

Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.904/2003

New Delhi, this the 4th day of Feb. ~~January~~, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

Mohinder Paul Bhatia
Ex Dy. SS (C&W)
Northern Railway
Mechanical Workshop
Amritsar
Presently r/o: H.No.22
Gali No.5, Gopal Nagar
Majitha Road
Amritsar.

... Applicant

(By Advocate: Shri Pradeep Gupta with Shri
S.K.Trivedi)

Versus

1. The Union of India
(through its Secretary)
Ministry of Railways
Rail Bhavan
New Delhi.

2. The Deputy Chief Mechanical Engineer
Northern Railway
Mechanical Workshop
Amritsar (Punjab).

... Respondents

(By Advocate: Shri S.M. Arif)

ORDER

Justice V.S. Aggarwal:-

The applicant Mohinder Paul Bhatia had joined Railway Department in the year 1957. In 1992 he was serving as a Deputy Superintendent, Northern Railway Locomotive Workshop, Amritsar.

2. By virtue of the present application, he seeks quashing of the order dated 11.5.1993 dismissing him from service and also of his appeal dated 16.2.1999 with consequential benefits.



16

- 2 -

3. Some of the relevant facts are that the applicant is alleged to have proceeded on leave on 17.5.1992. Departmental action had been initiated with respect to his absence from duty and not joining the same, despite repeated reminders. The disciplinary authority acting upon the report of the Inquiry Officer, dismissed the applicant from service.

4. The applicant contends that in order to save himself from the terrorists he had not joined the duty. The copy of the charge-sheet and the proceedings had not been supplied to the applicant. The charge that he had given wrong residential address was improper. He was never served and was not aware of the departmental proceedings, and in any case, it is asserted that the penalty of dismissing the applicant from service is disproportionate to the alleged dereliction of duty because the applicant had served the department for 34 years.

5. The petition has been contested. The respondents plead that on one side the applicant has stated that the respondents have violated the principles of natural justice but, in fact, the applicant remained absent and did not cooperate throughout the proceedings. The respondents have contended that the applicant had given different reasons for unauthorised absence from duty. Earlier in his appeal, the applicant had mentioned that he had been kidnapped by the 'unsocial elements' in 1992. He is not aware of the place where the applicant was kept but presently the reason given is that the applicant could not join the office due to terror of unsocial

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elements that occurred in Punjab (Amritsar) caused by the militants. His plea, therefore, that he was kidnapped by the militants, is not correct.

6. It is insisted that the disciplinary proceedings had been conducted, including the inquiry, in accordance with the procedure. The applicant has stated to have given various reasons for his absence at various times. He had applied for leave but did not join when required to do so. The facts are stated to be misrepresented.

7. During the course of the submissions, the learned counsel for the applicant raised two pertinent arguments:

- a) the proceedings were conducted ex-parte. The applicant had never been served with the chargesheet or with summary of allegations or about the proceedings; and
- b) the penalty awarded is disproportionate to the alleged dereliction of duty because the applicant had rendered 34 years of service.

8. At the outset, we deem it necessary to mention that on earlier occasion, the applicant had preferred OA 2344/2002 which was decided by this Tribunal on 10.9.2002. The said order reads:

"The applicant has been dismissed from service on the ground that he remained absent from duty without any good cause.

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(12)

-4-

2. Learned counsel of the applicant states that he is only pressing for the prayer that he had served the department for 35 years and that his case should have been considered for awarding of the pension. He further states that his petition is pending consideration in the Ministry of Railways regarding which no decision has been taken.

3. At this stage without expressing any opinion on the merits of the matter, the OA is disposed of with a direction that mercy petition of the applicant, copy of which is Annexure A-7 dated 19.1.2001 may be decided preferably within a period of six months from the date of receipt of a copy of this order."

9. It is abundantly clear from what has been reproduced above that in the earlier Original Application, the only prayer insisted was that the penalty of dismissal from service was disproportionate to the alleged misconduct because he had served the department for 35 years and his case should have been considered for awarding pension. In the present application, therefore, he cannot raise new pleas which had deemed to have been waived in view of the statement made on earlier occasion in the earlier OA.

10. Reverting back to the question as to whether the order so passed is disproportionate to the alleged misconduct, we make it clear that as it is a settled principle of law that it is within the domain of the disciplinary/appellate authorities to consider as to what is the proper penalty keeping in view the facts and circumstances of each case. In judicial review, this Tribunal will only interfere if the penalty awarded is shocking conscience of the Tribunal or in other words, is totally disproportionate to the

LS Ag e

13

alleged dereliction of duty. This question had been considered even in the last order passed on 10.1.2003.

