

Central Administrative Tribunal
Principal Bench

O.A. No.2901/2002

New Delhi this the 9th day of January, 2004

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri S.A. Singh, Member (A)

Shri S.P. Tiwari
Ex-Senior Clerk
Under Divisional Mechanical Engineer (Diesel)
Northern Railway
Tughlakabad.

-Applicant

(By Advocate: Shri B.S. 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. The Senior Divl. Mech. Engineer,
Diesel Shed,
Northern Railway,
Tughlakabad.

-Respondents

(By Advocate: Shri J.R. Sharma, proxy for
Shri V.S.R. Krishna)

ORDER (Oral)

Hon'ble Shri Shanker Raju, Member (J)

Applicant impugns order of removal dated 28.8.2001, appellate order dated 16.11.2001 as well as on revision dated 5.7.2002.

2. Applicant while working as Senior Clerk was proceeded against for a major penalty under Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to the "Rules") on the allegation of possessing unlawful railway material

which was found in his bag. Before the disciplinary proceedings, a preliminary enquiry was conducted by Shri Ashok Kumar, ALF where statements of witnesses were recorded.

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3. The above witnesses had also figured in the list of witnesses and the report of a preliminary enquiry was listed as a document. Applicant on receipt of Memo sought for copy of the report of ALF as well as statement of witnesses recorded in the preliminary enquiry. The report was, however, served upon him but not the preliminary enquiry statements. Applicant was held guilty of the charge by the Enquiry Officer.

4. While supplying a copy of the enquiry report, Disciplinary Authority pre-determined the penalty and proposed his removal from service through show cause notice dated 6.7.2001.

5. In response to the above, disciplinary authority imposed a punishment of removal, which on appeal, was affirmed by an order dated 6.11.2001 by the Appellate Authority.

6. In revision petition, the revisional authority while taking extraneous matter, i.e., the past record of the applicant affirmed the punishment, giving rise to the present OA.

7. At the outset, though several contentions have been raised by the learned counsel for applicant, it is contended that after the decision of Apex Court

in ECIL Vs. K. Karunakar JT 1993 (6) P.1, only enquiry report is to be forwarded for comments whereas Disciplinary Authority in the present case pre-determined the issue and has already made up his mind to impose a punishment of removal which he has imposed, cannot be countenanced.

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8. It is on the strength of decision of the Apex Court in State of U.P. Vs. Shatrughan Lal 1998 (6) JT 55, it is contended that when a request is made for supplying a copy of the P.E. statement, denial of the same vitiates the enquiry for violation of principles of natural justice. Learned counsel further states that in revision, past record was taken into consideration.

9. One of the contentions put-forth is that the disciplinary as well as appellate orders are non-speaking without dealing with the contentions of the applicant show non-application of mind and are in-contravention of Railway Board's Circular dated 5.12.85 as well as 13.7.81.

10. On the other hand, respondents' counsel vehemently opposed the contentions. However, on the issue of non-supply of P.E. statement, there is no specific rebuttal. Otherwise, it is stated that the charge against the applicant has been proved and the enquiry has been proceeded against in accordance with rules.

11. In the rejoinder, applicant reiterates his plea taken in the OA.

12. We have carefully considered the rival contentions of the parties and perused the material on record.

13. In so far as supply of P.E. statement is concerned, the applicant has specifically asked for copy of the P.E. statement, which was with a view to demeanour the credibility of witnesses and rebut their testimoney. The aforesaid statements have been denied to the applicant despite his specific request. This has greatly prejudiced him and vitiates the enquiry. Our conclusion is fortified by the decision of the Apex Court in Shatrughan Lal's case (supra).

14. The impugned orders are vitiated on the ground that after the decision of the Apex Court in ECIL (supra), the Disciplinary Authority has no authority to propose a punishment in the show cause notice. In the instant case, in the show cause notice issued to the applicant, the Disciplinary Authority along with the supply of enquiry report also proposed punishment of removal and ultimately the same was confirmed. This is not a tentative conclusion but pre-determined act of the Disciplinary Authority who has made up his mind to impose upon the applicant a punishment of removal, which cannot be countenanced.

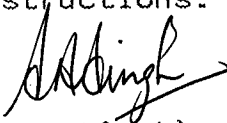
15. We also find that neither in the Disciplinary Authority order nor in the order passed by the Appellate Authority, reasons have been recorded, which is a mandate under the Railway's Board's instructions which are supplementing the

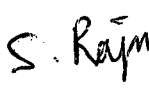
rules. Non-speaking order from a quasi judicial authority is an illegality. The reasons are more important when the orders passed are appealable. The contentions put-forth by the applicant have neither been discussed, mentioned nor controverted.

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16. The revision order is also illegal as extraneous consideration has been made by the revisional authority by taking into consideration the previous bad record of the applicant.

17. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are quashed and set aside. Respondents are directed to reinstate the applicant forth-with. However, if so advised, they shall be at liberty to resume the proceedings from the stage of show cause notice to the applicant and thereafter to take a final decision in accordance with rules and law. The intervening period and its treatment shall be done after the orders passed by the respondents in accordance with law, rules and instructions. No costs.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

cc.

L. No. 125/Diesel/172/2000.

Place : Diesel Shed,
Tughlakabad.

Date : 28.8.2001.

S.P. Tewari,
Senior Clerk,
Diesel Shed, Tughlakabad.

ANNEXURE A-1

I have gone through the file No. 125/D/172/2000 of Sh.

S.P. Tewari Sr. Clerk Diesel Shed Tughlakabad. I have also read the inquiry report and have also seen the statement of witnesses. It is clear that vibration Damper which was stolen from shift Tool Room has been recovered from you and on 22.10.2000 you had gone to shift Tool room in your duty from 16hrs to 24 hours when shift clerk had gone out for call of nature and Hari Shanker Khallasi was on Duty. From above it is clear that you had the intention of taking the Railway property out of the Railway premises and you were associated in the process of theft.

You/Reply to Show cause Notice was received on 17.7.2001 but no fresh fact has come to light. I have come to this conclusion that severe punishment be awarded for the said act which will give a message to antisocial elements and employees of Diesel Shed. I therefore impose the penalty of removal from service from immediate effect. And after confirmation of the charge of theft you are removed from service with immediate effect.

You can proper an appeal against these orders to Sr. DME in accordance with Rules provided.

- i) it is preferred within 45 days.
- ii) No improper language is used.

Sd/-

S.M. Sharma.

