

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : : GUWAHATI - 5

O.A. No. 194/94
T.A. No.

DATE OF DECISION 8.2.95

Sri Kartic Chandra Moitra

PETITIONER(S)

Sri R.N.Dhar

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Union of India & Others

RESPONDENT(S)

Sri B.K.Sharma.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE JUSTICE SHRI M.G.CHAUDHARI, VICE-CHAIRMAN.

THE HON'BLE SHRI G.L.SANGLYINE, MEMBER (ADMINISTRATIVE).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether the Judgement is to be circulated to the other Benches?

Yes

YES

NO

NO

Justice

Judgement delivered by Hon'ble ~~Justice~~ Vice-Chairman.

#

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 194 of 1994

Date of decision : This the 8th day of Feb 1995.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman.

The Hon'ble Sri G.L. Sanglyine, Member (Administrative).

Sri Kartic Chandra Moitra
S/o Late G.N. Moitra
Railway Qurs. No. 222-A,
Alipurduar Jn.,
Dist. Jalpaiguri.

..... Applicant

By Advocate Sri R.N. Dhar.

-versus-

1. Divisional Railway Manager
N.F. Railway,
Alipurduar Jn.

2. Shri A.K. Baul,
Divisional Personnel Officer
(Sr. Divisional Personnel Officer
with effect from 2.9.93).
N.F. Railway, Alipurduar Jn.
Dist. Jalpaiguri,
West Bengal
P.I.N. 736123

3. Shri A.K. Brahma
Deputy Chief Personnel Officer
N.F. Railway,
Maligaon,
P.O. Guwahati
P.I.N. - 781011

..... Respondents

By Advocate Sri B.K. Sharma.

ORDER

CHAUDHARI J. V.C.

The applicant was recruited as Junior Clerk (E) on 19.2.1963 in the Railway service with the respondents. He got promotion from time to time and on 14.2.90 he was



promoted as Assistant Personnel Officer. He belongs to Scheduled Caste community. He was sent for Orientation Course Training scheduled to be held from 10.6.91 to 11.7.91 at Zonal Rail^{way}/School, Chandausi. However while he was undergoing the training he was recalled by CPO/Maligaon and he joined as Assistant Personnel Officer at New Bongaigaon on 24.6.91. Thereafter he was served a confidential letter dated 24.6.91 pointing out his unsuitability to hold the post of Assistant Personnel Officer owing to unsatisfactory performance. He submitted a reply on 12.7.91. However, by letter dated 5.7.91 he was communicated adverse remarks noted in his Annual Confidential Report for the period ending 31.3.91. He submitted a representation against the same on 27.9.91 to the higher authority. While that representation was pending, by order dated 2.8.91 he was reverted from the post of Assistant Personnel Officer (Group B) to Office Superintendent (Group C) and transferred to Alipurduar. He was spared on 5.8.91. However he could not hand over the charge to the officer of the Personnel Branch and continued to work as Assistant Personnel Officer. According to the applicant the order dated 5.8.91 was not given effect to. He was communicated another adverse remark dated 12.8.91 for the period ending 18.12.90 against which also he submitted a representation on 5.9.91. It is stated by the applicant that after 5.9.91 he fell sick and was bed-ridden and under medical care and did not hand over the charge of Assistant Personnel Officer. He submitted a further representation to the General Manager on 15.8.91 and one more on 5.9.91 and a reminder on 16.9.91. By letter dated 4.10.91 he was informed that the representation dated 5.9.91 was rejected.

2. At that stage the applicant filed earlier application being numbered as O.A. 199/91 in this Tribunal aggrieved by the order of reversion dated 2.8.91. An interim order of suspension of that order was passed on 20.11.91. Even thereafter the applicant submitted a representation on 26/27.11.91 to the Deputy Chief Personnel Officer (G) Pandu followed by an application to the CPO requesting to assign him duty as Assistant Personnel Officer. That however was not done. He was informed on 12.12.91 that the order of reversion remains unaffected. After he recovered from his illness he reported to CPO on 27.11.91 but has not been assigned duty as A.P.O. The O.A. No. 199/91 was however withdrawn on 29.1.92.

3. The applicant filed O.A. 48/92 at that stage on 10.3.92 challenging the order of reversion and praying for setting aside the adverse remarks and for a direction to allow him to join as A.P.O. and for incidental reliefs. However during the pendency of that application the applicant was removed from service by the order passed by the Divisional Railway Manager, N.F. Railway, Alipurduar, bearing No. EQ/DAR/KCM dated 21.9.92 (with immediate effect). Thereafter the applicant has filed the instant application on 28.9.94 challenging the order of removal. By separate order we have disposed of O.A. 48/92 as having become infructuous and have heard the counsel fully in this application.

