Neutral Citation No. - 2024:AHC:26802-DB

Reserved
AFR

Court No. - 29

Case :- WRIT - A No. - 17190 of 2021

Petitioner :- Mohammad Sabir

Respondent :- Union Of India And 6 Others

Counsel for Petitioner :- Vinod Kumar

Counsel for Respondent :- Rajnish Kumar Rai,Gopal Verma

Hon'ble Vivek Kumar Birla,J.

Hon'ble Donadi Ramesh,J.

(Per Hon'ble Donadi Ramesh, J.)

1. Heard Sri Vinod Kumar, learned counsel for the petitioner and Sri Gopal Verma, learned counsel for the respondents.

2. Present petition has been filed aggrieved by the order of Central Administrative Tribunal Bench, Allahabad dated 05.04.2021 in Original Application No. 978 of 2010 (Mohammad Sabir Vs. U.O.I. and Others).

3. The petitioner has filed the original application assailing the order dated 1.4.2010 of the respondents herein. The petitioner while working on the post of Khalasi/Helper in Railways, the respondents have issued a memorandum of charge on 11.9.2008 proposing to initiate major penalty. Consequent on the said charge, an inquiry officer was appointed and the date 15.6.2009 was fixed for inquiry proceedings. On the said date, the petitioner appeared before the inquiry officer and the charge memo was read over to him and his statement was recorded. Thereafter, the inquiry report was submitted by the inquiry officer finding the petitioner guilty of the charges. Based on the above, the disciplinary authority have issued proceedings on 30.11.2009, imposing punishment on the petitioner of his

removal from service.

4. Aggrieved by the said order, the petitioner preferred a department appeal on 9.12.2009, which was decided by the order dated 1.4.2010 recording a clear finding that the petitioner is a habitual of absenting himself unauthorizedly and he has absented himself by total number of 801 days unauthorizedly. Accordingly, the punishment was affirmed. Assailing the said orders, he preferred the original application before the Central Administrative Tribunal, Allahabad.

5. The petitioner has raised several grounds before the Tribunal mainly on the ground that Rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968 (hereinafter referred to as the 'Rules') have not been followed by the inquiry officer while conducting the inquiry. Though, the inquiry officer, Mr. Deena Nath Singh was appointed, but there is no mention as to who appointed Mr. Deena Nath Singh. No letter regarding appointment of inquiry officer was delivered to the petitioner. Based on the statement recorded on 15.6.2009, the inquiry officer has submitted the report on 22.6.2009, which is a non-speaking, vague and cryptic. No witness was examined during the inquiry proceedings. No documentary evidence was examined and the petitioner was not provided any opportunity to cross-examine any witness during the inquiry proceedings. Finally, the punishment order of removal from the service is harsh punishment and disproportionate to the charges leveled against the petitioner.

6. To support his contention, the petitioner has relied on the judgments rendered by the Apex Court in cases of **Hardwari Lal Vs. State of U.P. and others decided on 27.10.1999, Union of India Vs. Mohd. Ramzan Khan, 1991 (1) SCC 588 and Ram Chander Vs. Union of India, SCC 1986 (3) 103**.

7. Replying to the said averments/allegations, the respondents have filed

counter affidavit by denying that the petitioner has been given proper opportunity of hearing during the inquiry proceedings and no violation of principles of natural justice is done and the petitioner was given ample time and opportunity to give reply to the charge-sheet, but he has not given any reply. Moreover, in his statement recorded before the inquiry officer, he has admitted the fact that he has gone out of station on 16.12.2007 without informing the senior officers and he had returned to his duty on 3.9.2008. To support his contentions, he mainly relied upon the statement recorded during the inquiry proceedings. The extracts of which is given below:

