

Court No. - 39

Case :- WRIT - A No. - 67182 of 2012

Petitioner :- Raj Kumar Chauhan

Respondent :- The Central Administrative Tribunal And Others

Counsel for Petitioner :- M.A.Mishra,Babu Nandan Singh,Manoj Kumar Singh

Counsel for Respondent :- Vivek Singh,Purnendu Kumar Singh,Rama Shanker Yadav,Saurabh Srivastava

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri Babu Nandan Singh, learned counsel for the petitioner and Shri Purnendu Kumar Singh, learned counsel for the respondent-Union.

2. Present petition has been filed against the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad, dated 25.01.2010, passed in Original Application No. 63 of 2010 (Raj Kumar Chauhan Vs. Union of India and 3 others). By that order, the learned Tribunal has dismissed the Original Application filed by the present petitioner and thereby confirmed the punishment order dated 17.12.2008 as confirmed in departmental appeal, vide order dated 28.10.2009. For ready reference, the order of the Tribunal reads as below :

"ORDER

(DELIVERED BY: JUSTICE A.K. YOG-MEMBER-JUDICIAL)

1. Heard Sri. M.A. Mishra, learned counsel for the applicant and Shri. P.N. Rai, Advocate representing the respondents.

2. The OA was listed for admission. We have perused the impugned order dated 28.10.2009, Annexure A-1/compilation-I. The said impugned order is a well reasoned order. The Appellate Authority has taken into account the fact that the applicant remained absent for six months without giving any information/intimation to his immediate Controlling Authority namely Section

Engineer (P. Way) Railway Track Officer, Pilibhit. However, the application sent application dated 16.11.2007 directing to D.R.M. (Personnel) Izzatnagar with prayer to change his duties. In this application also we find no reference of his remaining absent or any prayer to grant leave because of his physical inability. The Appellate Authority also noted that the applicant has refused to accept registered letter.

3. From the aforesaid facts, it is clear that the applicant remained absent for several months without sanctioned leave and also did not cooperate in the Disciplinary Enquiry. Not accepting of registered letter itself is a serious charge and show indiscipline.

4. O.A. has no merit, it is accordingly dismissed. No costs."

3. Submission of learned counsel for the petitioner is, both at the stage of the Original Application filed by the petitioner and also in the present writ petition, it has been specifically pleaded that major punishment of removal from service has been inflicted on the petitioner without conducting oral departmental enquiry. Relying on Part-IV, Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as the 'Rules'), it has been submitted, no major punishment may have been inflicted on the petitioner except in accordance with those Rules. The same would necessarily involve the conduct of oral departmental enquiry. Thus, reliance has been placed on the pleadings made in paragraph-4 (XXIV) of the Original Application. For ready reference, the said paragraph reads as below :

"That no opportunity of hearing was afforded to the applicant by the respondent no. 4 and without initiating any disciplinary proceeding, the applicant have been removed from his service, which is against the Railway servants (Disciple and Appeal) Rules 1968."

4. Then, reference has been made to the pleadings made in paragraph-28 of the present writ petition. It reads as below :

"28. That, no any opportunity of hearing was afforded to the petitioner by the

respondent no. 4 and 5 and without initiating any disciplinary proceeding, the petitioner has been removed from service, which is against the Railway servants (Discipline and Appeal Rules 1968)."

5. Referring to the reply to the above paragraph contained in paragraph-29 of the counter affidavit, it has been submitted that there is no denial to the fact pleaded by the petitioner that no oral departmental enquiry was conducted before inflicting major punishment of removal from service. For ready reference, paragraph-29 of the counter affidavit reads as below :

"29. That the contents of paragraph no. 28 of the writ petition are not admitted hence vehemently denied. However it is respectfully submitted that at every stage of the case the petitioner has got full opportunity of hearing and after affording proper opportunity of hearing the impugned orders has been passed and the same is also confirmed by Hon'ble Central Administrative Tribunal, Allahabad. It is also relevant to mention here that the Honble Central Administrative Tribunal, Allahabad in his order dated 25/01/2010 it was mentioned that "it is clear that the applicant remained absent for several months without sanctioned leave and also did not cooperate in the Disciplinary Enquiry. Not accepting of registered letter itself is a serious charge and show indiscipline.". Therefore the present writ petition is liable to be dismiss."