4. In this application the applicant prays that the said order of removal dated 21.9.92 be quashed and set aside and he be awarded compensatory costs of Rs. 5,000/-



for the illegal action taken against him by the respondents with a view to frustrate justice to him.

5. Several facts have been stated by the applicant in the application and several contentions have been urged before us by Mr. R.N. Dhar, learned counsel appearing for him who argued at length.

6. First and foremost thing to be noted is that the impugned order of removal from service was passed on 21.9.92. Even so, the applicant pursued the earlier application bearing number 48/92 till date which was directed against the earlier order of reversion. The order of removal was brought to our notice by Mr. B K Sharma the learned counsel for the respondents on 13.9.94 during the course of hearing of that application. On that day Mr. Sharma stated that a departmental proceeding was held against the applicant and after the charge framed against him was held proved the order of removal was passed and according to the respondents it was served upon the applicant and he had knowledge of it. Mr. Dhar on instructions of the applicant (who was present) stated then that the applicant denies the service of the said order and maintains that ^{that} was for the first time that he has come to know about it. It was thereafter that the present application was filed. Now in this connection it is stated by the respondents in the written statement that the order was sent to the applicant under registered post on 22.9.92 but it was returned back with the remark made by the Postal Authorities on 12.10.92 "Applicant refused to Accept".

hull

7. It may be mentioned that by our order dated 13.9.94 we had made certain queries and sought clarification from the respondents as to whether the charge sheet was served upon him, whether the removal order was served upon him and whether the authority passing the order of removal was competent to pass the same. It was in reply to these queries that the above explanation about the service of the order has been offered by the respondents. The applicant has filed a rejoinder but it is extremely evasive on this aspect. There is no categorical denial made that the registered packet was not sought to be delivered and he had refused to accept the service. On the other hand he has purported to state thus :

"the respondents have made an elaborate statement in their written statement regarding the issue of Charge-sheet under Issue No. (i) and communication of Charge-sheet and removal order under Issue No. (ii) but no explanation has been offered why the charge-sheet and removal order were sent by registered post while the applicant was residing in the Railway Qrs. and that too, in a walking distance from the Divisional Hd. Qrs. Office and the fact of his residing in a Railway Qrs. was within DPO's knowledge, instead of sending through a special Messenger".

And

"If the applicant could receive a number of letters served either in person or through the post office and also meet the visiting Welfare Inspector, there is no reasonable ground to refuse to accept the Charge-sheet or removal order. The applicant is therefore, constrained to say that there is no truth in the statement".

hull

It is interesting to note that in para 4.11 of the application the applicant has made following statement :

"That the applicant states that the impugned removal order No. EQ/DAR/KCM dated 21.9.92 now served in compliance with the order of the Hon'ble Tribunal".

In para. 4.14 he has stated as follows :

"In case the Postal Authorities returned as undelivered with endorsement as "addressee not found" "refused to accept" etc., in that case it should be pasted on the Notice Board of Railway Premises in which employee concerned, was working as well as in a place in the last noted local address of the railway servant. In this connection the applicant further states that the applicant is residing in Railway Quarter No. 222/A, Hospital Colony, a walking distance from the Divisional Railway Manager's office but no attempt was made to paste the copy of the so-called removal order in the Railway Qrs. in presence of two witnesses".

In para 4.15 he has stated as follows :

✓ ".....^e Categorically mentioned that the notice/order should be served on the railway servant. The procedure does not indicate that Railway Board intended to serve such of the notice/order on anybody or his family members. Such services contravened the Board's Instruction".

It is in paragraph 4.16 that the applicant has stated that he categorically denies that the impugned removal order was received by him.

hull

8. We have set out the statements contained in other paragraphs despite the purported denial in paragraph 4.16 in order to demonstrate that the denial does not inspire confidence and does not appear to be true. The applicant has not categorically denied the fact that the registered letter received by him was refused to be accepted by him even if he was to feign ignorance of the contents thereof. We do not therefore see any reason to disbelieve the statement made in the ^{written} statement. Moreover it is unthinkable that the applicant who claims to have worked in Group B post and wants to say that he has been repeatedly approaching the authorities and going to the office ^{could} ~~he did~~ not know about the order of his removal till it was brought to the notice of the Court by the respondents. There is no substance in the contention of the applicant when he questions as to why the order should have been sent by registered post. That is an approved method and provides a reliable means to ensure service. The respondents had tried to serve the order upon the applicant by adopting that mode and no fault can be found with it and if the applicant chose to refuse it, he has to thank himself for the consequences. The applicant has thus not approached the Tribunal with clean hands and has apparently tried to take advantage of the earlier application filed against the order of reversion by pursuing it hoping to overcome the order of removal passed on 21.9.92 and which had been sent to him by registered post but he refused to accept it on 12.10.92.

