



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00173/2014

Date of order: 14.08.2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Mukul Mukherjee,
Son of Late P.C. Mukherjee,
Aged about 61 years,
By Occupation : Removed from Railway Service,
Residing at : Ghospara, Village : Sankrail,
Jala No. I, P.O. Chaturbhuj Kathi,
House No. 81, P.S. Sankrail,
District : Howrah – 711 313.

Applicant

V E R S U S –

1. Union of India,
Through the General Manager,
South Eastern Railway
11A, Garden Reach Road,
Calcutta – 700 043.
 2. The Divisional Railway Manager,
Kharagpur Division,
South Eastern Railway,
Kharagpur,
District : Purba Medinipur,
Pin : 721 301.
 3. The Sr. Divisional Signal & Telecommunication Engineer
(Sr. DSTE/Co-ordination), Kharagpur Division,
South Eastern Railway,
Kharagpur,
District : Purba Medinipur,
Pin : 721 301.
 4. The Divisional Signal & Telecommunication Engineer
(DSTE), Kharagpur Division,
South Eastern Railway,
Kharagpur,
District – Purba Medinipur – 721 301.
 5. The Assistant Divisional Signal and
Telecommunication Engineer (ADSTE),
Kharagpur Division,
- W.B.*

Kharagpur,
South Eastern Railway,
District – Purba Medinipur – 721 301.

6. The Sr. Section Engineer/Telecommunication (SSE/Tele),
Kharagpur Division,
South Eastern Railway,
Kharagpur,
Being the Enquiry Officer,
District : Purba Medinipur,
Pin : 721 301.
7. The Additional Divisional Railway Manager,
Kharagpur Division,
South Eastern Railway,
Kharagpur,
District : Purba Medinipur,
Pin – 721 301.
8. The Sr. Divisional Finance Manager,
Kharagpur Division,
South Eastern Railway,
Kharagpur,
District : Purba Medinipur,
Pin – 721 301.
9. The Financial Advisor & Chief Accounts Officer (FA&CAO),
South Eastern Railway,
11A, Garden Reach Road,
Calcutta – 700 043.

... Respondents

For the Applicant : Mr. S.K. Dutta, Counsel
Mr. B. Chatterjee, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal in second stage litigation in a sequel to earlier O.A. No. 859 of 2012 seeking the following relief:-

"A) Do issue mandate upon the respondents, their men and agents and each of them to forthwith rescind, recall and/or withdraw:-

i) Purported charge memorandum dt. 21.4.2006 being Annexure A-1 hereto and not to give any effect to the same;

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- ii) Purported Enquiry Report dt. 2.3.2012 being Annexure A-3 hereto and not to give any effect to the same;
- iii) Purported major Penalty dated 20.4.2012 being Annexure 'A-5' hereto passed by the Disciplinary authority and not to give any effect to the same;
- iv) Purported order of the Appellate Authority dated 26.12.2012 being Annexure A-19 hereto and not to give any effect to the same;
- v) Purported order of the Revising Authority dated 12.8.2013 being Annexure A-21 hereto and not to give any effect to the same;

B) Do issue mandate upon the respondents, their men and agents and each of them to forthwith certify and transmit all the papers and documents in connection with the instant lis before this Learned Tribunal for kind perusal and on such kind perusal do conceivable justice to the applicant;

C) Do issue mandate upon the respondents, their men and agents and each of them to forthwith reinstate the applicant in his past service on notional basis since the applicant attained his age of superannuation in February, 2013 and/or on the applicant be declared reinstated in his service w.e.f. 20.4.2012 and to pay all the due salary, increments, bonus, leave salary and all other admissible ancillary benefits with 18% interest on the total sum thereon;

D) Grant cost of this proceeding in favour of the applicant;

E) Pass such other or further order or orders, mandate or mandates, direction or directions as may appear to be fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The applicant's submissions, as articulated through his Ld. Counsel, is that, while working as TCM/Gr. II, the applicant was chargesheeted for alleged unauthorized absence for the period 10.10.2004 to 3.4.2006. The applicant denied the charges categorically. Thereafter, one Monoj Mohan Ghosal, SSE/Tele/Panskura was appointed as an enquiry officer but the said enquiry was ultimately finalized by one, Shri C.R. Patra, SSE/Tele/TR/KGP, ex parte. Upon receipt of the enquiry officer's report dated 2.3.2012, the disciplinary authority, vide his orders dated 20.4.2012, imposed the punishment of removal of service which was upheld by the appellate authority vide his order dated 26.12.2012 and the applicant, having preferred a Revisional Petition, the Revisional Authority disposed of the said petition on 12.8.2013, whereby the punishment of "removal from service without any compassionate allowance" was modified to "removal from service with 2/3rd pension and gratuity."

