

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

OA.No.1951 of 1999

New Delhi, this 09th day of March 2001

HON'BLE SHRI KULDIP SINGH, MEMBER(J)
HON'BLE SHRI M.P.SINGH, MEMBER(A)

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Mohd. Saleem Abbasi
S/o Shri Bashir Uddin
R/o Haveli Kallu Khabas
Chitli Qalor
Jama Masjid
Delhi.

... Applicant

(By Advocate: Shri B.S.Mainee)

versus

Union of India, through

1. The General Manager
North Eastern Railway
Gorakhpur
2. The Divisional Railway Manager
North Eastern Railway
Izatnagar

... Respondents

(By Advocate: Shri P.M.Ahlawat)

ORDER(Oral)

By Shri M.P. Singh, M(A)

The applicant has filed this OA challenging the order dated 16.9.1996 passed by Assistant Operating Superintendent, North Eastern Railway, Izatnagar, the order dated 18.6.1997 passed by the Senior Divisional Operating Manager, Izatnagar and the order dated 12.3.1999 passed D.R.M., North Eastern Railway, Izatnagar. By the impugned orders the applicant has been removed from service and his appeal as also revision have been rejected.

2. The brief facts of the case are that the applicant was working as a Porter Group 'D' at Lal



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Kuan Railway Station under North Eastern Railway. While working as a Porter, a memorandum of chargesheet for major penalty was served on the applicant on 12.12.1995 on the allegation that he was absent from duty in an unauthorised manner from 30.8.1994. The applicant denied the charges. Thereafter an enquiry officer was appointed to hold the enquiry. The enquiry officer conducted the enquiry. According to the applicant, the statement of Station Master who was the Prosecution Witness was taken in the absence of the applicant. The applicant was not questioned regarding the evidence against him and as a matter of fact no opportunity was given to him to explain his position. Thereafter without questioning the applicant on the evidence against him the Enquiry Officer directed the applicant to give his defence note. The applicant is not aware as to what report was submitted by the Enquiry Officer. But the Assistant Operating Manager, Northern Railway, Izatnagar passed an order on 16.9.1996 imposing the penalty of removal from service on the applicant. The order passed by the Assistant Operating Manager is a non-speaking, non-reasoned and even it does not indicate whether the applicant has been dismissed from service or removed from service or retired compulsorily. The order has been passed without application of mind. The applicant submitted an appeal to the Senior Divisional Operating Manager on 15.10.1996 and the same was rejected on



18.6.1997. Thereafter he filed a revision application which was also rejected by the Divisional Railway Manager vide order dated 12.3.1999. Aggrieved by this, he has filed this OA.

3. The respondents have contested the case and have stated that the applicant has admitted that he remained absent from 30.8.1994 to 12.4.1996, but he had been informing the Station Superintendent. As the applicant remained absent from duty, an enquiry was conducted against him. During the course of the enquiry the applicant was given opportunity to cross examine the Station Master Shri M.Y. Siddiqui whose statement was recorded in the presence of the applicant. The enquiry officer concluded the enquiry and submitted the report to the disciplinary authority. A copy of the enquiry report was sent to the applicant by registered post on 1.8.1996. An order of removal from service was passed by the disciplinary authority. The Divisional Railway Manager considered all the points raised by the applicant in his petition and rejected the same by passing a reasoned and speaking order. He also filed a revisional application which was also rejected. In view of these submissions, the applicant is not entitled to the relief claimed by him.



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4. During the course of the arguments, the learned counsel for the applicant submits that the orders passed by the disciplinary authority and appellate authority are non-speaking and non-reasoned orders. He also submits that a copy of the inquiry report was not sent to the applicant to give him an opportunity for making representation against the findings of the enquiry officer which is against the law laid down by the Hon'ble Supreme Court. He has further submitted that the enquiry officer did not give an opportunity to the applicant to cross-examine the Station Superintendent Shri M.Y. Siddiqui nor did he record the statement of the applicant under Rule 9(21) of the Railway Servants (Disciplinary & Appeal) Rules. Thus, there is a violation of statutory rules.

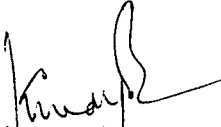
5. On a perusal of the record placed before us, we are of the considered view that the order passed by the disciplinary authority and the appellate authority are non-speaking and non-reasoned orders and in fact these are not proper orders. There is no application of mind by the disciplinary authority and the appellate authority. A copy of the enquiry report has not been sent to the applicant ^{and hence} giving him an opportunity to submit his representation and thus he has been denied an opportunity to defend his case which is against the principle of natural justice.



6. For the reasons stated above, the impugned order dated 16.9.1996 passed by Assistant Operating Superintendent, North Eastern Railway, Izatnagar, the order dated 18.6.1997 passed by the Senior Divisional Operating Manager, Izatnagar and the order dated 12.3.1999 passed D.R.M., North Eastern Railway, Izatnagar are quashed and set aside. However, the respondents are at liberty to hold a fresh enquiry against the applicant, if so advised.

7. The OA is disposed of as above. No order as to costs.


(M. P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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