

**(2008) 01 DEL CK 0184**  
**In the Delhi High Court**  
**Case No : WP (C) 362 of 2002**

Azmat Ali

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 11-01-2008

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16  
Industrial Undertakings (Development and Regulation) Act, 1951 — Section 18AA(1)  
Railway Servants (Discipline and Appeal) Rules, 1968 — Rule 9, 9(18), 9(19), 9(22), 9(9)(a)  
Railway Services (Conduct) Rules, 1966 — Rule 3(1)

**Citation :** (2008) 3 SLJ 42

**Hon'ble Judges :** Mukul Mudgal, J; Aruna Suresh, J

**Bench :** Division Bench

**Advocate :** G.S. Lobana, for the Appellant; Rajender Khattar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Aruna Suresh, J.—The present writ petition challenges the judgment of the Central Administrative Tribunal (hereinafter referred to as the Tribunal) dated 14th September, 2001 in O.A. No. 214/2001 wherein the Tribunal had dismissed the application of the petitioner filed against the punishment of removal by an order dated 7th October, 1995, against the rejection of the Appellate Authority order dated 2nd January, 1996, and the Revisional Authority order dated 24th February, 1997.

2. Briefly narrated the facts of the present case are that the petitioner joined the service of the respondent No. 4 W.M. Shell Progress, RCF Kapurthala, on 3rd October, 1989. He was regularised on 16.4.1990 as Artisan Trainer while working as Painter Grade-III in Bogie Shop of RCF. The petitioner was served upon a charge-sheet dated 16th August, 1995 on 1st September, 1995 under Rule 9 of Railway Service (Discipline and Appeal) Rules, 1968 (hereinafter referred to as the "RSDA Rules") alleging his participation in an illegal designed "Dharna" in Rail Coach Factory in front of Administration Block Gate since 10.8.1995 in

violation of Rule 3(1)(ii) and 3(1)(iii) of Railway Service Conduct Rules, 1966.

3. Petitioner vide letter dated 4.9.1995 requested the respondents to supply him the relevant documents and the documents which were the basis of the charge against him for participating in the illegal Dharna as well as list of witnesses. The respondent No. 4 vide letter dated 7.9.1995 appointed Sh. H.A. Khan, S.S. (Paint) as an Inquiry Officer without waiting for the petitioner's written statement. Subsequently, the petitioner made representation dated 9.9.1995 protesting against the hasty appointment of the Inquiry Officer without giving him requisite clarification/documents as called for in his letter dated 4.9.1995 and also for not giving him any opportunity to submit his written statement.

4. The respondent No. 4 vide letter dated 12.9.1995 replied the petitioner's representation dated 4.9.1995 informing him that he was sitting on Dharna since 10.8.1995. On 12.9.1995 the petitioner was supplied with the copy of workshop superintendent (bogie) memo dated 16.8.1995 mentioning the listed documents in Annexure III to the charge-sheet but refused to supply the list of witnesses as not being relevant.

5. The inquiry proceedings started on 19.9.1995 at 10.00 a.m. and petitioner asked for the supply of the confidential report and report of Welfare Inspector but on 20.9.1995 he was informed that copy of confidential reports could not be supplied. Again a request was made by the petitioner on the same day i.e. 20.9.1995 for clarification as well as for supply of documents. Without being provided with a reasonable opportunity to defend himself or to produce his defence witness or waiting the written brief of petitioner, the Inquiry Officer immediately finalised his inquiry report on 21.9.1995 which was served upon the petitioner vide letter dated 22.9.1995 at 5.05 p.m. As per the inquiry report, the petitioner was on sanctioned leave from 10.8.1995 to 11.8.1995 and thereafter he was unauthorizedly absent from duty from 12.8.1995 to 27.8.1995 and also that petitioner had been participating in the "Dharna".

6. Against this report dated 21.9.1995, petitioner submitted a detailed representation dated 5.10.1995 and pointed out the large scale violation of statutory rules and principles of natural justice. The respondent No. 4 agreeing with the inquiry report of the Inquiry Officer ordered the removal of the petitioner from service with immediate effect vide his letter dated 7.10.1995. Consequently, petitioner submitted an appeal against his removal from service on 25.10.1995 to the respondent No. 3, Deputy CME, Bogie, Kapurthala. However, this appeal was rejected in a mechanical manner vide letter dated 2.1.1996. Against this rejection order, petitioner filed revision application dated 28th January, 1996 to Revisioning Authority (respondent No. 2). The Revisioning Authority took more than one year to decide the review petition and that too on the direction of the Tribunal. The review petition was rejected on 24.2.1997.

