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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1425/1999

Monday, this the day of 23rd April, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

Shri Rajender Kumar
S/O Shri Dukhi Lal
Ex. Bungalow Peon
Under Sr. Divisional Mech. Engineer
(Coaching I),
Central Railway
Mumbai CST.

R/O C/O Shri K.L.Kurel,
353/C, SEH Colony (NR),
Ghaziabad (UP)

..Applicant

(By Advocate: Ms. Meenu Mainee)

VERSUS

Union of India
Through

1. The General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Central Railway,
Bombay Division,
Mumbai CST.
3. Shri Sushil Chandra
Dy. Chief Mechanical Engineer (Coaching),
Central Railway,
Mumbai CST.

..Respondents

(By Advocate: Shri H.K.Gangwani)

O R D E R (ORAL)

Hon'ble Shri S.A.T. Rizvi, Member (A):

On the charge of unauthorized absence from duty during the period from 14.2.1997 to 13.5.1997, the applicant has been proceeded against departmentally and has been punished with dismissal by disciplinary authority's order dated 20.10.1997, (Annexure A-1). The aforesaid order has been upheld by the appellate authority who has passed orders in appeal on 24.2.1998.

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The revisional authority before whom the matter was subsequently taken has, however, after consideration, reduced the scale of penalty from dismissal to removal. This order was passed on 17.7.1998. The aforesaid orders have been impugned by the applicant in this OA.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. The learned counsel appearing in support of the OA has argued that, in the present case, a proper enquiry has not been made and that a reasonable opportunity of being heard was not made available to the applicant. No prosecution witness has been examined and the defence witnesses named by the applicant too have not been examined. All that has been done in the present proceedings is to subject the applicant to a sort of interrogation on three different dates, namely, 18.6.1987, 5.9.1997 and lastly on 15.9.1997. We have perused the aforesaid material and find that it is in the nature of questions and answers wherein the questions were formulated and put by the enquiry officer. On the aforesaid method followed in conducting disciplinary proceedings, the learned counsel for the applicant has placed reliance on Mukesh Kumar Vs. Union of India & Ors. decided by this Tribunal on 11.5.1990 and reproduced in ATJ 1990 (2) Volume-9 1. While dealing with the aforesaid matter, the Tribunal has, in that case, in turn, placed reliance on what the Supreme Court has observed in Associated Cement Company Vs. Their Workmen, 1963 (2) Lab. LJ 396. The aforesaid

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observation has been reproduced by the Tribunal in that case and we do the same in the following.

"17. Another lacuna in the proceedings is that Enquiry Committee examined the applicant first and then only called the prosecution witnesses. In our opinion, an inquiry in which the delinquent officer is examined at the very commencement of it cannot be held to be a fair inquiry giving him a reasonable opportunity to defending himself. In Associated Cement Company Vs. Their Workmen, 1963 (2) Lab. LJ 396, the Supreme Court observed as follows:-

"The other infirmity in the present proceedings flows from the fact that the enquiry has commenced with a close examination of Malak Ram himself. Some of the questions put to Malak Ram clearly sound as questions in cross-examination. It is necessary to emphasize that in domestic enquiries the employer should take steps first to lead evidence against the workman charged, give an opportunity to the workman to cross-examine the said evidence and then should be workman be asked whether he wants to give any explanation about the evidence led against him. It seems to us that it is not fair in domestic enquiries against industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him. In dealing with domestic enquiries held in such industrial matters, we cannot overlook the fact in a large majority of cases, employees are likely to be ignorant, and so, it is necessary not to expose them to the risk of cross-examination in the manner adopted in the present enquiry proceedings."

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18. In the instant case, the proceedings of the enquiry clearly indicate that it was in the form of questions and answers between the Inquiry Officer and the delinquent officer from the very outset of the enquiry.

19. In the conspectus of the facts and circumstances of the cases we are of the

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opinion that the impugned orders of dismissal are liable to be set aside and quashed...."

4. In the aforesaid case, the Tribunal had quashed and set aside the orders of dismissal on the ground that the enquiry proceedings clearly indicated that it was in the form of questions and answers between the inquiry officer and the delinquent officer from the very outset of the enquiry. The circumstances in the present OA, we find, are not materially different from the circumstances in which this Tribunal has passed the aforesaid order.

5. In addition, we also find that the defence helper made available to the applicant, at a very crucial stage in the enquiry, withdrew on his own merely because the applicant had apparently without his permission filed a petition dated 3.9.1997 before the Asstt. Mechanical Engineer, the disciplinary authority in the case. We also find that the application filed by the applicant soon thereafter for appointment of an alternative defence helper was not acted upon by the disciplinary authority, though on the same date, namely, on 15.9.1997, the matter was proceeded against the applicant as usual by means of questions and answers. We are convinced that the non-availability of defence assistant has adversely affected the defence of the applicant without any fault of his.

6. Insofar as the legitimate defence of the applicant is concerned, we have also noted with interest that in the aforesaid petition of 3.9.1997, the applicant had suggested the production of Mr. & Mrs. Sushil

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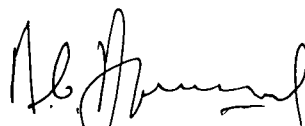
Chandra in his defence. The enquiry officer nor the disciplinary authority took any action on the aforesaid request with the result that the most material witnesses in this case, both residing in the house in which he worked as bungalow Khallasi, could not be examined in his defence thereby weakening the case in support of the applicant.

7. The learned counsel has also submitted that, in accordance with the procedure in vogue, on receipt of the petition dated 3.9.1997, the disciplinary authority as well as the enquiry officer should have stayed the proceedings particularly because the allegation of bias had thereby been made against the enquiry officer as well as the disciplinary authority. No such thing was done and the enquiry officer/ disciplinary authority concluded the proceedings without examining any witness.

8. In the circumstances aforesaid, we find that the defence of the applicant has been seriously prejudiced, inter alia, due to non-observance of the principles of natural justice. The proceedings cannot, therefore, be sustained. In the result, OA succeeds and is allowed. The impugned orders dated 20.10.1997, 24.2.1998 and 17.7.1998 are quashed and set aside. The applicant will be reinstated in service from the date of his dismissal and will be entitled to back wages at the rate of 50%.
No costs.



(S.A.T. Rizvi)
Member (A)



(Ashok Agarwal)
Chairman

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