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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA No. 1427/99

New Delhi: this the 28th day of February, 2001.

HON'BLE MR. S. R. ADIGE, VICE CHAIRMAN (A).

HON'BLE DR. A. VEDAVALI, MEMBER (J)

Anant Prakash Kashyap,
S/o Late Shri. Puttu Lal,
Ex. Clerk Gr. I,
Under Dy. Chief Accounts Officer (T),
Railway Accounts Office,
Kishan Ganj,
Delhi.

....Applicant.

(By Advocate: Shri B. S. Mainee)

Versus

Union of India
through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Financial Advisor &
Chief Accounts Officer,
Northern Railway,
Baroda House,
New Delhi.
3. The Dy. Chief Accounts Officer (T),
Northern Railway,
State Entry Road,
New Delhi.

(By Advocate: Shri VSR Krishna).

ORDER

S. R. Adige, VC (A):

Applicant impugns the disciplinary authority's order dated 12.8.98 (Annexure-A1) removing him from service, and the appellate authority's order dated 31.3.99 (Ann. A2) rejecting his appeal. He seeks reinstatement with consequential benefits.

2. Applicant was proceeded against departmentally vide Memo dated 16.5.95 (Annexure-A/9) on the charge of being unauthorisedly absent from 19.4.86 till date.

3. The Enquiry Officer in his report dated 15.1.97 (Annexure.A-15) held the charge as proved. A copy of the

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EO's report was furnished to applicant on 27.12.97 (Annexure-A15) for representation, if any.

4. Applicant submitted his representation dated 18.3.97 on receipt of which the Disciplinary Authority after considering the same, as also the other materials on record, and agreeing with the EO's findings removed applicant from service vide impugned order dated 12.8.98, which was upheld in appeal vide impugned order dated 31.3.99, giving rise to the present OA.

5. We have heard applicant's counsel Shri Mainee and respondents' counsel Shri VSR Krishna.

6. The first ground taken by Shri Mainee is that there has been a grave infirmity in the conduct of the proceeding rendering it liable to be quashed and set aside, in as much as applicant was examined thoroughly by the EO before the PWs were examined (Annexure-A12). In this connection, he relies on several rulings including Smt. Suraj Vs. UOI ATJ 1992(2) 41; Mukesh Kumar's case ATJ 1990(2)1; Associated Cement Company Vs. their Workmen 1963(2) Labour Law Journal 396; N.S. Meena Vs. UOI ATJ 1991 Vol.1 page 413; and OA No. 5/99 D.N. Shukla Vs. UOI decided on 30.10.2000.

7. A perusal of the materials at Annexure-A12 indicates that the Enquiry Officer did indeed examine applicant thoroughly before he examined the PWs. In a DE, it is the PWs who are required to be examined and cross-examined under Rule 9(17) Railway Servants (Disc. & Appeal) Rules before the delinquent is called upon to enter into his own defence under Rule 9(19) and 9(20) of those Rules. This departure from the Rules promulgated under Article 309 of the Constitution, is an infirmity grave enough to warrant quashing of the entire proceedings from the stage of service of the chargesheet on applicant.

8. Shri Mainee has also raised the point that by order dated 12.8.98 applicant has been removed from service retrospectively w.e.f. 19.4.86 which is not permissible in law, and also that there has been non-compliance of Rule 9(21), but without considering it necessary to discuss these additional grounds, we hold that the reasons contained in para 6 above itself are sufficient to warrant judicial intervention in this OA.

9. The OA therefore succeeds and is allowed. The impugned order of the disciplinary authority and of the appellate authority are quashed and set aside. Applicant should be reinstated in service forthwith. Thereupon it will be open to respondents to take up the DE from the stage of service of the chargesheet upon applicant and thereafter proceed in accordance with law. No costs.

A Veda Valli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)

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