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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA-1929/2002

New Delhi this the 30th day of May, 2003.

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Hon'ble Sh. C.S. Chadha, Member(A)

Sh. Mukesh Garg,
S/o Sh. B.B. Gupta,
Commercial Clerk,
Railway Station,
Daya Basti,
Delhi. Applicant

(By Advocate : Sh. B.S. Mainee)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divl. Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Sr. Divl. Commercial Manager,
State Entry Road,
Northern Railway,
New Delhi. Respondents

(By Advocate : Sh. D.S. Jagotra)

ORDER (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman(J)

The applicant is aggrieved by the penalty orders issued by the Disciplinary Authority dated 10.05.2001 (Annexure A-1) and the order dated 05.07.2001 (Annexure A-2) passed by the Appellate Authority imposing on him punishment of reduction to the lowest scale i.e. Rs. 3200/- for a period of 4 years with cumulative effect. These orders have been passed after holding a departmental enquiry against the applicant under the provisions of Railway Servants (Discipline & Appeal) Rules, 1968.

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2. We have heard Sh. B.S. Mainee, learned counsel for applicant and Sh. D.S. Jagotra, learned counsel for respondents and have perused the relevant documents on record.

3. One of the grounds taken by Sh. B.S. Mainee, learned counsel is that the aforesaid impugned penalty orders are non-speaking orders, which do not show any application of mind or discussion of the evidence ^{been by} that had led to the departmental enquiry proceedings. He has, therefore, contended that these penalty orders are liable to be quashed and set aside and they are in violation of the relevant Rules, Instructions and Principles of natural justice. In the Appellate Authority's order dated 05.07.2001, it is noticed that the Authority has not cared to refer to the points taken by the applicant in the appeal submitted by him dated 20.06.2001 (Annexure A-9) which is, therefore, contrary to the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968, as well as the settled ^{position by} provisions of law in the case of S.N. Mukherjee Vs. U.O.I. (1991(1)SLJ SC 1).

4. Another submission made by the learned counsel for applicant is that the respondents did not spare the defence witness Sh. A. Rehman, Luggage Inspector (LI) who was posted at Allahabad at the time

of disciplinary proceedings whom he wanted to call as a defence witness and who was not spared by his superior. We see force in the submissions made by Sh. B.S. Mainee, learned counsel that in the circumstances of the case the respondents ought to have spared this witness whom the applicant wanted to call as a defence witness in the departmental proceedings, which has not been done. No doubt there was one other defence witness but at the same time it cannot be held that the applicant has been given a reasonable opportunity to put forward his case in defence, by being deprived of an officer whom he states was a witness to the whole incident which was under enquiry in the present case. Therefore, we find merit in the submissions of the learned counsel for the applicant that the deposition of defence witness Sh. A. Rehman (L1) is material. The defence witness Sh. A. Rehman (L1) did not attend the enquiry as apparently his superior had not spared him to do so from Allahabad and admittedly the departmental proceedings were being held at New Delhi. Therefore, we are not impressed with the submissions made on behalf of respondents that there was no other alternative with the enquiry officer but to drop that witness even without the consent of the defence helper, which appears to be in violation of the principles of natural justice.

5. We do not find any satisfactory explanation given by the respondents on the aforesaid two points raised by the applicant in the departmental

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enquiry held against him on the basis of which the aforesaid impugned order reducing his pay to the lowest scale i.e. Rs.3200/- for a period of 4 years with cumulative effect has been imposed on the applicant.

6. In view of the above facts and circumstances of the case, the OA partly succeeds and is allowed with the following directions:-

- (i) The impugned penalty orders dated 10.01.2001 and 05.07.2001 and the enquiry officer's report dated 24.05.2000 (Annexures A-1, A-2 and A-7), respectively, are quashed and set aside;
- (ii) As there has been procedural lacuna, as mentioned above, we consider it appropriate to remit the case to the enquiry officer from the stage of calling the aforesaid defence witness Sh. A. Rehman (L1) in the departmental enquiry proceedings. Thereafter, the competent authorities shall pass appropriate speaking orders in
P.S.

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accordance with Law, Rules and
Instructions; and

(iii) The above shall be done within ^{six^b}₆ months from the date of receipt of
a copy of this order.

No order as to costs.

C.S. Chadha

(C.S. Chadha)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

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