

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2635 OF 2021

Sabina K. Shaikh	}	Petitioner
Versus		
Union of India and Ors.	}	Respondents

Mr.Vicky A. Nagrani for the petitioner.
Mr.Suresh Kumar for the respondents.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- JULY 12, 2021

PC :-

1. The original applicant in Original Application No. 202 of 2021, pending on the file of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter "the Tribunal" for short), is the petitioner in this application under Articles 226 and 227 of the Constitution of India. She has challenged the order dated 22nd June 2021 passed by the Tribunal upon hearing an application for interim relief [numbered as Miscellaneous Application No. 296 of 2021 in Original Application No. 202 of 2021]. By the order under challenge, the Tribunal declined interim relief as prayed for by the petitioner.

2. It is noted that in the original application, a charge-sheet dated 15th March 2018 is primarily under challenge. The secondary challenge is to an order dated 17th December

2020 of the petitioner's disciplinary authority. By such order, an inquiry report of Mr.Milind Dhotre holding that the charge levelled against the petitioner had not been proved, was not accepted by the disciplinary authority and a fresh inquiry officer, Mr.V.P. Muralidharan, was appointed to inquire into the same charge. The petitioner prayed for quashing of the charge-sheet as well as the order appointing inquiry officer.

3. The original application was first taken up for consideration on 5th March 2021 by the Tribunal. While issuing notice to the respondents and inviting a short reply on interim relief as sought for in the original application, the Tribunal directed listing of the original application on 12th March 2021. By orders dated 12th March 2021 and 24th March 2021, the Tribunal adjourned hearing to further dates while allowing the respondents to file reply. Thereafter, the original application could not be taken up for consideration in view of the second wave of the pandemic.

4. During the pendency of the original application, the disciplinary authority by an order dated 12th March 2021 recorded a note of disagreement with the finding recorded by Mr.Milind Dhotre, inquiry officer, and while forwarding the same called upon the petitioner to respond within 15 days why an order of penalty should not be passed.

5. As a result of issuance of the aforesaid order dated 12th March 2021 upon recording of note of disagreement by the disciplinary authority, what ensued is that during the subsistence of the order 17th December 2020 directing fresh

inquiry by Mr.V.P. Muralidharan, inquiry officer, the disciplinary authority simultaneously called upon the petitioner to answer why the inquiry report submitted by Mr.Milind Dhotre should not be overruled and an appropriate order passed penalizing the petitioner for her misconduct. This is indeed quite strange and unprecedented.

6. Be that as it may, upon receiving the disagreement note, the petitioner requested the disciplinary authority to stay its hands since she had already moved the Tribunal challenging the charge-sheet dated 15th March 2018. The petitioner had also indicated therein that she proposed to move an application for advancing the date of hearing.

7. An application was duly moved by the petitioner for early hearing, whereupon the Tribunal fixed the matter for consideration of interim relief on 22nd June 2021. While the Tribunal was considering the prayer of the petitioner on interim relief, a submission had been made on behalf of the respondents that the order dated 17th December 2020 appointing Mr.P.V.Muralidharan as inquiry officer had been withdrawn and that based on the earlier inquiry report, the disciplinary authority has finalized the proceedings and final order was passed by it, which was in the process of being served on the applicant. On behalf of the petitioner, a prayer was made that since the final order had not been served, *status quo* may be directed to be maintained as and by way of interim relief. Hearing the parties, the Tribunal proceeded to record as follows: -

"After hearing submissions of both the counsels, we are of the considered opinion that in view of the submission of the respondents' counsel that based on the earlier inquiry report, the respondents have issued final order, it is not appropriate to grant any interim relief at this stage by keeping the DE proceedings in abeyance. Thus the request for grant of interim relief at this stage is rejected.

*List this case again on **28.07.2021** for final arguments."*

8. As noted above, this order is under challenge in this application.

9. In course of hearing before us, Mr.Nagrani, learned advocate for the petitioner contended that the final order, if any, passed in the proceedings against the petitioner has not yet been served on her; and in view thereof, the final order cannot be regarded to have taken effect. He, thus, argued that the tribunal was in error in not considering the prayer of the petitioner for interim relief.