> *"आरोप– आप दि० 17.12.07 से 02.09.08 तक अनाधिकृत रूप से अनुपस्थित रहें इससे यह स्पष्ट होता है कि आपकी रूचि रेल सेवा में नहीं है। इस प्रकार आपने रेल सेवा आचार संहिता 1966 के नियम–3 के अपनियम I, II, III के अधिनियमों का उल्लंघन किया है।*
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> *1. नाम– मो० साबिर*
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> *बयान– मैं दिनांक 16.12.07 को रेस्ट में घर गया था कि देखा कि मेरी पत्नी की तबियत बहुत खराब है। उसका उपचार 14.12.07 से डॉ० ए०के० नारायन क्लीनिक चाकन्द बाजार गया (बिहार) में चल रहा है। यह हिस्टिरिया रोग से ग्रसित थी तथा पागलों जैसा व्यवहार कर रही थी। मेरे घर में कोई पुरुष सदस्य न होने के कारण मैं उसके उपचार कराने के बाद जब वह 31.08 को ठीक हुई तो मैं 03.09.08 को ड्यूटी हेतु आया। मैं इसकी सूचना करीब अनुभाग अभियंता (लोको)/मुगलसराय के पास दिनांक 01.06.08 को रजिस्टर्ड पत्र द्वारा दिया था।"*

8. Based on the above facts, the Tribunal has framed the issue whether the inquiry proceedings have been vitiated due to the reason that several provisions of Rule 9 of the Rules, 1968 were not followed by the inquiry officer as quoted by the petitioner. Considering the above facts, the Tribunal has passed the following order:

> *"16. The applicant He has also admitted that he had left station without taking any leave. When he was asked that he is habitual of*

becoming absent unauthorizedly, he admitted this fact also, but stated that due to illness of his wife, he has to be absented repeatedly. He has also admitted the fact that he did not make any effort to consult any doctor of Railway hospital for treatment of his wife. Thus, a perusal of statement of the applicant clearly shows that he himself has admitted all the charges levelled against him.

17. The basic principle of law is that "facts admitted need not to be proved", The requirement to prove or examine any documentary or oral evidence, could have arisen in case the O.A. No.330/00978/2010 Page 8 of 8 applicant had not admitted the charges levelled against him. Therefore, if he was not given any opportunity to cross examine the witnesses or witness was not produced, it will not make any difference in view of his admission.

19. In view of the above, we do not find any illegality or irregularity in the enquiry proceedings. The judgments cited by the learned counsel for applicant are not applicable in the present case, because in the present case, the applicant himself has admitted the allegations that he had left the station without any leave application and he had informed the higher officer after 7 months from that. He has also admitted that he did not consult any doctor from Railway Hospital and he often use to become absent unauthorizedly without giving any information to the higher officer. Although, he has stated that he has to do all this, because of illness of his wife."

9. Aggrieved by the abovesaid order, present writ petition has been filed.

10. Learned counsel appearing on behalf of the petitioner has contended that the Tribunal has failed to appreciate the legal contentions raised by the applicant therein, in fact, he has specifically contended that the respondents have not followed Rule 9 (9) (c), Rule 9 (13) (2) (I), Rule 9 (14), Rule 9 (17), Rule 9 (20), Rule 9 (22) and Rule 9 (25) .

11. As per the above quoted Rules, more specifically Rule 9(14) of the

Rules, 1968 provides for fixing date in inquiry after one month from the date of nomination of an assisting railway servant and Rule 9 (17) provides for examination of witness and cross-examination by delinquent employee, but in the instant case, no witnesses were examined by the inquiry officer and no opportunity was given to the petitioner to cross-examine the witness. Hence, it vitiates the procedure contemplated in the above said Rules. Further, learned counsel for the petitioner relied on Rule 9 (22). As per above said rule, an opportunity to delinquent employee to submit his defence statement after closing the inquiry proceeding, but in the instant case, no opportunity was given to the petitioner. Hence, the punishment order imposed by the respondents vide order dated 11.9.2008 and the appellate order dated 1.4.2010 vitiates the rules contemplated above.

12. More particularly, learned counsel for the petitioner has vehemently submitted that after issuing charge memo without conducting a proper inquiry and giving opportunity, the inquiry officer has called the petitioner and recorded statement on 15.6.2009 and based on the said statement, has submitted his report without supplying the same to the petitioner, which is contrary to Rule 9 (22) and Rule 9 (25). According to the said rule, show cause notice has to be issued with the inquiry report, has not followed in the instant case.