7. The petitioner filed original application being O.A. No. 568/1997 before the Tribunal, Chandigarh Bench which was transferred to Principal Bench of Delhi and

was renumbered as O.A. No. 214/2001. The Tribunal dismissed the O.A. No. 214/2001 vide its order dated 14.9.2001 resulting into the filing of the present writ petition before us.

8. Sh. G.S. Lobana, the learned Counsel for the petitioner submitted as follows:

(i) The respondents had completed similar disciplinary proceedings with identical charges and findings in the case of Sh. Mohan Lal, RCF and Sh. Arvind Prasad, RCF and had laid them off with mild punishment. Awarding of any extreme punishment to the petitioner is not only disproportionate but also violative of Articles 14 and 16 of the Constitution of India.

(ii) It is further submitted that the copies of the statements of the witnesses recorded earlier by the respondent were not made available to the petitioner and as such he could not prepare his defence properly. It is violative of both the statutory rules as well as of the principles of natural justice and tantamounts to denial of reasonable opportunity to the petitioner to defend himself. This action of the Inquiry Officer also violates Rule 9(18), 9(19) and 9(22) of the RSDA Rules. Sub-rule 9(a) of Rule 9 of the RSDA Rules provides that on the receipt of the written statement of defence, the Disciplinary Authority shall consider the same and decide whether the inquiry should be proceeded with or not and if it decides to proceed with the inquiry, shall appoint an Inquiry Officer. Non-compliance of these rules by the Competent Authority also violated respondent's own instructions contained in Railway Board Letter No. E (D&A) 83 RG 6-14 of 29th March, 1985, SE 80/85, SC 59/85 WR 94/85 which makes charged officials access to such documents mandatory. Learned Counsel while referring to The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu, further submitted that in a departmental inquiry if any material is sought to be used then copies of that material should be supplied to the party against whom such inquiry is held.

(iii) The petitioner had requested the Inquiry Officer to provide him an opportunity to examine the defence witnesses namely Sh. Mahesh Chander Welder and Sh. Gurmeet Chand Minhas, but the same has been denied by letter dated 21st September, 1995 which is against Rule 9 of RSDA Rules. Further, there were no witnesses as per the charge-sheet who could state that petitioner was participating in the "dharna" since 10th August, 1995.

(iv) The confidential report from CWE and reports of Welfare Inspector which had been relied upon by the Inquiry Officer were not made available to the petitioner despite several requests.

(v) The proceedings against the petitioner had been held in a manner inconsistent with the rules of natural justice and in violation of statutory rules prescribing the mode of enquiry and the conclusion/findings reached by the Inquiry Officer is based on no evidence.

(vi) The Inquiry Officer had established that the petitioner was on unauthorized

leave from 12th August, 1995 till 27th August, 1995 but had made no independent attempt to prove that petitioner was participating in "dharna" which was the main charge against the petitioner. The respondents have thus not carried out the disciplinary proceedings in a manner as required under the RSDA Rules.

(vii) The Disciplinary Authority without applying his own mind, mechanically agreed with the findings of the Inquiry Officer and passed a cryptic, non-reasoned and non-speaking order dated 7th October, 1995. The D.A. moreover, had added one additional charge of violation of Rule 3(1)(i) of Railway Service Conduct Rules which was not part of the charge-sheet, which contained violation of Rule 3(1)(ii) and Rule 3(1)(iii) only. The petitioner filed his detailed appeal of 14 pages which the Appellate Authority rejected by a non-reasoned and non-speaking order of 9 lines. Revision petition was also rejected by the Revision Authority ignoring the pleas raised by the petitioner in the same manner. Learned Counsel for the petitioner has referred to S.N. Mukherjee Vs. Union of India, and Ram Chander Vs. Union of India (UOI) and Others, to support his submissions.

9. Mr. Rajender Khattar, the learned Counsel for the respondent submitted as under:

(a) The petitioner was working as a Painter in Bogie Shop of RCF Kapurthala and participated in an illegal "dharna" in front of Administrative Block Gate from 10th August, 1995. The said "dharna" was declared illegal by General Manager (P) RCF Letter N.Dy.CPO/G/RCF/Personnel/Misc dated 12th August, 1995. The petitioner willfully ignored the said advice and continued participating in the said illegal "dharna". He was issued major penalty memorandum SF5 dated 16th August, 1995. Moreover, the petitioner was unauthorizedly absent from his duty with effect from 12th August, 1995 to 26th August, 1995. For the said misconduct he was also issued another major penalty memorandum dated 22nd September, 1995.