Will

9. It is pertinent to note that the applicant has stated in paragraph 3 of the application that the removal order was served upon him only in compliance with the direction of the Tribunal's ^{in the} order dated 13.9.94. The application filed on 28.3.94 would be within limitation from that date. That stand of the applicant is consistent with his alleged ignorance of the order but as we have discussed above it is difficult to believe that he had no knowledge of the order. It is also not the submission of the applicant that as he did not know the contents of the registered letter, and since now he understands that it contained the impugned order the delay that may have occurred from the date of refusal of that letter till the filing of the application may be condoned. Such condonation has not been sought by him. The reason is obvious since for that purpose he had to admit the fact that he had refused the registered letter which however he has avoided to admit. The inference is thus inevitable to be drawn ~~namely~~ that what the respondents have stated is true. The application filed on 28.3.94 therefore is liable to be dismissed as barred by limitation under Section 21 of the Administrative Tribunals Act, 1985.

10. Another circumstance which renders the application untenable is that the applicant has not exhausted all the departmental remedies against the impugned order of removal and has not thus complied with the requirement of Section 20 of the Administrative Tribunals Act. Since it is the stand of the applicant that he came to know about the impugned order only after it was served upon him pursuant to our direction dated 13.9.94 in O.A. 48/92,

Handwritten signature

it was open to him to file a departmental appeal. However he has not adopted any such remedy. Not only that but when before proceeding with the hearing on merit, we repeatedly asked Mr. Dhar to tell us as to whether the applicant would like to prefer an appeal which we may direct the appellate authority to consider on merits without raising objection of limitation, he emphatically stated that the applicant does not desire to do so. It may be mentioned that the applicant was present and Mr. Dhar received instructions from him all the time. Mr. Dhar kept on saying that the appeal would be barred by limitation and was not willing to leave it to us to direct the appeal to be heard without raising the ^{objection} question of limitation. In fairness to Mr. B. K. Sharma it must however be stated that he vehemently opposed any such opportunity being given to the applicant submitting that that would provide him a lever to re-open a question which was barred by limitation.

11. The emphatic refusal on the part of the applicant to avail the remedy of appeal makes the position still ^{worse} ~~bad~~ for him. It creates the bar under Section 20 and as it is stated that the appeal would be barred the jurisdiction of the Tribunal cannot be invoked to get relief which is otherwise barred. Mr. Dhar however vehemently argued that since according to the applicant the impugned order is illegal because it is passed by an authority who was not competent to remove him from service and therefore it was non-existent in the eye of law it was not necessary to file a departmental appeal and he would therefore pray for quashing the said order on the ground that it is illegal.

Null

12. The impugned order shows that a departmental enquiry was held by the Office Superintendent (E) after a charge-sheet was issued on 14.2.92 and served upon the applicant. The order of removal has been passed by the Divisional Railway Manager, N.F. Railway, Alipurduar Junction (as the Disciplinary Authority). The applicant's substantive post after his reversion was Group C post. Although it is the case of the applicant that despite the order of reversion from Group B to the Group C post he had not joined in the reverted post and continued to work in the Group B post till he fell sick and was not thereafter allowed to work in the Group B post and consequently the enquiry could be held and removal order passed only by the authorities competent to do so in respect of Group B post. ^{It} is difficult to accept ~~this~~ ^{the} contention. The order of reversion was in operation and cannot be said to have been rendered inoperative as that question was still to be examined by this Tribunal in O.A. 48/94. The applicant has not stated in the application as to who was his appointing authority. He has also not produced the appointment letter. It is contended in paragraph 4.6 of the application that by virtue of Rule 215 of the Railway Establishment Code Vol. I, the General Manager is the authority to make appointments to Group C and D posts and therefore neither the charge-sheet was issued nor the penalty is imposed by competent authority and consequently the entire disciplinary proceedings are without jurisdiction and null and void. Reliance is placed in this connection on Rule 215 of Railway Establishment Code.

hull

13. In view of these contentions we had sought clarification from the respondents on 6.10.94 on the following points :

- i. Whether the charge-sheet was served upon the applicant or can be deemed to be served on the applicant ;
- ii. Whether the order of removal was served or deemed to be served upon the applicant ;
- iii. Whether the Divisional Personnel Officer who issued charge-sheet and the Divisional Railway Manager who passed the removal order are equivalent in rank or superior authority, vis-a-vis the appointing authority of the applicant, i.e. the Office Superintendent in the scale of Rs. 2000-3200/-.