6. Second, it has been submitted, merely because the petitioner may have been failed to respond to the show cause notice dated 18.08.2008, it did not absolve the respondent from its obligation under the Rules to conduct an oral departmental enquiry. For ready reference, the contents of the notice dated 18.08.2008 reads as below :

"पत्रांक: का/पी०सी०/राजकुमार चौहान/37

प्रेषक, श्री राज कुमार चौहान पुत्र

सेक्शन इन्जीनियर/पीवे/ श्री गोपाल मो० मथुगढ़ी

पीलीभीत-2 बाल्मीकि बस्ती पो० मुरसानगेट

जिला हाथरस।

आज दिनांक 29-02-2008 से लगातार आज तक अपनी डियूटी से बिना किसी स्वीकृत अवकाश एवं बिना किसी सूचना से आप डियूटी से अनाधिकृत रूप से डियूटी से अनुपस्थित हैं। इस कार्यालय के पत्र सं०/कापी०सी०/राजकुमार चौहान/973 दिनांक 23-6-2008 को आपके घर के पते पर पत्र भेजा गया था परन्तु आप आज अपनी डियूटी पर उपस्थित नहीं हुए।

अतः पुनः आपके पास पत्र भेजा जा रहा है पत्र प्राप्ति के सात दिन के अन्दर डियूटी पर उपस्थित होने एवं अनुपस्थित के सम्बन्ध में स्पष्टीकरण देवे। अन्यथा दिये गये समय से सीमा के अन्दर कार्यस्थल पर उपस्थित नहीं हुए तो आपके विरुद्ध अनुशासनात्मक कार्यवाही की जायेगी।"

7. Without conducting such enquiry, the below noted punishment order was passed on 17.12.2008 :

"कर्मचारी लम्बे अवधि से अनुपस्थित चल रहा है। इस दौरान कर्मचारी ने उपस्थित होकर किसी प्रकार की कोई सूचना नहीं दी कर्मचारी के विरुद्ध जारी दीर्घ दण्ड ज्ञापन उसके गृह पते से वापस आ गया है। इन सभी स्थितियों में यह पता चलता है कि कर्मचारी की रेल सेवा में अभिरुचि नहीं रह गयी है। अतः कर्मचारी के विरुद्ध जारी दीर्घ दण्ड ज्ञापन के लिये एक तरफा कार्यवाही करते हुये निम्न आदेश पारित किया जाता है"

"कर्मचारी को रेल सेवा से तत्काल प्रभाव से हटाया जाता है।"

(Remove from service)"

8. Bare perusal of that order itself makes it plain that no departmental proceeding was conducted against the petitioner. Even if the petitioner had failed to respond to the notice dated 18.08.2008, the only consequence he may have been visited with, could be initiation of oral departmental enquiry as was clearly indicated in that notice.

9. On the other hand, learned counsel for the respondent-Union would contend, there is no denial the fact that the petitioner

remained absent over a long time. He did not submit any application for grant of leave. Not only that, the petitioner failed to respond to the notice dated 18.08.2008 and he did not join back on duty. Therefore, the respondent/disciplinary authority was left with no option but to dispense with the services of the petitioner.

10. The conduct of the petitioner in failing to respond to the notice dated 18.08.2008 has been considered by the Tribunal. Taking a serious note of the same, the Tribunal has refused to offer any interference in the penalty order.

11. It is the submission of the learned counsel for the respondent that the order of the Tribunal does not warrant any interference.

12. Having heard learned counsel for parties and having perused the record, we find that the petitioner was a permanent employee of the Railways inasmuch as he was granted compassionate appointment on 15.5.2007. He may have worked for more than a year in that capacity, on substantive appointment made. Therefore, there can be no exception to the rule that no major punishment may have been inflicted upon the petitioner except in accordance with law i.e. after conclusion of a proper oral departmental enquiry, in accordance with the Rules.

13. It is also not in dispute that the respondent intended to initiate such proceeding. That was clearly indicated in the notice dated 18.8.2008 issued to the petitioner. The same has been extracted above.