(b) As regards SF5 dated 16th August, 1995, on appointment of an Inquiry Officer vide order dated 7th September, 1995, the inquiry was conducted with effect from 19.9.1995 to 21.9.1995 and copies of all the relied upon and relevant documents were made available to the petitioner and petitioner participated and availed the opportunity to defend his case. In the inquiry the charges were established and the copy of the inquiry report was duly supplied to the petitioner by the Disciplinary Authority vide letter dated 22.9.1995. The representation of the petitioner dated 5.10.1995 was duly considered by the Disciplinary Authority and it was only after hearing the petitioner on the inquiry report, the Disciplinary Authority imposed the penalty of Removal from Service, vide NIP dated 7.10.1995. The penalty of removal from service had been imposed after following due procedure as laid down under rules. The appointment of the Inquiry Officer was in consonance with the rules as contained in Railway Boards Letter No. E (D&A) 83 RG 6-14 dated 29th March, 1985 and 5th December, 1985. Filing of written statement of the delinquent official is not a precondition for appointment

of an Inquiry Officer.

(c) The petitioner availed the remedy of appeal and revision which was duly considered by the Appellate Authority. After giving him personal hearing and after considering the merits of the case, the appeal was rejected and the penalty was upheld. The Competent Authorities i.e. Appellate Authority and the Revisioning Authority followed the due procedure and afforded reasonable opportunity to the petitioner and only thereafter appeal and the revision were dismissed and these orders do not suffer from any legal infirmity.

(d) There was evidence available on the record in the inquiry proceedings inclusive of the independent witnesses indicating that petitioner was on unauthorized absence and he also participated in illegal "dharna" during the period when he was away from his duty with effect from 10.8.1995. Furthermore, the petitioner's continued unauthorized absence from the duty and his availability at the "dharna" place further preponderates the unabated participation in the said "dharna". Thus there was positive evidence that the petitioner was on unauthorized absence. The petitioner was given fair and sufficient opportunity to cross examine the witnesses for the prosecution (department) and produce his defence which he availed of.

(e) The confidential reports were not provided to the petitioner but they are not substantial evidence to prove the charges and therefore no prejudice has been caused to the petitioner for non-supply of the confidential reports and not providing of the said confidential reports to the petitioner did not vitiate the inquiry.

10. Undisputedly, the petitioner was not supplied with the confidential reports. This resulted into the petitioner failing in preparing his written statement or defence properly, These lapses and denial on the part of the respondents in not providing the petitioner with the copies of the documents, statement of witnesses and the list of witnesses is violative of both the statutory rules as well as of the principles of natural justice.

11. To say that no prejudice was caused to the petitioner when he was not provided with the confidential reports and other documents as sought for is not correct proposition of law and facts.

12. In S.N. Mukherjee Vs. Union of India, , it was observed:

The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fairplay in action". As pointed out earlier the requirement about recording of reasons for its decision by an Administrative Authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by Administrative

Authorities. The rules of natural justice are not embodied rules. The extent of their application depends upon the particular statutory framework whereunder jurisdiction has been conferred on the Administrative Authority. With regard to the exercise of a particular power by an Administrative Authority including exercise of judicial or quasi judicial function the legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the Administrative Authority be recorded and be communicated to the aggrieved party and it may dispense with such requirement. It may do so by making an express provision to that effect.

It was further observed:

For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an Administrative Authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

13. In *Tirlok Nath v. Union of India and Ors.* 1967 SLR 759 (SC), the Supreme Court has observed as follows:

If the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, i.e., documents sought to be relied upon by the Inquiry Officer or required by the public servant for his defence.

It was further observed:

Though the scope of judicial review is limited, but Courts can not sit as silent spectators to a departmental proceeding which has been conducted against the charged official in a manner inconsistent with the statutory rules as also the principles of natural justice. Service Jurisprudence is replete with law that every departmental inquiry will be vitiated where such rules have been violated. In the instant case the respondents admittedly refused to supply the documents despite demand by the petitioner and also categorically denied the opportunity to examine defence witnesses and cross-examine prosecution witnesses as the same was considered to be not relevant, clearly shows that the petitioner was denied a fair and reasonable opportunity to defend himself. The stand of the respondent that the said demanded document was not relied upon is of no consequence and should have been supplied to the petitioner if he so desired for his defence, further the question of relevancy has to be judged from the point of view of the defence and not the Disciplinary Authority.

