

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1607/2002

This the 17th day of July, 2003.

HON'BLE SH. GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE SH. SHANKER RAJU, MEMBER (J)

Dinesh Chandra Sharma
S/o Shri Mattoo Lal Sharma
Ex- Gang Mate,
N. E. Railway,
Now Key Man,
Mathura Cantt.

(By Advocate: Sh. D.P. Sharma)

Versus

1. The Chief Engineer
N. E. Railway
Gorakhpur.
2. The Additional Divisional Rail Manager,
N.E.Railway, Izzat Nagar,
Bareilly.
3. The Senior Divisional Engineer/II,
N. E. Railways, Izzat Nagar,
Bareilly.

(By Advocate: Sh. R.P. Aggarwal)

O R D E R (ORAL)

By Sh. Shanker Raju, Member (J)

Applicant impugns respondents' order dated 10.8.2000 imposing upon him a penalty of removal from service, appellate order dated 16.1.2000 rejecting his appeal and also the revisional order dated 19.9.2001 wherein the penalty of removal has been reduced to reduction in rank.

2. Applicant while working as P.Way Mate was proceeded against for a major penalty on a memorandum alleging use of un-parliamentary language and misbehaviour with the officers.

3. On examination of prosecution witnesses applicant requested the respondents to allow him to examine defence witnesses. The aforesaid request was turned down and the enquiry officer by his report held the applicant guilty of charge of creating obstruction during inspection and misbehaving with the officers.

4. On representing against the enquiry report a major punishment of removal was inflicted which was affirmed in appeal. On revision taking a compassionate view the penalty was reducted and the applicant was reverted to a lower post to get further promotion in the next higher grade as per the seniority of Key Man.

5. Though Sh. D.P.Sharma, learned counsel of the applicant has raised several legal pleas to assail the impugned orders but at the outset it is stated that through his application dated 18.8.99 in his defence applicant had requested the enquiry officer to allow him to examine five offical witnesses who were working in Railways as well as correspondent of Dainik Jagran at Mathura.

6. In the above conspectus, it is stated that his request for examination of defence witnesses was arbitrarily without recording reasons turned down on the ground that as the name of defence witnesses were not referred to in the cross-examination of prosecution witnesses and also in the annexures attached with the memorandum, request was not in accordance with law. In this background, it is stated that denial of examination of defence witnesses deprived the

applicant to effectively defend the charge against him and as he has been prejudiced the enquiry and consequent orders are vitiated.

7. On the other hand on this issue, Sh. R.P. Aggarwal, learned counsel of the respondents contended that as the request of the applicant for examination of defence witnesses was not reasonable and relevant, the same has been rejected by recording reasons, does not vitiate the enquiry.

8. Sh. Aggarwal defends the order passed by the respondents and referred to a statement made by the applicant on 31.5.99 contending that the applicant had admitted the charge. As such there is no need for holding further enquiry but in the interest of justice after due opportunity was accorded to the applicant in accordance with procedure, the order passed cannot be interfered in a judicial review.

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

10. As per Rule 9 (19) of the Railway Servants (Disciplinary and Appeal) Rules, 1968 on closure of the disciplinary authority's case Railway servant shall be required to state his defence and as per Rule 9 (20) of the rules *ibid.* the evidence on behalf of Railway servant shall then be produced and the witnesses produced by the Railway servant shall then be examined by or on behalf of him and shall be cross-examined by the Presenting Officer.

11. The aforesaid provision shows that it is the right of the Railway servant to state the witnesses to be produced in his defence on closure of the prosecution. In the present case such an application was made citing six witnesses in defence on 18.8.99.

12. As per Railway Board's letter dated 2.5.70 which has made obligatory to examine all the witnesses produced by the delinquent Railway servant and it would not be correct to refuse examination of such witnesses on any account.

13. The aforesaid instructions have been clarified by the Board's letter dated 8.12.70. It is stipulated that if enquiry authority is of the view that such an evidence would be entirely irrelevant to the charge and failure to secure the attendance of witnesses would not prejudice defence request can be rejected but that should be accompanied with reasons to support in full.

14. In the conspectus, if one has regard to the above the witnesses cited by the applicant were those who were present at the time when the applicant had allegedly misbehaved and obstructed. Their presence and examination in defence was essential for the applicant to establish his innocence and to rebut the charges alleged against him by the respondents. The reasons assigned by the enquiry officer to deny such a request is that as their names did not figure either in the annexures alongwith chargesheet, during the enquiry and in cross-examination.

15. In our considered view, the aforesaid is not a valid compliance. The enquiry officer is mandated firstly not to refuse examination if the witnesses are official and in the event he is of the view that non-examination of witnesses would not prejudice defence of the delinquent, the request is to be rejected by recording reasons in full. As there is no reference as to whether prejudice has been caused to the applicant or not by a non-examination of defence witnesses the reasons assigned are vague and are not justifiable.

16. A coordinate bench in K.T.Venkatachalamapthy vs. Divisional Safety Officer, Southern Railway Madurai and another SLJ 1992 (1) CAT 151 held that rejection of examination of defence witnesses only on the ground that the same is not necessary is not valid.

17. In Ramesh Kumar Mansukhlal Bhatt vs. Union of India and others SLJ 1999 (2) 564, the Tribunal has held that refusal to produce defence witnesses lightly vitiates the proceedings.

18. Having regard to the decisions of the Division Bench, we are of the considered view that refusal of the request of the applicant for examination of defence witnesses which were relevant to his defence a grave prejudice has been caused to him and as the substantive rule of procedure has been violated, enquiry as well as consequent order cannot be sustained in law.

19. For the reasons recorded above, leaving open the other grounds of the applicant, we partly allow this OA. Impugned orders are quashed and set aside. However, if so advised, respondents shall resume the proceedings from the stage of

defence evidence. The consequential benefits shall be subject to the order passed by the respondents on resumption of proceedings in accordance with rules and instructions and law on the subject. The aforesaid enquiry, if so initiated, shall be completed within a period of 3 months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
Member (J)

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(GOVINDAN S. TAMPI)
Member (A)