The primary grounds on which the application has been challenged are as follows:-

- (i) The enquiry was not conducted by the duly appointed Enquiry Officer and as such whether the enquiry and its outcome are legal.

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- (ii) The entire disciplinary proceeding and its outcome are time barred.
- (iii) The punishment order dated 20.4.2012 is a cryptic one and without discussing any pros and cons reached extraneous finding.
- (iv) Both the Enquiry authority and the Disciplinary authority acted in total contravention of the natural justice and procedural law.

4. On the contrary, the respondents have argued as follows:-

That, the applicant was appointed in S.E. Railway as a Casual Telecom Fitter in Gr. 'C' category in 1980 and thereafter, appointed as Ty. TM Gr. III on 1.4.1984 in Waltair Division. The applicant was transferred to KGP Division on his own request in October, 1984, to GRC in December, 1985, and, thereafter was temporarily promoted as TCM Gr. III at GRC on 3.8.1996.

The applicant, having been on unauthorized absence from 10.10.2004 to 3.4.2006, was issued with a major penalty chargesheet by DSTE/East/KGP dated 21.4.2006. The applicant submitted his defence representation on 19.6.2006 denying the charges. An inquiry officer was nominated and, although, eight different dates were fixed for holding the enquiry, the applicant did not attend the enquiry excepting on two dates. Finally, the inquiry officer had to take an ex parte decision and submitted the enquiry report holding the applicant guilty of the charges leveled against him. The applicant/CO submitted his final defence representation and the disciplinary authority, upon considering the entire matter, passed an order on 20.4.2012 for 'removal from service with immediate effect'. The applicant preferred an appeal before the appellate authority i.e. Sr. DSTE (Co-Ord.), S.E. Railway, Kharagpur, and also moved the Tribunal in O.A. No. 859 of 2012, which was disposed of by directing respondent No. 3, the appellate authority, to pass an appropriate order and to dispose of his appeal within a period of three months from the date of communication of the order. The appellate authority disposed of the appeal upholding the punishment of 'removal from service' through a reasoned order. Thereafter, the applicant preferred a revision petition to ADRM, S.E. Railway, KGP and the Revisioning Authority, on

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humanitarian grounds, considered the revision petition and passed an order of '2/3rd of pensionary benefits and gratuity w.e.f. 24.4.2012'. The respondents have contended that the instant O.A. deserves to be dismissed with costs.

5. The main point of determination herein is whether natural justice and procedural justice were violated in imposing the penalty on the applicant.

6. At the outset, we refer to the inquiry report dated 2.3.2012, which is reproduced as below:-

SOUTH EASTERN RAILWAY

No. ST/DA/MM/TCM-II/114

Dt:- 2.3.2012

D&A Enquiry reports in connection with major penalty charge memorandum (SF-5) No. :- ST/DA/MM/TCM-II/11 dt. 21.4.2006 issued to Sri Mukul Mukherjee TCM II/DZK.