14. In the *Government of A.P. v. Venkata Rayadu* (supra) in similar circumstances it was observed that it is a settled principle of natural justice that if any material is sought to be used by an Inquiry Officer in the inquiry, then he has to supply the copies of that material to the party against whom such inquiry is held.

15. Similar were the views expressed by the Supreme Court in *State of Gujarat v. Ramesh Chandra Mashruwala* 1977 SLJ 178 and it was observed the rationale

for making available the documents required by the delinquent officer is that it is indispensable for putting forward effectively his defence.

16. From perusal of the record it is not in dispute that documents as demanded were not supplied to and the defence witnesses were not allowed to be examined at all and prosecution witnesses were not allowed to be cross-examined properly. It may be mentioned that the extensiveness of examination is not determined by the number of questions which may be put to a witness as is alleged by the respondents to justify their act and to say that no prejudice is caused to the petitioner. The petitioner was on sanctioned leave (LPA) from 10.8.1995 to 11.8.1995 and thereafter leave from 12.8.1995 to 27.8.1995 was not sanctioned, which could not be communicated to the petitioner. The reasons for this non-communication are not clear, evidently because of failure to give a proper and effective opportunity to the petitioner to examine and cross examine witnesses who deposed the fact that he was absent from duty and was sitting on Dharna (though absence/abscondence from duty was not a charge) and as a consequence whereof he was held guilty of sitting on a dharna. Despite all this, inquiry was completed, which is evident from the documents on record. Further relevancy and irrelevancy of a document or a witness is to be seen from the point of view of the charged official and not the authority. Assuming that the petitioner was served with a copy of the charge-sheet on 16.8.1995 but admittedly even on repeated demands he was not supplied with the demanded documents to prepare a proper defence.

17. In our opinion, the Inquiry Officer proceeded in the manner contrary to the established legal position and also against the relevant instruction in Railway Board Letter No. E (D&A) 83 RG 6-14 of 29th March, 1985. SE 80/85, SC 59/85 WR94/85 in regard to the supply of documents and the list of witnesses requested by the petitioner. In this view of the matter, the refusal by the Inquiry Officer to give to the petitioner the documents required by him and the list of witnesses as per his request clearly amounted to a denial of a reasonable opportunity and vitiates the entire proceedings. A grave error has been done by the respondents which caused serious prejudice to the petitioner and denied him any opportunity to make proper defence. The petitioner was issued charge-sheet dated 16.8.1995 under Rule 9 of RSDA Rules and charges levelled against him were two fold (1) Rule 3(1)(ii) and (2) Rule 3(1) of the Railway Service Conduct Rules. The petitioner, however, was not provided with the memo dated 16.8.1995 namely Annexure III and Annexure IV (list of witnesses) along with the charge-sheet.

18. We also feel that Disciplinary Authority had acted in haste, which is clearly manifested from the proceedings conducted. There was no preliminary meeting among the investigation officer, the presenting officer and the charged officer to lay down the modalities of the inquiry. When the examination of the petitioner began, reference was made to the confidential report on the petitioner's participation in the "dharna". The copy of the said report was not made available

to the petitioner despite repeated requests and the inquiry continued. Sub-rule 9(a) of Rule 9 of the RSDA Rules provides that on the receipt of the written statement of defence, the Disciplinary Authority shall consider the same and decide whether the inquiry should be proceeded with or not and if it decides to proceed with the inquiry, shall appoint an Inquiry Officer. This also violated the respondent's own instructions contained in the Railway Board Letter No. E. (D&A) 83 RG 6-14 of 29th March, 1985, SE 80/85, SC 59/85 WR 94/85 which make the charged officials' access to such documents mandatory.

19. Serious prejudice was also caused to the petitioner by not granting him an opportunity to examine the defence witnesses namely, Shri Mahesh Chander and Gurmit Chand Minhas, which opportunity was denied to the petitioner vide letter dated 21st September, 1995, in violation of Rule 9 of RSDA Rules. As per the charge-sheet there was no witness who had specifically stated that the petitioner was participating in "dharna" since 10th August, 1995. Thus, proceedings conducted by the Disciplinary Authority against the petitioner were against the prescribed rules laid down by the respondents themselves and, therefore, the whole proceeding against the petitioner stood vitiated.

20. The rejection of the appeal of the petitioner by the Appellate Authority dated 2nd January, 1996 and the Review Petition by the Revisioning Authority dated 24th February, 1997 was arbitrary and utterly perverse. In our view, they had rejected the appeal as well as review petition of the petitioner without examining the pleas through non-speaking, cryptic and unreasoned orders.