14. However, it is a fact, within a period of four months therefrom, the punishment order providing for removal from service was issued (as quoted above). Perusal of that order does not bring out initiation of any departmental enquiry proceeding. On the contrary, the said order only indicates that the petitioner failed to respond to

the earlier notice which clearly appears to be a reference to the notice dated 18.8.2008. Acting solely on that mistake on the part of petitioner, the disciplinary authority inferred that the petitioner was not interested in continuing his engagement with the Railways. In the first place, no such inference may have been available, in absence of any departmental enquiry conducted. Second, in absence of such enquiry, it never became open to the disciplinary authority to inflict a major punishment on the petitioner, contrary to the Rules.

15. As to the pleadings, it clearly appears that the petitioner had pleaded before the Tribunal that he has been unfairly dealt with to the extent no departmental enquiry was conducted before passing the penalty order dated 17.12.2008. Here, we may note, by earlier order passed in these proceedings, we had required the Union of India to produce before the Court a copy of the Original Application. The same has been made available to us, today. Having perused the same, we have extracted the relevant paragraph of the Original Application, above.

16. In these proceedings, it has been again specifically pleaded, no disciplinary proceeding was conducted against the petitioner before awarding major penalty. The reply to the above pleadings is wholly evasive and unreliable. Instead of replying to the fact assertion made in paragraph-28 of the writ petition, the respondents have chosen to rely on the observation of the Tribunal that the conduct of the petitioner in not furnishing reply to the notice dated 18.8.2008 was a serious misconduct as may have disentitled him to any discretionary relief.

17. In the context of service jurisprudence, it is settled position in law that major penalty may not be awarded except in accordance with the procedures and rules prescribed therefor. As noted above,

Rule 9 of the Rules would commend that an oral departmental enquiry may precede award of major penalty. No reason has been ascribed in the penalty order and no reason is shown to exist, otherwise if such departmental enquiry could or had been dispensed with.

18. Seen in that light, the punishment order is not founded on any departmental enquiry and it is not based on any satisfaction of the disciplinary authority that such enquiry may be dispensed with.

19. Resultantly, the conclusion cannot be escaped that the punishment order has arisen contrary to law. The basic requirement of rules of natural justice that a delinquent employee may first be confronted with charge of misconduct and that the said charge may be proved by leading adequate evidence, in his presence, has not only been violated but in the present facts, the said procedure is seen to have been completely ignored.

20. Therefore, we have no hesitation to reach the conclusion that the punishment order has arisen in vacuum. The same may never be sustained. Also, the Tribunal has missed that issue by mile. It has erred in looking at the conduct of the petitioner in failing to respond to the notice dated 18.8.2008. That was not a notice in the departmental enquiry proceedings. Rather, it was a notice proposing to initiate departmental enquiry proceedings. Therefore, the only consequence that may have arisen upon failure on the part of petitioner to respond that notice may have been initiation of such departmental enquiry. Neither any charge sheet is shown to have been issued or served on the petitioner nor any domestic departmental enquiry is shown to have been conducted inasmuch as no enquiry report is seen to be existing leaving alone second show cause notice and consequential order.

21. In view of the above, we find, no useful purpose may be served in remitting the matter to the Tribunal as a fundamental error has crept in award of major punishment as may not be cured by the Tribunal. While in judicial review proceedings, we may not readily set aside the punishment order, at the same time, we would be failing in discharge of our duty if we only push out a case from this Court to the Tribunal. The facts of the present case are glaring and exceptional.

22. Accordingly, the orders dated 07.12.2011, 25.01.2010, 28.10.2009 and 17.12.2008 passed by the respondent nos. 3, 1, 4 and 5 are set aside. The matter is remitted to the disciplinary authority to reconsider the issue of initiation of departmental enquiry proceedings and proceed strictly in accordance with law. Since more than 15 years have passed, we also require the disciplinary authority to consider if the punishment already meted out to the petitioner may serve the interest of justice as may not warrant any further enquiry and allow the petitioner to join back in service subject to such terms as the disciplinary authority may choose to impose.

23. In any case the proceedings may be completed within a period of six months from today.

24. The writ petition is **allowed**. No order as to costs.

Order Date :- 1.11.2023
SA

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)