

(2019) 07 CAT CK 0032

In the Central Administrative Tribunal

Case No : Original Application No. 3032 Of 2017

Amit Kumar

APPELLANT

Vs

Union Of India Through And Ors

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Citation : (2019) 07 CAT CK 0032

Hon'ble Judges : S.N. Terdal, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : M.S. Saini, Amit Sinha, R.V. Sinha

Final Decision : Partly Allowed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant has filed this OA seeking the following relief(s):-

â??(1) To call for the records of the Disciplinary Proceedings.

(2) To quash and set aside the order dated 10.03.2017 passed by the Disciplinary Authority thereby imposing a very harsh penalty of â??Removal

from Serviceâ?? based on the Inquiry held in gross violation of the Rules and the principles of natural Justice.

(3) To quash and set aside the order dated 25.04.2017 passed by the Appellate Authority, in view of the Rule that no person can be judge in his own

case;

(4) To quash and set aside the charge memo dated 13.12.2016 issued by the D.A. with pre-determined and biased mind at the behest of his superior,

the Controlling Authority of the applicant.

(5) To direct the respondents to allow the applicant to join duty treating the

period of absence from 25.09.2016 to 20.10.2016 as per rules.

(6) To pass order/(s) as the Honâ??ble Tribunal may deem fit and appropriate.â??

2. The facts of the case as submitted by the applicant are that he was appointed as Fresh Face Substitute Telephone Attendant-cum-Dak Khalasi

(TADK) attached to the Executive Director/Track-2 on 11.12.2015 in Research Design and Standard Organisation (RDSO), Lucknow. He was given

temporary status on completion of 120 days on 25.04.2016. Subsequently, in view of his sickness, he left the workplace on 25.09.2016 and for his

hometown, Mathura. Further, he remained under treatment of a private medical practitioner. The Respondent No. 3, i.e., his Controlling Authority,

Executive Director/Track- 2, sent him a letter dated 30.09.2016, alleging that he left the workplace without intimation and directing him to submit his

explanation, failing which, disciplinary action will be initiated against him. It was also indicated that his unauthorized period of absence will be treated

as without pay. The applicant submitted his explanation vide his application dated 08.10.2016, explaining the position and further requesting that he be

granted leave up to 13.10.2016. His Controlling Officer (Respondent No. 3) vide letter dated 14.10.2016, advised him that he should have taken

treatment in the Railway Hospital and that this act of indiscipline by him warrants disciplinary action.

3. His explanation was rejected by the Controlling Authority and he was advised that in view of the applicant absconding from duty, disciplinary action

will be taken against him. He was subsequently issued a major penalty charge sheet and an Inquiry Officer was appointed. The applicant submitted his

explanation to the charge memorandum and, thereafter, also participated in the disciplinary enquiry. On the report submitted by the Inquiry Officer, the

disciplinary authority passed the impugned order dated 10.03.2017 of removal from service w.e.f. 02.03.017. The appeal submitted by the applicant

was rejected by the Appellate Authority. It is also submitted that the Executive Director/Track -2, with whom the applicant was attached and who

was his Controlling Authority also acted as his Appellate Authority, which is not permissible and is against the principles of natural justice. It is also

mentioned that his revision petition is pending disposal by the Revisionary Authority. The applicant has sought relief in terms of quashing and setting

aside the impugned order dated 10.03.2017 passed by the disciplinary Authority,

imposing the penalty of removal from service and also quashing and setting aside the order dated 25.04.2017 passed by the Appellate Authority.

4. In the counter affidavit filed by the respondents, it is submitted that the applicant was appointed as Fresh Face Substitute Telephone Attendant-cum-Dak Khalasi and was attached with Executive Director/Track 2, RDSO, Lucknow. At the time of his appointment, the applicant had given an undertaking (Annexure R-1) on 03.12.2015 regarding his conduct and service condition, which reads as under (translated from Hindi):-

Declaration: I hereby declare that I am willing to work at the post of Telephone Attendant cum Dak Khalasi under the under mentioned Officer.

My appointment is purely on adhoc basis till I am regularized after due screening. I shall be appointed for 4 months in the first stage. After that, my

services shall be expanded quarterly on the basis of my work efficiency report submitted by the concerned officer. I also accept that if it comes into

the notice of the concerned officer that I am careless towards my duties or misbehaved or not deserving for the post on account of any reason or the

concerned officer does not require my services in future, then I can be removed from services without any prior information. In these circumstances, I

shall not have any specific right/claim to any other optional post in railways. I also accept that I shall continue working with the new coming officer as

per the orders of administration if requires after the present officer. I have read the recruitment and service conditions for appointment of T.A.D.K.

applicable in R.D.S.O. and they are acceptable to me and I promise to ensure compliance of the same. I have filled the form Form D and shall

ensure its compliance.

Also, the item (iv) of the appointment letter issued to the applicant dated 07.12.2015 (Annexure R-2), reads as under (translated from Hindi):-

While working on the post of Substitute TADK, if it is found that you have expressed unwillingness towards your duties or misbehaved with

anybody or you are absent or there is no requirement of your services to the concerned officer or the period of the post is over, you will be terminated

from railway service without any prior information in such circumstances.