13. In support of his contention, learned counsel for the petitioner has relied on the judgment of the Apex Court passed in case of **Union of India and Others Vs. Dinanath Shantaram Karekar and Others, (1998) 7 Supreme Court Cases 569 and State of U.P. Vs. Saroj Kumar Sinha, JT 2010 (1) SC 618**. Further, he relied on the judgment of the Apex Court in case of **Krushnakant B. Parmar Vs. Union of India and another, (2012) 3 Supreme Court Cases 178.** Relevant paragraph as contained in the case of **Union of India and Others (supra)**, reads as follows:

> *"4. So far as the service of show cause notice is concerned, it also*

cannot be treated to have been served. Service of this notice was sought to be effected on the respondent by publication in a newspaper without making any earlier effort to serve him personally by tendering the show cause notice either through the office peon or by registered post. There is nothing on record to indicate that the newspaper in which the show-cause notice was published was a popular newspaper which as expected to be read by the public in general or that it had wide circulation in the area or locality where the respondent lived. The show-cause notice cannot, therefore, in these circumstances, be held to have been served on the respondent. In any case, since the very initiation of the disciplinary proceedings was bad for the reason that the charge sheet was not served, all subsequent steps and stages, including the issuance of the show-cause notice would be bad."

14. Relevant paragraph as contained in the case of **State of U.P. Vs. Saroj Kumar Sinha,**, reads as follows:

21. We have noticed at some length the sequence of events and the efforts made by the respondent to receive copies of the documents which were relevant for the preparation of his defence in the departmental inquiry. As noticed earlier all the requests made by the respondent fell on deaf ears. In such circumstances, the conclusions recorded by the High Court were fully justified.

27. Apart from the above by virtue of Article 311(2) of the Constitution of India the departmental inquiry had to be conducted in accordance with rules of natural justice. It is a basic requirement of rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceeding which may culminate in a punishment being imposed on the employee.

28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind.

The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of Shaughnessy v. United States, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied."

15. Relevant paragraph as contained in the case of **Krushnakant B. Parmar (supra)** reads as follows:

"16. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant. The question whether `unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant."

16. According to the above law laid down by the Apex Court, service of notice has to be effected on the petitioner, if he is not available, the same has to be published in newspaper, but in the instant case, nothing has established. Hence, as per the above judgment, the respondents have failed to issue show cause before imposing the punishment order.

17. As contended in the instant case, respondents have not supplied any documents which are based for initiation of the charges against the petitioner, which is mandatory as per rules and above mentioned judgments of the Apex Court. The respondents failed to appreciate the procedure contemplated under the rules. Hence, requested to set aside the punishment order dated 30.11.2009 and the appellate order dated 01.04.2010.

18. Replying to the above said contentions, learned Standing Counsel has submitted that this fact has brought to the notice of the Court about the sole charge framed against the petitioner, which is as follows:

> *"आप दिनाँक 17.12.07 से 02.09.08 तक अनाधिकृत रूप से अनुपस्थित रहे। इससे यह स्पष्ट होता है कि आपकी रूचि रेल सेवा में नहीं है।*
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> *इस प्रकार आपने रेल सेवा आचार संहिता 1966 के नियम–3 के उपनियम I, II, एवं III के अधिनियमों का उल्लंघन किया है।"*

19. The above charge has been issued to the petitioner for unauthorized absence from duties from 17.12.2007 to 02.09.2008. Based on the above charge, charge memo was issued on 11.9.2008. Despite receipt of the said charge, the petitioner has not shown any interest to submit his defense or explanation. As he failed to submit any explanation, it was incumbent on the inquiry officer to fix a date for his appearance in the inquiry. Accordingly, 15.6.2009 was the date fixed for inquiry and his statement was recorded. The relevant portion of the statement made by the petitioner in the report, reads as follows:

" मेरी पत्नी की तबीयत खराब होने के कारण मैं उसका उपचार कराना उचित समझा। घर में कोई पुरुष सदस्य न होने के कारण उनके पागलों जैसा व्यवहार के कारण मैं उन्हीं की देख–रेख में लगा रहा हूं। जिसकी समय पर सूचना भी नहीं दे पाया। मानसिक रूप में विक्षिप्त होने के कारण मैं उनको छोड़ कर नहीं जा सकता था। इसके लिए मैं अपने को दोषी नहीं मानता हूँ। जाँच चाहता हूँ। "

20. To support his contention, learned Standing Counsel has relied on Clause 4 and 5 of the Standard Form of Charge-sheet issued to the petitioner on 11.9.2008, which reads as under:

"4. Shri…….. is hereby directed to submit to the undersigned (through General Manager ……...Railway) a written statement of his defence (which should reach the said General Manager) within ten days of receipt of this Memorandum, if he does not required to inspect any documents for the preparation of this defence, and within ten days after completion of inspection of documents if he desires to inspect documents and also---

(a) to state whether he wishes to be heard in person; and

(b) to furnish the names and addresses of the Witness, if any, whom he wishes to call in support of his defence.

