

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 397/98

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New Delhi, this the 22nd day of September, 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE CHAIRMAN (J)
HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)

In the matter of:

Sh. Azim Ullah
S/o Sh. Ali Baksh
Ex. Substitute Loco Cleaner
under Loco Foreman
Northern Railway
Moradabad
presently
c/o Sh. Mukesh Kumar Rathore,
Gali No. 28, H.No. C-1/412,
Karwal Nagar Extn.
Khajori Khas,
Delhi. Applicant
(By Advocate: Sh. B.S. Mainee)

VS.

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad. Respondents
(By Advocate: Sh. Rajeev Bansal)

ORDER (ORAL)

By Mr. Govindan S. Tampi,

In this application, orders dated 10.9.91 passed by Assistant Mechanical Engineer, Northern Railway, Moradabad and dated 9.2.96 passed by Sr. Divisional Mechanical Engineer, Northern Railway, Moradabad, are under challenge.

2. The applicant who joined as a casual labourer in Moradabad Division and subsequently appointed as Substitute Loco Cleaner in Moradabad was proceeded against, under the charge-sheet dated 13.10.89. His having denied the charge; enquiry proceedings ^{began} ~~ordered~~. On receipt of the report of the enquiry officer, the disciplinary authority has decided by the

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✓ impugned order dated 10.9.91 to remove him from service. This was confirmed by the appellate order issued on 15.1.92. Aggrieved by the same he moved this Tribunal in OA No.944/92 which was disposed of on 22.8.95. The relevant portion of the appellate order reads as below:-

2 "The same has not been complied with by the delinquent. He has himself to suffer. Thus, this is a fit case where the Appellate authority to pass a detailed order after considering the memo. of appeal in objective manner and in that way any observation made in the judgment will not come in the way of Appellate authority. He is free to take his own view in the matter in the circumstances of the case and he may at the appellate stage himself give an opportunity to cross-examine the witnesses which the applicant did not cross-examine by not associating in the enquiry. It is open to the appellate authority to consider every aspect objectively. The appellate authority, therefore, consider the appeal and pass the speaking order in that direction.

4 The application is, therefore, partly allowed and the case is remanded to the Appellate authority to decide the appeal of the applicant by a speaking order in the light of the observation made in the body of the judgment after giving a personal hearing to the delinquent and also considering his request, if any, for corss-examining any of the witnesses examined in his absence. In the circumstances, the parties are directed to bear their own cost. The Appellate authority to conclude the proceedings of the appellate stage expeditiously preferably within a period of six months from the date of receipt of copy of this order."

3. Thereafter the Senior Divisional Mechanical Engineer in the DRM's office, Moradabad passed the revised appellate order dated 9.2.96 which reads as under:-

✓ "In reference to above, the appellate authority has passed the following orders.

"That in compliance to the judgment of Honourable Central Administrative Tribunal, Principal Bench, New Delhi dated 22nd August, 1995 on OA NO. 944/92. Sh. Azimullah the delinquent was extended an opportunity vide this office letter No. 727E/D&AR/91-229/MB-129 dated 1.12.95, to appear before appellate authority for personal hearing of his appeal and for cross-examination of PWs if desired by him but the delinquent failed to turn up, although he was given 31 days time. It is evident that Sh. Azimullah was not inclined to follow the directives of Honourable Tribunal.

I reject the appeal."

4. Arguing for the applicant against the above order, Sh. Mainee, learned counsel stated that the order was totally non-speaking and ^{was} ~~is~~ in consonance with the order issued by the Tribunal in the earlier OA. He has raised a number of points specifically on ^{the} non-speaking nature of the enquiry report before the disciplinary authority, but this was not dealt with by him in his order. He argues that the order of disciplinary authority was not correct. He also referred the decision of the Hon'ble apex Court wherein it was indicated that enquiry report should have been made available to the delinquent officer before the proceedings by the disciplinary authority. Sh. Mainee further argues that the appellate authority was directed to come to a conclusion independently applying his mind, which has not been done. Thus, his rights have been violated. He seeks relief especially as what has been given is extreme penalty of removal.

5. Replying for the respondents Sh. Bansal learned counsel states that the appellate authority has acted in consonance with the directions given by the Tribunal. He also placed before us the relevant file ^{from} ~~for~~ which the appellate order was given.

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6. We have given careful⁴ consideration to the rival contentions and also have perused the records placed before us by the counsel for respondents which he also showed to counsel for the respondents in the court. While disposing of the earlier OA, the Tribunal had specifically stated that what was necessary is only to set aside the appellate order with direction to the appellate authority to consider the issues in independent manner and to apply his mind and to pass orders accordingly. The records placed before us clearly shows that the appellate authority ~~has~~[^] applied its mind on the issues and recorded findings and decided the appeal though the operative portion of the appellate order ^{alone} was communicated to the party. This was not correct. In fact what was necessary to do justice was to communicate to the applicant the entire order which is [^]detailed and speaking one, where all the points have been taken into consideration. By not making it available the applicant's right for review has been violated. This is an irregularity.

7. As earlier indicated, what is expected of us at this time is only to find out as to whether the appellate authority has acted in tune ^{with} ~~of~~ the order of the Tribunal dated ^{22.8.95 in OA No} 944/92, ^{functioning} keeping in mind all the circumstances of the case and also acting independently and applying its mind. The perusal of the records placed before us ^{has} ~~made~~[^] clear to us that he has done it but while communicating the order he has done a mistake by ~~only~~ ^{only} forwarding [^] the operative portion. Beyond that no mistake or no irregularity has been done in this case. Sh. Mainee strenuously argues that the points relating to the enquiry report had been raised by him also in earlier OA but that has not been considered. We have seen the records and found that [^] a slight mention has been made in the OA, ~~though~~[^] it

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had not been argued before the Tribunal earlier and the Tribunal has, therefore, correctly not recorded any finding on that. It is not for us to reopen the issue and go back on our coordinate Bench's decision. The interest of justice in this case would, to our mind, be fulfilled by directing the respondents to make available to the applicant within a week from today the full and detailed appellate order which is duly recorded in the file and leaving the applicant to avail himself of the remedy of review in terms of Rule 25 of Railway Servants (Discipline and Appeal) Rules, 1968, if he so chooses.

8. The application is disposed of with the directions that if the applicant files a review petition within one month from the receipt of the appellate order, the same may be disposed of by a detailed and speaking order, within three months.

(GOVINDAN S. TAMPI)
Member (A)

(V. RAJAGOPALA REDDY)
Vice Chairman (J)