14. The respondents have explained the above points in their written statement. They interalia contend as follows :

1. In terms of schedule II (Schedule of Disciplinary powers) in respect of non-gazetted staff of zonal Railways, the senior scale officer holding independent charge of the Department on the Division may institute disciplinary proceedings/ issue charge-sheet though he cannot impose the penalty of removal etc. Reference is made to column 4 of the aforesaid schedule.
2. The power to impose the penalty of compulsory retirement, Removal and dismissal is delegated to an authority of equivalent rank or higher authority. to the Appointing authority. Reference is made to items 6, 7, and 8 in schedule II to RS(D&A) Rules 1968.

well

Thus according to the respondents as the Divisional Personnel Officer was holding the Senior Scale post with independent charge of the Division he was competent to issue the Memorandum of charge as the Disciplinary Authority and as the applicant was holding the post of Office Superintendent in the scale of Rs. 2000-3200 his appointing authority was the junior Administrative Officer and he or equivalent or higher authority to him could impose the penalty. Hence according to them the Divisional Manager who is Senior Administrative Officer and higher than the Junior Administrative Officer was quite competent to impose the penalty of removal from service upon the applicant by the impugned order. The respondents therefore maintain that there is no illegality in the holding of the disciplinary enquiry or imposition of the penalty.

15. Mr. B.K.Sharma, the learned counsel for the respondents reiterates the aforesaid submission and we are inclined to accept the same for reasons stated below :

16. So far material clause C of Rule 215 of the Railway Establishment Code is as follows :

"215. Authorities competent to make first appointments to Group C & D posts in the offices detailed below shall be as shown against each -

a)

b)

c) Indian Railway The General Manager or lower authority to whom he may delegate the power.

Schedule II of the Railway servants (Discipline and Appeal) Rules 1968 read with amendment Rules 1992 ~~prescribed~~ ^{specifies} under Rule 4 and Sub-rule (2) of Rule 7 thereof ~~specifies~~ the Disciplinary powers and suspension of different grades of Railway Officers in respect of non-gazetted staff of Zonal Railways etc. Heading 5 (b) mentions at item No. 7 'Removal from Service'. Column 4 of the schedule shows that the power of Removal of service is exercisable in respect of Group D and Group C staff by "Junior Administrative Grade Officers and Senior Scale Officers holding independent charge in charge of Department on the Division".

The schedule of power in Establishment matters issued by the General Manager, N.F. Railway in 1989 mentions the extent of power delegated to various officers at the Head Quarters office and Divisions. Column No. 7 mentions 'DRM/ADRM' and column No. 8 mentions ' Junior Administrative Grade'. Entry in column 2 at serial No. 6 read with above noted entries in column 7 and 8 shows that the officers mentioned in column Nos. 7 and 8 are delegated the 'Full' powers to make first appointment to non-gazetted post. (This is based on relevant circulars issued by the Railway Board).

17. The above noted provisions leave ^{no} manner of doubt that in the instant case the authority who issued the charge-sheet as well as the authority who has imposed the penalty ~~were~~ ^{was} fully competent to do so in exercise of the powers of the appointing authority delegated to them for

the said purpose. We therefore accept the submission of the respondents as it is based on these provisions.

18. Mr. Dhar however submitted that as held by the Calcutta High Court (Full citation not given) only the General Manager would be the competent authority in respect of the applicant and consequently he would be the person who could initiate the disciplinary proceeding or impose the penalty of removal upon ^{the applicant} him. That however does not appear to be the correct position from the relevant provisions of the rules noted above. The fact that the charge memo was issued by the Divisional Personnel Officer has not been controverted by the applicant. The contention of the applicant that even assuming that he had joined in the reverted post still the Divisional Personnel Officer was not competent to issue the charge-sheet for major penalty as the scale of the applicant was Rs. 2000-3200 cannot also be accepted in the face of the delegation of powers to full extent under the 1989 schedule of power of N.F. Railway (Supra). The challenge to the impugned order on the ground that it is passed by an authority not competent to impose the penalty of removal or that the charge-sheet was also not issued by an authority competent to do so must therefore fail.