The same reads:

"In compliance of order dated 10.9.2002 of Central Administrative Tribunal, Principal Bench, New Delhi in OA No.2344/02, the President has considered the mercy petition dated 19.1.2001 (which is annexed as Annexure A-7 to the O.A.) of Shri Mohinder, Paul Bhatia, Ex Dy. SS (C&W), Mechanical Workshop, Amritsar, Northern Railway.

2. The President has observed that in his mercy petition, Shri Mohinder Paul Bhatia has neither raised any point relating to the merit nor to the procedure. The only point raised by him is that he is victim of certain circumstances and the penalty of dismissal from service imposed on him is very harsh. He has also pleaded for the mercy on the ground that his service of 34 years on the railway has been blotless. The President finds that there is irrefutable evidence available on record to the effect that Shri Mohinder Paul Bhatia absented from duty wilfully. His submission (as he had made in his revision petition) that he had been kidnapped by unsocial elements of the state and was kept in their captivity after 17.5.92 has been rightly given no credence by the revising authority. Shri Mohinder Paul Bhatia. As regards his pleading that his service he has been awarded a number of punishments. The President has also observed that during the period from 17.5.92 onwards he never tried to explain his absence to his office and he evaded the enquiry also. Also, though he was dismissed from service in May 1993, he bothered to represent his case to the railway authorities only in August 1998, which shows that he was not interested in railway service.

3. In view of the aforesaid and after considering all other facts and circumstances relevant to the case, the President is of the view that Shri Mohinder Paul Bhatia has been rightly held guilty of the charges levelled against him and the penalty of dismissal from service imposed on him is not excessive. The President has, therefore, decided to reject the mercy petition dated 19.1.2001 submitted by Shri Mohinder Paul Bhatia."

ls Ag

14

-6-

11. It is obvious from the aforesaid that this question has been looked into independently. Otherwise also being true to the Ministry/Department which he has been serving, it was improper for being absent altogether for long periods. Discipline cannot be violated, and thereupon, one cannot take shelter behind the plea that he had been serving the Department for so many years. We are not inclined in the facts of the present case to hold that the dereliction of duty is to be dealt with leniently.

12. Though no other plea could be raised, still since it was urged, we delve into the other controversy also.

13. As already referred to above, it has been contended that the applicant had not been served with the chargesheet and was not aware of the proceedings nor knew about the departmental action.

14. We have called for the file of the department. It clearly indicates that notices were being sent to the applicant at the address supplied by the applicant, but he could not be found at the last address.

15. The learned counsel for the applicant relied upon the decision of the Supreme Court in the case of Union of India and Others v. Dinanath Shantaram Karekar and Others, (1998) 7 SCC 569. The Supreme Court on the facts of that case held that the postal endorsement "not found" only indicates that the chargesheet was not tendered to him even by the postal

LS Ag e

15

authorities. A document sent by registered post can be treated to have been served only when it is established that it was tendered to the addressee. Where the addressee was not available even to the postal authorities, and the registered cover was returned to the sender with the endorsement "not found", it cannot be legally treated to have been served. In the facts of that case, the Supreme Court had upheld the order whereby the disciplinary proceedings had been quashed. Obviously the facts of that case are distinguishable from the facts and circumstances of the present case.

16. The ratio deci dendi has no application in cases where a person gives his address and he is not available and does not join duty for months together. In such a situation when a person is not available for more than a year, it cannot be taken that the department is helpless. Repeated notices, as apparent from the departmental file, were sent but could not be served. In such a situation to insist that personal service must be effected when applicant himself admits that he was hiding (taking his own assertion) the plea in the peculiar facts of the present case must fail.

17. Otherwise, in any case, we can certainly address ourselves to the doctrine of "useless formality". It had been highlighted more recently in the case of Aligarh Muslim University and Others v. Mansoor Ali Khan, 2000 SCC (L&S) 965. The Supreme Court, while discussing the theory of useless

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formality, concluded that it depends on facts and circumstances of each case. The findings of the Supreme Court are:

"24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. State Bank of India [(1984) 1 SCC 43]. Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn., pp.472-75), as follows: (SCC p.58, para 31)

"[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry; the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364]. In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P. (1996) 5 SCC 460.

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C.Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Straughton, L. J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H.

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Clark' etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case."

18. In the facts, the Supreme Court held the case of Mansoor Ali Khan as an exception. We find that even the case of the petitioner falls on the same footing, he was absent for long periods, namely, years. He admits that he was hiding himself. Though we do not believe this version but it is apparent that he could not be served. To insist that principles of natural justice had to be complied with would be travesty of justice.

19. No other arguments have been raised.

20. Resultantly, the OA being devoid of merit is accordingly dismissed. No costs.

S. K. Naik
(S.K. Naik)
Member (A)

V. S. Aggarwal
(V.S. Aggarwal)
Chairman

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