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Central Administrative Tribunal, Principal Bench
Original Application No.208 of 2002

New Delhi, this the 18th day of September, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. M.P. Singh, Member (A)

Shri Hari Shankar
S/o Shri Chittar Singh
Ex. Technician Grade III
Under Divisional Mechanical Engineer,
Northern Railway,
Diesel Shed,
Tughlakabad

.... Applicant

(By Advocate: Ms. Meenu Mainee)

Versus

Union of India, through

1. The General Manager
Northern Railway
Baroda House, New Delhi

2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi

3. Divisional Mechanical Engineer (Diesel)
Diesel Shed
Northern Railway,
Tughlakabad.

.... Respondents

(By Advocate: Shri D.S. Jagotra)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant has been awarded a punishment of removal from service. By virtue of the present application, the said applicant has assailed the order so passed and seeks reinstatement with all consequential benefits.

2. The relevant facts for purposes of the present application are that applicant was working as Helper to Shri Dharam Pal in Shift Tool Room. A memorandum of chargesheet was issued to him primarily on the ground that

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he was responsible for missing of one Vibrator Dumper during his duty hours on 22.10.2000.

3. The learned counsel for the applicant assails the order of removal from service and consequent dismissal of his appeal on the ground (a) the preliminary enquiry report had not been served on the applicant and, therefore, it could not be relied upon by the disciplinary or the appellate authority; (b) the disciplinary as well as the appellate authority have passed non-speaking orders and have considered the fact which was not a part of the charge namely that applicant had absconded intentionally from duty on the same day without approval.

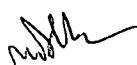
4. So far as the first contention of the applicant is concerned, we have little hesitation in concluding that so far as the principle of law is concerned, the report of the preliminary enquiry, if any, must be supplied particularly when it is to be relied upon. However in the facts of the present case, it appears as is apparent from the reply of the respondents that copy of the said report had been given to the applicant on 21.11.2000. For purposes of the present application, we find no reason to disbelieve the said statement because during the course of enquiry, no such attempt was made by the applicant to ask for the said report. Thus the first contention of the applicant must necessarily fail.


5. However the second contention that speaking order has not been passed and that the respondents have acted on

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material which was not a part of the charge, must prevail. Perusal of the order passed by the disciplinary authority a copy of which is Annexure A-2 reveals that the disciplinary authority has not gone into the detailed facts so as to permit us to state that it was a speaking order. Even the appellate authority has considered the fact which was not a part of the charge namely that applicant absconded intentionally from his duty on the same date without taking approval of the competent authority. When this fact is not a part of the charge then it cannot be used against the applicant for any purpose. Therefore on the second plea, necessarily the application must succeed.

6. Resultantly the application is allowed and the impugned orders are set aside. However we direct that disciplinary authority, if deemed appropriate, may take the loose thread and pass a fresh order in accordance with law.


(M.P. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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