21. The Hon"ble Supreme Court in the case of Ram Chander v. Union of India (supra), observed as under:

In Swadeshi Cotton Mills v. Union of India, although the majority held that the expression "that immediate action is necessary" in Section 18-AA(1)(a) of the Industrial Undertakings (Development and Regulation) Act, 1951, does not exclude) absolutely, by necessary implication, the application of the audi alterant partem rule, Chinnappa Reddy, J. dissented with the view and expressed that the expression "immediate action" may in certain situations mean exclusion of the application of the rules of natural justice and a post-decisional hearing provided by the statute itself may be a sufficient substitute. It is not necessary for our purposes to go into the vexed question whether a post-decisional hearing is a substitute of the denial of a right of hearing at the initial stage or the observance of the rules of natural justice since the majority in Tulsiram Patel case unequivocally lays down that the only stage at which a Government servant gets "a reasonable opportunity of showing cause against the action proposed to be taken in regard to him" i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is

of utmost importance after the Forty-second Amendment as interpreted by the majority in Tulsiram Patel case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by Tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given.

(Emphasis supplied)

22. Instate of State of U.P. Vs. Shatrughan Lal and Another, , the Apex Court observed that one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental where charge-sheet is issued and the documents which are proposed to be utilized against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. It was further observed that preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial.

23. In any event, even if we proceed on the assumption that the charge was proved, the extreme punishment of removal of the petitioner from the service due to his participation in a "dharna" declared illegal is violated of Articles 14 and 16 of the Constitution at it is discriminating. Respondents had conducted similar disciplinary proceedings with identical charges and findings in the case of Shri. Mohan Lal, RCF and Sh. Arvind Prasad, RCF and had let them off with much milder punishments. Petitioner, therefore, at best could be awarded the same punishment as awarded to the co-delinquents Mohan Lal and Arvind Prasad and the action of the respondents in imposing harsher treatment on the petitioner under these circumstances is not justified especially when no reason has been advanced by the respondent as to why petitioner was liable to harsher punishment as compared to his co-delinquents. The Tribunal has totally ignored this aspect of discrimination in the impugned judgment. Thus, awarding of extreme punishment of removal from service is not only disproportionate but also violative of Articles 14 and 16 of the Constitution of India.

24. The Tribunal had observed in Paragraph 8 of its impugned order as below:

8...We observe certain discrepancies which have occurred in the proceedings like

the non-supply of the note which led to the beginning of the investigation, denial of the request be the applicant for examination of two witnesses. This would have vitiated the proceedings had any prejudice been caused to the applicant. It is on record that the applicant has during the course of inquiry examined and cross-examined the witnesses extensively. It can not therefore be said that reasonable opportunity of putting forth his case has been denied. The fact that he was away from duty without sanction is a matter of fact and it has been deposed by the witnesses that he was seen at "Dharna" which was an illegal activity. Therefore, both the ingredients of the charge-sheet stand proved by evidence. Therefore inspite of short comings in the procedure, which were avoidable, there has been no denial of justice and the applicant can not have a legitimate ground for complaint. Keeping in view the gravity of the charges against him, which are proved, we do not think the punishment of removal imposed on him, is harsh so as to shock the judicial conscience.

25. In our view, the Tribunal erred in appreciating that the whole process of conducting the inquiry became per se illegal, once the Inquiry Officer had gone beyond the ambit of the established legal position while not providing a reasonable opportunity to the petitioner to put forward his case by failing to supply the documents relied upon and the list of witnesses on which he had relied upon merely on the ground that cross-examination was permitted. In our view, the CAT has completely misapplied the mandatory duty to supply relevant documents by considering the right of cross-examination as an adequate substitute. Thus, the whole procedure for conducting an inquiry has been violated and the order of removal of the petitioner from service is void-ab-initio and being contrary to the established proposition of law and principles of natural justice.

In view of the above, the judgment of Tribunal dated 14th September, 2001 is set aside and the writ petition is allowed. The respondents are directed to take back the petitioner into the service with effect from the date of his removal from service, i.e., 7th October, 1995 with all the notional consequential benefit on or before 14th February, 2008. In the facts of the case, we are satisfied that since the petitioner had not worked from the date of dismissal 7th October, 1995 till 11th January, 2008 he shall not be entitled to any back wages for the period, provided the reinstatement is made on or before 14th February, 2008. In case of non-compliance of the order within the stipulated time, the petitioner shall be entitled to 25% of the accrued back wages payable on or before 14th March, 2008.