidence and perverse and illegal.

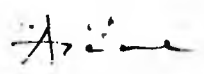
9. In any case as observed earlier, we find that the inquiry had proceeded against the applicant on baseless and false charges since the charges levelled against the applicant are found to be false. The subsequent action of holding the inquiry and finding of the inquiry officer as well as the order of imposing penalty on the applicant becomes illegal, null and void. Since the charges are found to be baseless and false the inquiry held in the same charges is vitiated and deserves to be quashed and set aside. The applicant therefore, requires to be directed to be reinstated in service with all back-wages. However, since he was occupying a safety category post, and


would be required to be reinstated therein he would first be required to be asked to undertake medical examination and only if he is found fit, to be permitted to carry on further duties.

10. For the aforesaid reasons and in the facts and circumstances of the case, we quash and set aside the charge-sheet dated 27.11.2000 served on the applicant and consequential action of holding of the inquiry in those charges and imposing penalty of removal from service vide order dated 27.7.2001 of the respondent No.5 and confirmed by the Appellate Authority and Revisional Authority. We further direct that the applicant be reinstated in service within one month from the date of receipt of the copy of this order and after his reinstatement in service, he shall be asked to undertake the medical examination and only if he is declared to be fit for further service, he be allowed to perform the duty in safety category post. However, if he is not found fit, necessary action pertaining to the medical de-categorisation as per rules and regulations be taken. We also direct that the applicant shall be entitled to the back wages from the date of his removal from the service i.e. 27.7.2001 till the reinstatement in the service and this period shall be treated

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as the period spent on duty for all purposes. With this direction the OA stands disposed with cost.


(A.S. Sanghvi)
Member (J)

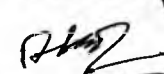

(M.P. Singh)
Vice Chairman

ab

पूठकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्पित:-

- (1) सचिव, उच्च न्यायालय द्वार एसोसिएशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल applicant
- (3) प्रवर्ती श्री/श्रीमती/कु.....के काउंसल HIS Shrinivastava
- (4) न्यायाधीश, के.प्र.अ., जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु


उप रजिस्ट्रार 27-7-04

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on 27.7.04
BS