5. The respondents in their counter reply opposed the OA. It is submitted that the applicant was unauthorizedly absent from duty since 25.09.2016 and

failed to report on duty and also failed to go to the authorized railway hospital for

his treatment. Accordingly, the disciplinary action was initiated against him and a major penalty charge sheet was served on him vide order dated 13.12.2016. The case was referred to the Inquiry Officer. The inquiry was conducted and the disciplinary authority after considering the enquiry report dated 30.01.2017 and the representation of the applicant dated 17.02.2017, imposed the punishment of removal from service w.e.f. 02.03.2017 vide order dated 10.03.2017. Further, the applicant submitted his appeal to the Appellate Authority on 03.04.2017. The Appellate Authority considered the appeal and vide order dated 25.04.2017 upheld the punishment of removal from service imposed by the disciplinary authority. The applicant, thereafter, submitted revision petition dated 12.05.2017 to the Revisionary Authority, which also upheld the decision of the disciplinary authority vide order dated 01.09.2017.

6. Respondents have reiterated that the applicant was given all reasonable opportunities for presenting his case. The punishment imposed by the disciplinary authority, has been upheld by the Appellate and the Revisionary Authority. In the rejoinder submitted by the applicant, points mentioned in the O.A. are highlighted. It has also been accepted that his revision petition has also been decided by the Revisionary Authority. It has, however, been reiterated that his Controlling Authority, i.e., Executive Director/Track-2 has also acted as Appellate Authority, which is against the principles of natural justice.

7. We heard Mr. M. S. Saini, learned counsel for the applicant and Mr. Amit Sinha for Mr. R. V. Sinha, learned counsel for the respondents. We have perused the pleadings and relied upon judgments.

8. The applicant was appointed as a Fresh Face Substitute Telephone Attendant-cum-Dak Khalasi and was attached with the assigned officer. An undertaking was obtained from the applicant (Annexure R-1), wherein he has accepted that (translated from Hindi) "If it comes into the notice of the concerned officer that I am careless towards my duties or misbehaved or not deserving for the post on account of any reason or the concerned officer does not require my services in future, then I can be removed from services without any prior information." In the appointment letter given to the applicant dated 07.12.2015, in item (iv), it is clearly mentioned that (translated from Hindi) "While working on the post of Substitute TADK, if it

is found that you have expressed unwillingness towards your duties or misbehaved with anybody or you are absent or there is no more requirement of your services to the concerned officer or the period of the post is over, you will be terminated from railway service without any prior information in such circumstances.â??

9. In this case the applicant was given temporary status on completion of 120 days. For his unauthorized absence from 29.04.2016, he was issued a major penalty charge sheet. This fact has also been accepted by the applicant that as he was suffering from Fever he had left Lucknow, his headquarters for his hometown, i.e., Mathura. He subsequently obtained treatment from private medical practitioner. He was also questioned by the Controlling Authority, as to why, he did not report to the railway hospital in RDSO, Lucknow or at Mathura and remained absent in an unauthorized manner. His explanation was not found satisfactory and disciplinary proceedings were initiated against the applicant. An inquiry was also conducted.

The Inquiry report was submitted to the disciplinary authority, who decided to impose upon him the punishment of removal from service. The

Appellate Authority, in this case, happened to be the Controlling Authority of the applicant with whom he was working as TADK, rejected his appeal.

The revision petition of the applicant was considered by the Revisionary Authority and the same was also rejected. The applicant has highlighted that

his appeal has been considered by his Controlling Authority, which is against the principles of natural justice and the same should, therefore, be quashed.

10. It is evident from the facts of the case that the applicant was working as TADK in Railways which is a category of staff attached to officers, who

are also their Controlling Authority. In this case the applicant attained the temporary status on completion of 120 days and was extended the

opportunity to participate in the inquiry. Other reasonable opportunities for submission of his explanation and later on appeal and revision appeal were

also provided. It is also settled law that the jurisdiction of the Tribunal to interfere with the disciplinary matter or punishment cannot be equated with an

appellate jurisdiction. The intervention of the Tribunal is limited to judicial intervention to adjudicate if the disciplinary proceedings are consistent with

the rules and is in accordance with the principles of natural justice. It is evident

that in this case a charge sheet was served on the applicant and an inquiry was held. The Disciplinary Authority in his detailed speaking order imposed the punishment of removal from service. The valid point here, where the Tribunal would like to interfere is about the Controlling Authority, i.e., Executive Director/Track -2 with whom the applicant was attached to work and who also acted as the Appellate Authority and decided the appeal of the applicant. Though the disciplinary authority and the Revisionary Authority are different, the very fact that the Controlling Authority of the applicant also decided the appeal is against the principles of natural justice, as â??Nemo judex in causa suaâ??.

11. In view of the above mentioned the order of the Appellate Authority dated 25.04.2017 is quashed and set aside and consequently the order passed by the Revisionary Authority dated 01.09.2017 is also quashed and set aside. It is directed that within 15 days from the receipt of certified copy of this order, the applicant will prefer an appeal to the Appellate Authority, nominated by the Revisionary Authority, other than the one that decided his appeal vide order dated 25.04.2017. The same shall be considered and decided within a period of two months from the date of receipt of such an appeal from the applicant. The OA is partly allowed with the above directions. There shall be no order as to costs.