1. Brief history:- Sri Mukul Mukherjee TCM-II/DZK while he was functioning as TCM-II/GRC during the period of 10.10.2004 to 3.4.2006 is alleged to have committed an act of misconduct absenting from his duty from 10.10.2004 to 3.4.2006 as per Muster Roll/Attendance Sheet which is in contravention to Railway Service Conduct Rules, 1966.
2. Charge and Imputation:- That the said Sri Mukul Mukherjee, TCM-II/DZK while he was functioning as TCM-II/GRC during the period from 10.10.2004 to 3.4.2006 is alleged to have committed an act of misconduct by absenting himself unauthorisedly from his duty from 10.10.2004 to 3.4.2006. He did not obtain any prior permission /leave from the competent authority. He has not reported himself for his duty nor even submitted any acceptable documents in support of his such inability during the said absent period. Thus, by the above cited fact Sri Mukul Mukherjee, TCM-II/DZK failed to maintained absolute integrity, devotion to duty and acts in a manner which is unbecoming of a Rly. Servant contravening rule 3.1(i), (ii) & (iii) of Rly. Service Conduct Rules, 1966 rendering himself liable for disciplinary action being taken against him in terms of Rly. Servant's Disciplinary & Appeal Rules, 1968 as amended from time to time.
3. Proceeding of the Case:- On being appointed as Inquiry Officer by the Disciplinary Authority (DSTE/East/KGP) vide his order No. ST/DA/474 dt. 3.8.2007 the undersigned asked the CO vide letter No. ST/DA/MM/TCM-II/33/37/39/41/50 to attend enquiry with his defence council on 26.12.07, 1.2.08, 20.2.08, 27.2.08, 5.4.08. But the CO did not attend the enquiry and in two cases among the above he attended the office but refused to answer any question in connection with the enquiry. The case file containing 52 pages return to Sr. DSTE/KGP's office vide this office letter No. E/CNL/D&A/53/01 dt. 1.1.4.2008. Again the case file was resubmitted to the undersigned vide letter No. ST/DA/42 dated 11.2.2010 and accordingly the enquiry date were fixed on 7.4.10, 19.5.10 vide letter No. ST/DA/MM/TCM-II/11/64, 66 respectively but the party did not attend the enquiry and the case file return back on 7.6.10 to Sr. DSTE/KGP. Again the case file resubmitted to the undersigned on 18.2.12 by the Disciplinary Authority (DSTE/South/KGP) and accordingly the enquiry date fixed on 29.2.12, but the party fails to attend the enquiry due to unauthorised absent from 6.2.12, till date.
4. Assessment:- Though the Charge Memorandum (SF-5) and the series of enquiry letter send to the CO, the party did not turn up in the enquiry. So the enquiry in connection with the DA case could not be concluded.
5. Conclusion:- After considering all the records available it is ascertained that Sri Mukul Mukherjee/TCM-II/DZK failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of a Rly. Servant contravening rule 3.1 (i), (ii) & (iii) of Railway Service Conduct Rules, 1966. Therefore, the charges of long unauthorized absence from duty from 10.10.2004 to 3.4.2006 brought against Sri Mukul Mukherjee/TCM-II/DZK are proved to be correct beyond doubt.

Sd/-
(C.R. Patra)
SSE/Tele/TR/KGP
& Inquiry Officer"

(Signature)

Upon examination of the said enquiry report, the following transpires:-

- (a) That, the charge memorandum had been issued to the applicant on 21.4.2006 on two articles of charge, thereby rendering the applicant liable for disciplinary action in terms of Railway Servants (Discipline & Appeal) Rules, 1968.
- (b) That, the Inquiry Officer had directed the CO to attend enquiries along with his defence Counsel on 26.12.07, 1.2.08, 20.2.08, 27.2.08 and 5.4.08 respectively. The CO attended only on two occasions and refused to answer any questions. Enquiry dates were again fixed on 7.4.10 and 19.5.10 and also on 29.2.2012. The CO did not attend the enquiry on the remaining dates.
- (c) The enquiry officer assessed that, despite the fact that charge memorandum and series of enquiry notices were sent to the CO, the CO did not attend the enquiry and hence the enquiry in connection with the DA case could not be conducted.
- (d) The Enquiry Officer thereafter concluded that the CO failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Railway Servant, contravening Rule 3.1 (i), (ii) & (iii) of Railway Service Conduct Rules, 1966; and that the charges against the applicant/CO were proved to be correct beyond doubt.

Ld. Counsel for the applicant, during oral hearing, referred to the procedure to be held for conducting an ex parte inquiry under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968. Following is extracted therefrom:-

Ex parte Inquiry

What is an ex parte inquiry – An ex parte inquiry means an inquiry held in absence of the delinquent official or his defence helper. It is held under Rule 9(23) of DAR which says that “If a Railway servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear before the inquiry authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.”

Thus the essential ingredients of an ex parte inquiry are:

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- (a) The articles of charges must be delivered to the delinquent,
- (b) He should either –
 - (i) Not submit his defence, or
 - (ii) Otherwise fail or refuse to comply with the provisions of rule 9.

Thus when a charge memorandum was sent per Registered Post but came back undelivered and was later not posted at the working place, the memorandum was taken as not served, and ex parte was not justified.