10. *Per contra*, Mr.Kumar, learned advocate for the respondents [who joined the hearing through the virtual platform] contended that although the final order of removal from service passed by the disciplinary authority could not be served on the petitioner personally, since she was on leave, such order has been e-mailed to the petitioner at the e-mail address indicated in the original application.

11. Hearing such a submission, we called upon Mr.Kumar to tender, through e-mail, the order of removal said to have been passed against the petitioner. After seeking a short

adjournment, Mr.Kumar has tendered the relevant documents, which are taken on record and marked as 'X' for identification.

12. On perusal of the tendered documents, we find that the disciplinary authority of the petitioner has indeed ordered her removal from service for the reasons recorded in support of imposition of penalty for misconduct committed by her. The order of the disciplinary authority appeared to us to be undated. However, our attention was drawn by Mr.Kumar to a document contained in Form No. WR C 219 F R/2 [being a Notice of Imposition of Penalty (NIP) under Rule 6 of the Railway Servants (Discipline and Appeal) Rules 1968] signed by the disciplinary authority on 23rd June 2021. The said form also contains a column, whereupon acknowledgment of the employee, to whom the notice is addressed, is required to be obtained. The column is blank, which suggests that the petitioner's contention of she not having been served the final order of removal being correct.

13. We need not examine the merits of the rival claims at this stage since the original application is pending before the Tribunal. However, the disturbing feature that has attracted our attention is that the Tribunal was prevented by the respondents on 22nd June 2021 from considering the petitioner's prayer for interim relief based on a contention that the final order had already been made which, we find, not to be correct as per the records. Since the respondents have taken recourse to knavery to prevent a decision from the Tribunal on interim relief as prayed for by the petitioner, we severely condemn such action of the respondents. We also

record that having regard to the requirements of the Form, which appears to be a statutory form, acknowledgement of receipt of the notice of imposition of penalty is required to be endorsed by the noticee and in the absence of any endorsement of the petitioner acknowledging receipt of such notice, it cannot be contended with any degree of conviction that the final order of removal has taken effect. We may, in this connection, refer to the decision of the Supreme Court in the case of ***State of Punjab vs. Amar Singh Harika*** reported in AIR 1966 SC 1313, wherein it has been held that "*mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned*". The distinction between an order of dismissal and an order of removal is well known and bearing in mind such distinction, it makes no difference that in the present case an order of removal, and not an order of dismissal, has been made. Since the effect of both, i.e., an order of dismissal and an order of removal, is termination of service, we are inclined to hold that till such time receipt of the notice of imposition of penalty in Form WR C 219 F R/2 is either acknowledged by the petitioner either by putting her signature or her left-hand thumb impression thereon, or the notice is sent by post to the petitioner, the relevant order of removal cannot be regarded to have taken effect. We also hold that in the facts of the case as there is a specific form prescribed to serve an order of termination on the employee, mere forwarding of such notice by e-mail cannot be a substitute for the prescribed procedure; and, till such time the procedure is amended to include service of notice by e-mail,

the respondents would not be justified in claiming that the requisite notice/relevant order has been served.

14. Before parting, we wish to record that proceedings before this Court could have been avoided if the Tribunal had not adopted a flawed procedure. The least that was expected of the Tribunal was to require the respondents to produce a copy of the final order of removal, instead of blindly relying on the submission that it had been passed. As we have presently seen, the final order was not in existence on the date the Tribunal passed the impugned order. The Tribunal ought to have realized that without the copy of the order being produced before it by the respondents, its finding that "*the respondents have issued final order*" is one without evidence and, thus, perverse.

15. In such view of the matter, the impugned order of the Tribunal dated 22nd July 2021 is set aside. We direct *status quo ante*, as on 22nd June, 2021, meaning thereby that the petitioner shall be deemed to be in service till such time the Tribunal finally decides the original application on merits. The Tribunal having fixed 28th July 2021 for final arguments, we request the Tribunal to commence final hearing of the original application on that date without acceding to any request made on behalf of any of the parties for adjournment and to decide the same, in accordance with law, as expeditiously as possible thereafter.

16. Needless to observe, all other contentions on merits of the rival claims are left open for being urged before the Tribunal for a decision by it.

17. The writ petition stands allowed, to the extent mentioned above. No costs.

SALUNKE
J V

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SALUNKE J V
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(G. S. KULKARNI, J.)

(CHIEF JUSTICE)