19. It is alleged by the applicant that even the charge-sheet was not served upon him. It is stated in the impugned order that the same was sent through registered post and delivered by the postal authority at the residence of the applicant. It is stated in the written statement in that connection that the applicant had absented himself

hull

unauthorisedly on the order of reversion having been passed against him hence the disciplinary enquiry was commenced and the charge-sheet was issued and sent to his residential address which was the address given by him in the verification and was also recorded in his personal case file. It is stated that the charge memo was sent under registered post on 15.2.92 and was delivered and the postal acknowledgement was also received back. It is also pointed out that the applicant had personally met the Divisional Personnel Officer on 17.5.92 and complained of non-receipt of annexures to the memorandum of the charge-sheet and that the Divisional Personnel Officer also had ^{at} that time recorded his statement and advised to send annexures 1,2, and 3 and these were sent to the applicant again under registered post on 18.5.92 and acknowledgement was received back. It is further stated that the appointment of enquiry officer was also intimated by registered post on 28.4.92 and as a measure of abundant caution the memorandum was also pasted on the Notice Board of the office in the presence of 3 official witnesses. It is also pointed out that the postal authority by its letter dated 14.5.92 has certified that the letter dated 28.4.92 ^(about appointment of E.O.) ~~(furnishing the annexures)~~ was delivered to the addressee on 30.4.92. The respondents state that all the communications as regards the departmental enquiry pertaining to the charge-sheet were sent to the applicant by the registered post as well as copies thereof were pasted on the Notice Board of the office in the presence of official witnesses. The respondents therefore maintain that the applicant was duly served ^{or must be deemed to be served} with the memorandum of charge-sheet and also



was made aware of the enquiry proceedings but he has avoided to participate in the enquiry deliberately with a view to suffer an ex-parte order and then seek to challenge it on the ground of ^{it} being ex-parte. We see no reason to disbelieve these statements contained in the written statement of the respondents.

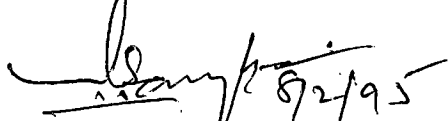
20. To sum up, there can hardly be any doubt that the charge-sheet was served upon the applicant. There can hardly be any doubt that the order of removal was served upon him. It is apparent that he had avoided to face the enquiry. The applicant did not accept the order of reversion. He remained absent unauthorisedly. Although there is every reason to believe that he was aware of the order of removal, he did not disclose that fact in the previous application i.e. O.A. No. 48/92. He has failed to categorically deny that he had been offered delivery of a registered cover which according to the respondents had contained the removal order. He has avoided to annex the copy of appointment letter obviously with a view to create a camouflage as to the appointing authority so as to build up an argument over that point. The applicant who had functioned as Group B Officer could not be so naive as not to know who was ^{his} appointing authority and who was the authority competent to initiate disciplinary proceedings or pass the removal order. ~~hearing~~ ^{learning} these facts vague he has only tried to confuse the issues by merely referring to certain provisions of the Rules. There can hardly be any doubt that the disciplinary enquiry was commenced by the authority competent to do so and the order of removal has also been passed by the authority competent to do so. The applicant has not shown the courage of facing the appellate authority


lll

when we were inclined to give an opportunity to appeal. He also was evasive in pointing out as to who could be the appellate authority requiring us to make a query in that behalf to the respondents. From their reply it is clear that the Chief Personnel Officer being the principal head of the Department ^{on} ~~as~~ the Division would be the appellate authority and could have been asked to deal with the appeal on merits. However the applicant neither wanted that opportunity nor on his own chose to prefer any appeal if not to any other authority but even to the General Manager. The applicant has also not approached the Tribunal in a straight forward manner. We therefore find no substance in the contention that the entire enquiry proceeding as also the removal order should be held as vitiated ^{on} ~~as~~ illegal or nonest and ^{is} ~~is~~ required to be quashed. That is the position on merits.

21. Thus on the ground of limitation as also on the ground that the applicant has not exhausted all the remedies before approaching the Tribunal ^{as also on the ground} ~~and that he~~ ^{that he} has not come with clean hands and as there is no substance on merits in his contentions to challenge the legality of the impugned order, the application must be dismissed. Under the circumstances if the applicant has to suffer an ex-parte order ^{of removal} he has to thank himself for that situation. No relief can be given to him either in law or in equity more particularly for his calculated reluctance to adopt departmental remedies.

In the result, the application is dismissed. There will be no order as to costs.


(G.L.SANGLYINE)
Member(A)


(M.G.CHAUDHARI)
Vice-Chairman