5. Shri……. Is informed that an inquiry will be held only in respect of those article of charge as are not admitted. He should, therefore specifically admit or deny those article of charges. "

21. On perusal of the above said clauses, it clearly indicates that written statement of his defence has to be submitted within ten days of receipt of memorandum, but in the instant case, even on perusal of the original application filed by the petitioner or contention of learned counsel for the petitioner clearly discloses that the petitioner has not submitted any explanation as contemplated in clause 4 of the charge sheet. Furthermore, clause 5 clearly stipulates that an inquiry will be held only in respect of those articles of charge are not admitted. But in the instant case, sole

charge was framed against the petitioner, which is for continuously unauthorized absence from 17.12.2007 to 02.09.2008 and the said charge was admitted by the petitioner in his statement recorded on 15.6.2009. Hence, once the charge is admitted, there is no necessity to conduct any further inquiry with regard to the admitted charges.

22. Apart from the above, on perusal of the removal order, it is evident that the petitioner has absented himself from duties for 319 days in 2005, 44 days in 2006, 67 days in 2007 and 261 days in 2007-08. It clearly discloses that the petitioner is habitual absentee from the duties. Moreover, in the impugned order clearly indicates that the inquiry report has been supplied to the petitioner on 8.7.2009 and no reply/explanation has been submitted by the petitioner. Hence, contentions of the petitioner is not supported by any material, which is vague and baseless.

23. In view of the above said facts, learned counsel for the respondents further submitted that the respondent authorities have followed due procedure as contemplated under the rules and also the format given in the articles of charges. Considering the same, the Tribunal has rightly dismissed the original application filed by the petitioner and there is no ground to interfere with the orders impugned in the writ petition. Accordingly, requested for dismissal of the same.

24. Considering the submissions made by learned counsel for the parties and perusal of the record, no doubt the petitioner has filed the original application assailing the orders dated 30.11.2009 and 1.4.2010 but there is no averment in the original application with regard to the submission of his reply to the charge memo issued on 11.9.2008 and the inquiry report has not been supplied to the petitioner without having any substantial basis and the averment in the pleadings, learned counsel for the petitioner has contented that the respondents have not followed the Rules, 1968. Bare perusal of the charge memo and the statement recorded by the inquiry officer clearly discloses that the petitioner has

admitted the charge, and once, he has admitted the charge as per the standard format of charge-sheet, there is no requirement of further inquiry, but in the instant case, the fact remains that the respondents have issued charge memo to the petitioner, despite receipt of the charge memo, the petitioner has failed to submit any explanation within stipulated time. Hence, left with no option, the respondents have issued a notice for appearance on 15.6.2009 for inquiry, and accordingly, they have recorded the statement of the petitioner. On perusal of the statement recorded by the inquiry officer, it clearly discloses that he has accepted the charge and when once charge is accepted, other procedure may not be required to the followed by the authorities. Apart from that the impugned order clearly discloses that the respondents have supplied a copy of inquiry report to the petitioner on 8.7.2009, but the same was not specifically denied by the petitioner. Hence, taking the admitted fact into consideration and the case laws, which are being relied by the petitioner, would not be applicable in the instant case.

25. As the petitioner is a habitual absentee from his duties since 2007-09 and he was absent about 600 days. In view of the aforesaid circumstances, the Tribunal while taking the facts of the case and case laws into consideration, has rightly dismissed the original application filed by the petitioner.

26. Hence, we are of the considered opinion that there is no good ground to interfere with the impugned order passed by the Tribunal.

27. The writ petition lacks merit and is, accordingly, dismissed.

Order Date :- 19.02.2024

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