How to hold ex-partie inquiry – For holding an ex-partie inquiry the articles of charges must be properly served on the Railway employee either in person, or as per registered post, or by pasting at the working place, as the case may be. If the employee does not give the defence despite being served with the memorandum of charges; or after having given the defence, does not turn up, or having turned up, does not sit in the inquiry then the ex-partie inquiry can be held. An ex parte inquiry demands all the formalities of the normal inquiry e.g. (a) the inquiry officer must be appointed unless the disciplinary authority may decide to inquire himself; (b) he must fix the date and place for inquiry. (c) he must hold the inquiry and call all the witnesses and documents as cited in the memorandum of charges; (d) get the documents duly proved and record the evidence of witnesses so as to prove the charge; (e) where the delinquent had not turned up in the inquiry and adjournment has been given with a view to hold ex-partie inquiry, if he does not turn up on the next occasion, then notice of intention to hold ex-partie inquiry should be given; (f) findings of inquiry must be duly drawn."

In the instant matter, it is seen that the inquiry officer did not get the documents duly proved and record the evidence of witness so as to prove the charge. Further, the inquiry officer had to issue a notice of his intention to hold an ex parte enquiry and the respondents have not brought anything on record to prove that any such notice of ex parte enquiry was indeed issued to the applicant/ CO. The enquiry officer also did not duly draw up the enquiry findings based on evidence derived from documents, examination of witnesses as well as any detailed minutes on the conduct of the CO.

In *Kiran Bala Sahni v. UOI ATJ 1995 (1) 23* an ex parte inquiry, in which a verdict of guilt was given without recording any evidence, was quashed.

In *C.S. Prabhakaran v. Union of India, ATJ 2000 (1) 420*, it was held as follows:-

"The Inquiry Officer, while deciding to hold the ex parte inquiry must give a notice preferably by Registered AD post to the Charged Officer and before actually holding the ex parte inquiry must ensure that the notice has actually been served upon the charged officer and in case when notice is not served, he must make efforts to inform the charged officer through publication in the newspaper. In case such an action is not taken by the Inquiry Officer, punishment awarded to the employee is quashed."

Further, in *Union of India v. Dina Nath SCC 1998 (7) 569* the Hon'ble Supreme Court has ruled as under:-

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".... That only communication of chargesheet or notice is not enough. Department has to ensure that chargesheet/notice has actually been served on the charged officer."

Neither the disciplinary authority nor the appellate authority had discussed the inadequacy of procedure in submission of the Inquiry report consequent to the ex parte enquiry.

This matter travelled up to the level of the Revisional authority and the orders of the Revisional authority, though favourable to the applicant, had also not deliberated on the propriety and procedural justice in the process of ex parte inquiry conducted by the IO in terms of RS (DA) Rules, 1968. In *Chairman, LIC of India v. A. Masilamani*, 2012 (8) Supreme Today 224 (SC); in *Managing Director, ECIL, Hyderabad v. B. Karunakar*, AIR 1994 SC 1074; in *Hiran Mayee Bhattacharyya v. Secretary, S.M. School for Girls*, (2002) 10 SCC 293; in *U.P. State Spinning C. Ltd. v. R.S. Pandey*, (2005) 8 SCC 264; and *Union of India v. Y.S. Sandhu, Ex-Inspector*, AIR 2009 SC 161 the Hon'ble Court held that, it is a settled legal proposition that, once the Court holds that the enquiry was not properly conducted, the court must remit the concerned case to the concerned authority, for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. Accordingly, we deem it fit to remit the concerned matter back to the Revisional authority, who will thereafter act in terms of Rule 25(1)(v) of the Railway Servants (Discipline & Appeal) Rules, 1968, which states as follows:-

"Rule – 25. 'Revision :- (1) Notwithstanding any contained in these rules:-

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- (v) any other authority not below the rank of a Deputy Head of a Department in the case of a Railway servant serving under his control [may at any time, either on his or its own motion or otherwise, call for the records of any inquiry either on his or its own motion or otherwise, call for the records of any inquiry and revise any order made under these rules or, under the rules repealed by Rule 29, after consultation with the Commission where such consultation is necessary] x x x

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[Signature]

The Revisional authority will complete his exercise within a period of eight weeks from the date of receipt of a copy of this order and issue a reasoned order untrammelled by his earlier orders dated 12.8.2013. While the Revisional authority proceeds to take actions in terms of this order, the applicant is directed to cooperate with the respondent authorities in the process.

7. The O.A. is allowed to the extent of the above directions. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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