
(2025) 01 CAT CK 1558

In the Central Administrative Tribunal, Allahabad Bench, Allahabad

Case No : Original Application No. 284 Of 2012

Hinchhu & Ors.

APPELLANT

Vs

Union Of India Through General Manager, North Central
Railway, Head Quarters Office. Allahabad & Ors.

RESPONDENT

Date of Decision : 23-01-2025

Acts Referred:

Railway Servants (Discipline & Appeal) Rules, 1968 — Rule 9, 9(21)

Citation : (2025) 01 CAT CK 1558

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : S. K. Kushwaha, Saurabh

Final Decision : Allowed

Judgement

Om Prakash VII, Member (J)

1. Shri S. K. Kushwaha, learned counsel for the applicant and Shri Saurabh, learned counsel for the respondents, are present and heard.

2. The instant original application has been filed seeking following relief:

"a) Issue an order or direction in the nature of certiorari quashing the major penalty charge sheet (SF-5) dated 25-01-1996 A- 1], Show Cause Notice dated 16-12-2009 2009 and the Enquiry Report dated 11-3-1996 (A-2]; Order of Removal from service dated 03-03- 2010 passed by Asstt. Divisional Engineer, N. C. Rly., Chunar [A-3] and the Appellate Order dated 10-09-2010 passed by Sr. Divisional Engineer-I, N. C. Railway, Allahabad [A-4]..

b) Issue an order or direction in the nature of mandamus directing the respondents to put the applicant back to duty immediately with full back wages and interest thereon on the market rate and regularise the entire period from the date he reported for duty after his leave from 16-08-1995 to 12-01-1996 with all the consequential benefits;

- c) Issue an order or direction in the nature of mandamus directing the respondents to sanction leave of the applicant from 16- 08-1995 to 12-01-1996 with consequential benefits;
- d) Pass any other or further order which this hon'ble court may deem fit and proper in the circumstances of the case;
- e) Award cost of the O. A. and other legal expenses.

3. The brief facts of the case are that the original applicant was serving under the respondents' department as Gangman at Chunar at the relevant point of time. He remained absent from service from 16.08.1995 to 12.01.1996. Thereafter a major penalty charge sheet (SF-5) was served on 25.01.1996 to the original applicant. The original applicant submitted his reply on dated 09.02.1996 mentioning therein that his absence during the aforesaid period was not willful but it was on account of serious illness of his wife and due to this reason he could not perform his official duty. It was also mentioned that no relied upon document was disclosed in the charge sheet nor a copy of the charge sheet was served to the original applicant. The original applicant participated in the enquiry proceedings but the same was concluded in the single day and punishment of the removal from service was imposed upon the original applicant by the disciplinary authority. The original applicant filed an appeal which was also dismissed, thereafter he preferred revision, which too was dismissed. Then the original applicant filed O.A. no. 1306/2004 before this Bench, which was allowed on dated 28.10.2009 setting aside the orders passed by disciplinary authority, appellate authority as well as revisional authority with the observation that a copy of the enquiry report be supplied to the applicant and thereafter to pass an appropriate order after affording an opportunity of hearing to the original applicant. In pursuance of the direction given in the aforesaid O.A., a copy of the enquiry report was supplied to the original applicant and thereafter applicant passed an order of removal of original applicant from service. The original applicant preferred appeal which was also dismissed. Thus, the applicant has challenged the charge sheet, show cause notice, enquiry report, order passed by the disciplinary authority as well as appellate authority in the instant Original Application. It is also mentioned that the entire enquiry has been concluded in a single day and the procedure prescribed under Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968] have not been followed and opportunity of hearing has not been afforded to the original applicant. Thus prayer was made in the instant O.A. to allow the O.A. and set aside the orders passed by the disciplinary authority as well as appellate authority.

4. Per contra, respondents have filed their Counter Affidavit refuting the facts disclosed in the OA and alleged that the original applicant remained absent from service from 16.08.1995 to 12.01.1996 and no application/information in this respect had been given to the respondents by the original applicant. Since the original applicant remained absent for about 200 days unauthorizedly, he was served a major penalty charge sheet. Original applicant participated in the

enquiry proceedings and direction given in the O.A. no. 1306/2004 has been complied with. Absence of the original applicant from 16.08.1995 to 12.01.1996 was found unauthorised and wilful, thus punishment of removal from service was imposed by the disciplinary authority. original applicant has preferred appeal which was also dismissed finding no substance in it. It is also mentioned that there is no denial of the original applicant regarding his absence during the aforesaid period, thus enquiry was concluded in accordance with law and adhering the principle of natural justice. Thus prayer was made to dismiss the instant original application.

5. A rejoinder affidavit has also been filed by the applicant in which same facts have been reiterated as has been mentioned in the O.A.

6. We have heard the learned counsel for the parties.

7. Submission of learned counsel for the applicant is that although O.A. no. 1306/2004 was decided by setting aside the orders passed by the disciplinary authority, appellate authority as well as revisional authority, the procedure prescribed under Rule 9 of the [The Railway Servants (Discipline & Appeal) Rules, 1968] have not been followed by the respondents in this matter. He further argued that charge sheet was served upon the original applicant on dated 25.01.1996 and enquiry proceedings was started on 11.03.1996 and no opportunity was given to the original applicant to appoint his defence assistant. It is also argued that enquiry has been concluded in a single day, i.e. on 11.03.1996 which itself make it clear from Annexure (A-2). Referring to the provision of Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968], it was further argued that the original applicant has not examined himself in the enquiry as witness thus, it was incumbent upon the enquiry officer to examine /interrogate to the original applicant by taking recourse to the provision of Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968] which is a mandatory provision. Non-adherence of the aforesaid provision has vitiated the entire disciplinary proceedings. It was further argued that on this ground alone orders passed by disciplinary authority as well as appellate authority are liable to be set aside. To substantiate his submission, learned counsel for the applicant referred to the provision of aforesaid rule and further argued that the enquiry officer has also violated the principle of natural justice by not affording the fair opportunity of hearing. He further submitted that mere compliance of the direction given in the earlier O.A. filed on behalf of the original applicant will not absolve the enquiry officer from adhering to the provision of the Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968] as well as principle of natural justice. Thus, argued to allow the instant Original Application and to set aside the impugned orders. In support of his submissions, learned counsel for the applicant placed reliance on the case law of *Moni Shankar Vs. Union of India* and others reported in 2008 AIR SCW 2067.

8. Learned counsel for the respondents argued that the original applicant participated in the enquiry proceedings and there is no denial regarding the

absence period. He further argued that the original applicant was supplied the enquiry report in compliance of the direction of the Tribunal. Since absence was wilful and no information was given to the respondents in this regard, thus disciplinary authority has rightly removed the original applicant from service. Appeal filed against the aforesaid order was also considered meticulously and has rightly been dismissed. It is further argued that no plea regarding adherence of the provision of Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968] has been taken in the first O.A. thus, applicant cannot take this plea at this stage merely on this ground that it is legal plea. It is also argued that O.A. lacks merit and is liable to be dismissed.

9. In rebuttal, learned counsel for the applicant states that legal plea can be raised at any stage and if it is not raised earlier, the applicant will not be estopped from raising this plea orally.

10. We have considered the rival submissions and gone through the entire records.

11. Before discussing the submissions raised across the BAR, it will be useful to quote the provisions of Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968]:-

The inquiring authority may, after the railway servant closed his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him.

12. It will also be useful to quote the law laid down in *Moni Shankar* (supra) case, which is as under:-

18. The Enquiry Officer had put the following questions to the appellant:-

"Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the Enquiry?"

19. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.

24. It is the High Court who posed unto itself a wrong question. The onus was not upon the appellant to prove any bias against the RPF, but it was for the department to establish that the charges levelled against the appellant.

25. The High Court also committed a serious error in opening that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied from the said opportunity".

13. It will also be useful to quote the enquiry report dated 11.03.1996, which is as under:-

14. In this matter, as is evident from the record that first O.A. filed on behalf of the applicant was allowed and orders passed by the disciplinary authority, appellate authority as well as revisional authority were set aside and respondents complying with the direction given in the said O.A. have passed the fresh orders of removal by the disciplinary authority as well as appellate authority. It is pertinent to mention here that plea of adherence of provision of Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968] is mandatory provision as well as legal one and if it is not raised earlier the applicant cannot be estopped from raising the said plea in the present O.A. even in oral argument.

15. The view taken by the Tribunal finds support with the law laid down by the Hon'ble Apex Court in M/s. Sanghvi Reconditioners Pvt. Ltd. vs Union of India & Ors. (AIR 2010 SC 1089) as well as Greater Mohali Area Development Authority & Ors vs. Manju Jain & Ors. (AIR 2010 SC 3817). The legal plea if not pleaded earlier could also be raised orally during the course of argument and Court can take into consideration such plea at the time of final hearing.

16. In this matter it is also evident that charge sheet was submitted on dated 25.01.1996 and inquiry was concluded on dated 11.03.1996 itself on a single day. Nothing is mentioned in the enquiry report as to whether any sort of opportunity was given to the original applicant to explain the incriminating material collected during enquiry under Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968]. As has been held in Moni Shankar (supra) case, the provision of Rule 9(21) of the [The Railway Servants (Discipline & Appeal) Rules, 1968] is of mandatory in nature and non adherence of this provision vitiate the entire proceedings. If this plea is taken into consideration, when enquiry officer has not followed the mandatory provision provided under aforesaid Rule, the inquiry report, orders passed by the disciplinary authority as well as appellate authority stand vitiated and are not sustainable. Accordingly, O.A. on this ground is liable to be allowed. Impugned orders passed in this matter are liable to be set aside. Thus, O.A. on the aforesaid ground is allowed. Enquiry report and impugned orders dated 11.03.1996 and 03.03.2010 are set aside. Since original applicant has died, no further direction could be given to the respondents to proceed further with the enquiry. Since punishment imposed by disciplinary authority and affirmed by the appellate authority have been set aside, thus respondents are hereby directed to extend all the post retiral benefits to the applicant treating the original applicant in service till his superannuation and pension till his death. It is clarified that the applicant will not be entitled for any back wages of the original applicant. This exercise shall be completed within a period of four months from the date of receipt of certified copy of this order. All associated MAs stand disposed off.

17. No costs.